

Court File No. CV-22-00685200-00CL

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

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

Applicant

and

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC. and 181
DAVENPORT RETAIL INC.**

Respondents

RESPONDENTS' SUPPLEMENTAL AUTHORITIES

October 30, 2022

HENEIN HUTCHISON LLP
235 King Street East, First Floor
Toronto, Ontario M5A 1J9

Tel: (416) 368-5000

Scott C. Hutchison (LSO: 29912J)
shutchison@hhllp.ca

Ewa Krajewska (LSO: 57704D)
ekrajewska@hhllp.ca

David Postel (LSO: 78102E)
dpostel@hhllp.ca

Lawyers for the Respondents

SUPPLEMENTAL AUTHORITIES

The respondents intend to rely on the following supplementary authorities on the hearing of the application:

1. The admissibility of pre-contractual negotiations in the interpretation of an agreement

a. *Ontario First Nations (2008) Limited Partnership v. Ontario Lottery and Gaming Corporation*, [2021 ONCA 592](#) at para. [para. 61 to 65](#)

2. When interpreting a contract, an adjudicator should read the text in a fashion that accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed

a. *2484234 Ontario Inc v Hanley Park Developments Inc*, [2020 ONCA 273](#) at para 64

3. The admissibility of post-contractual conduct in the interpretation of an agreement

a. *Shewchuk v Blackmont Capital Inc*, [2016 ONCA 912](#) at para [41 to 50](#)

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-and-

NORTHERN CITADEL CAPITAL INC
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Court File No. CV-22-

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PROCEEDING COMMENCED AT TORONTO

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235 King Street East, First Floor
Toronto, Ontario M5A 1J9

Tel: (416) 368-5000

Scott C. Hutchison (LSO: 29912J)
shutchison@hhllp.ca

Ewa Krajewska (LSO: 57704D)
ekrajewska@hhllp.ca

David Postel (LSO: 78102E)
dpostel@hhllp.ca

Lawyers for the Respondents

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B E T W E E N:

PRICEWATERHOUSECOOPERS INC.,
(In its Capacity As Court-Appointed Receiver And Manager Of Bridging Finance Inc.)
Applicant

and

NORTHERN CITADEL CAPITAL INC.; ONE8ONE DAVENPORT INC.; 181 DAVENPORT
RETAIL INC.
Respondents

FACTUM OF THE NON-PARTY
KHASHAYAR KHAVARI

ADAIR GOLDBLATT BIEBER LLP
95 Wellington Street West
Suite 1830, P.O. Box 14
Toronto ON M5J 2N7

Simon Bieber (56219Q)
Tel: 416.351.2781
Email: sbieber@agblp.com

Sean Pierce (78100M)
Email: spierce@agblp.com

Tel: 416.499.9940
Fax: 647.689.2059

Lawyers for the Non-Party,
Khashayar Khavari

TO: **Thornton Grout Finnigan LLP**
TD West Tower, Toronto-Dominion Centre
3200 – 100 Wellington Street
West Toronto, ON M5K 1K7

John L. Finnigan (24040L)

Email: jfinnigan@tgf.ca

Grant B. Moffat (32380L)

Email: gmoffat@tgf.ca

Adam Driedger (77296F)

Email: adriedger@tgf.ca

Tel: 416-304-1616

Lawyers for the Applicant

AND TO: **HENEIN HUTCHISON LLP**
235 King Street East
First Floor Toronto, ON M5A 1J9

Scott C. Hutchison (29912J)

Email: shutchison@hhllp.ca

Ewa Krajewska (57704D)

Email: ekrajewska@hhllp.ca

David Postel (78102E)

Email: dpostel@hhllp.ca

Tel: (416) 368-5000

Lawyers for the Respondents

AND TO: **PRICEWATERHOUSE COOPERS INC.**
18 York Street, Suite 2600
Toronto, ON M5J 0B2
Tel: (416) 687-8200

Greg Prince

Email: gregory.n.prince@pwc.com

Michael McTaggart

Email: michael.mctaggart@pwc.com

Christine Sinclair

Email: christine.l.sinclair@pwc.com

Tyler Ray

Email: tyler.ray@pwc.com

Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds

AND TO: **OSLER, HOSKIN & HARCOURT LLP**
100 King Street West - Suite 6200
Toronto, ON M5K 1K8
Tel: (416) 862-5672

John MacDonald
Email: jmacdonald@osler.com
John MacDonald
Email: jmacdonald@osler.com
Blair McRadu
Email: bmcradu@osler.com

Lawyers for Richter Inc. as Proposed Receiver

AND TO: **RICHTER INC.**
181 Bay Street, Suite 3320
Bay Wellington Tower
Toronto, ON M5J 2T3
Tel: (416) 488-2345

Adam Sherman
Email: asherman@richter.ca
Megha Sharma
Email: msharma@richter.ca
Tel: (416) 646-8378
Proposed Receiver

AND TO: **KEB HANA BANK**
627 Bloor Street West
Toronto, ON M6G 1K8
Tel: (416) 227-5570

Theo Ikonomou
Email: t.ikonomou@hanafn.com
PPSA registrant with respect to 181 Davenport Retail Inc.

AND TO: **LAX O'SULLIVAN LISUS GOTTLIEB LLP**
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8
Tel: (416) 642-3134

Nadia Champion
Email: ncampion@lolg.ca
Matthew Law
Email: mlaw@lolg.ca

Lawyers for Mizrahi Inc. and 2495159 Ontario Inc.

AND TO: **DEPARTMENT OF JUSTICE (CANADA)**
Ontario Regional Office
120 Adelaide Street West
Suite 400
Toronto, ON M5H 1T1

Diane Winters
Email: diane.winters@justice.gc.ca

AND TO: **HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF
ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE
INSOLVENCY UNIT**
6th Floor, 33 King Street West
Oshawa, ON L1H 8H5
Tel: (905) 433-5657

Leslie Crawford
Email: leslie.crawford@ontario.ca
Insolvency Unit
Email: insolvency.unit@ontario.ca

Court File No. CV 22-006852-0000CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.,
(In its Capacity As Court-Appointed Receiver And Manager Of Bridging Finance Inc.)
Applicant

and

NORTHERN CITADEL CAPITAL INC.; ONE8ONE DAVENPORT INC.; 181 DAVENPORT
RETAIL INC.
Respondents

**FACTUM OF THE NON-PARTY
KHASHAYAR KHAVARI**

1. The Non-Party, Khashayar Khavari (“**Khash**”) has brought a motion to intervene as an added party in this application pursuant to Rule 13.01.
2. This factum addresses two issues: (1) why Khash should be granted leave to intervene in this application; and (2) if granted leave to intervene, Khash’s position on the underlying application (the “**PwC Application**”).
3. On the motion for leave to intervene, Khash should be granted leave because he satisfies either of the first two criteria in the disjunctive test for leave to intervene under Rule 13.01.
4. If granted leave to intervene in the PwC Application, Khash *supports* the applicants’ request to appoint a receiver, but respectfully requests several modest amendments to the draft

receivership order to protect his interests in the companies over which the applicant seeks to appoint a receiver.

PART I – FACTS

5. In the underlying application, the applicant, PricewaterhouseCoopers Inc. (“**PwC**”) seeks to appoint a receiver over three corporate entities: Northern Citadel Capital Inc. (“**Northern Citadel**”); One8One Davenport Inc. (“**One8One**”), and 181 Davenport Retail Inc.¹ These companies relate to a real estate development at 181 Davenport Avenue, Toronto.²

6. These companies are or were controlled by Sam Mizrahi (“**Mizrahi**”). As a result, Mizrahi is the sole human face and the instructing mind of the Respondents’ position on this application, having sworn the only affidavit in the Respondents’ Application Record.³

7. Khash owns 100% of the shares of Northern Citadel, 50% of the shares of One8One Davenport, and has a 50% interest in 181 Retail.⁴ Khash’s interest in these corporations is the subject of ongoing litigation between Khash and Mizrahi (the “**Khash Litigation**”). But for Mizrahi’s conduct as alleged in the Khash Litigation, Khash would have had the same participation rights in the PwC Application that Mizrahi does as an affiant and a directing mind of the corporate defendants. Khash has brought a motion to intervene in the present application to protect his interests in these companies and the relief sought with respect to these companies in the Khash Litigation.

¹ Notice of Application, Exhibit “A” to the Affidavit of Kashayar Khavari, Motion Record (“**MR**”), Tab 2, p. 25ff.

² Notice of Application, para. 10, Exhibit “A” to the Affidavit of Kashayar Khavari, MR, Tab 2, p. 29.

³ Affidavit of Sam Mizrahi, Respondents Application Record, Tab 1, p. B-1-51.

⁴ Affidavit of Kashayar Khavari, paras. 11-13, MR, Tab 2, p. 16.

8. On his motion for leave to intervene, the Court need not make any determinative findings regarding the nature of Khash's interests in these companies nor of any contested issues in the Khash Litigation. It need only conclude that (1) he has an interest in the outcome of the Khash Litigation; and (2) that interest relates to or could be affected by the PwC Application in a manner that satisfies r. 13.01. This does not require more than a review of the pleadings in the Khash Litigation.

Background to the Khash Litigation

9. In 2010, Khash and Mizrahi agreed to develop condominium projects together. They agreed to be 50/50 business partners, splitting all profits.

10. In October 2011, Khash and Mizrahi entered into a trust agreement whereby Khash transferred his shares in the various companies he and Mizrahi had set up to Mizrahi (the "**Trust Agreement**"). That agreement provides that Mizrahi would hold these shares in trust for Khash.⁵

11. The Trust Agreement provides that Khash has a 50% interest in a series of project companies that were later amalgamated to become One8One and 181 Retail.⁶

12. The Trust Agreement further provides that Khash has a 100% interest in Northern Citadel.⁷

⁵ Affidavit of Khashayar Khavari, para. 8, MR, Tab 2, p. 15.

⁶ Affidavit of Khashayar Khavari, paras. 9-11, MR, Tab 2, pp. 15-16.

⁷ Affidavit of Khashayar Khavari, para. 13, MR, Tab 2, p. 16.

13. While legal nature of the Trust Agreement is a matter of dispute in the Khash Litigation, Mizrahi admits in his statement of defence in that litigation the key terms of the agreement as set out above.⁸

14. In the Khash Litigation, Khash has alleged significant misconduct by Mizrahi regarding Mizrahi's holding of Khash's shares in Northern Citadel, One8One, 181 Retail, and others. These allegations include:

- In June 2015, Mizrahi admitted that he had mismanaged the 181 Davenport project;
- The financial report Mizrahi had provided up until that time had been inaccurate;
- In July 2016, Khash demanded his shares in trust be returned to him;
- Mizrahi then locked Khash out of their offices and changed the locks;
- Mizrahi admitted that he had removed funds from the various development projects (including 181 Davenport) and that he would not return them;
- Mizrahi threatened that if Khash took legal action, he would lose all his money;
- Mizrahi withheld material information from Khash and misled him about the projects' debts and use of loan proceeds (including for 181 Davenport); and

⁸ Affidavit of Khashayar Khavari, para. 14, MR, Tab 2, p. 17; Fresh as Amended Statement of Defence and Counterclaim, paras. 37-58, Exhibit "F" to the Affidavit of Khashayar Khavari, MR, Tab 2, pp. 1040-1045.

-5-

- As a result of these actions, Mizrahi failed to bring 181 Davenport to completion.⁹

15. As a result of this misconduct, Khash seeks a number of different forms of relief relating to the respondents in this application. With respect to Northern Citadel, the relief Khash seeks includes the following:

- (a) an order declaring that Khash is the sole shareholder;
- (b) an equitable tracing of funds other defendants received from Northern Citadel;
- (c) an order that Khash has an equitable interest or constructive trust over any property other defendants acquired with funds that originated with Northern Citadel; and
- (d) a rectification of records to reflect Khash's interests in Northern Citadel.¹⁰

16. With respect to One8One, the relief Khash seeks includes:

- (a) an order requiring it to account for all property it received directly or indirectly from or on behalf of Khash;
- (b) an equitable tracing of the monies to which Khash has an entitlement;
- (c) an order that Khash possesses and equitable interest in any such property; and

⁹ Fresh as Amended Statement of Claim, paras. 53-63, Exhibit "F" to the Affidavit of Khashayar Khavari, MR, Tab 2, p. 1008-1010.

¹⁰ Fresh as Amended Statement of Claim, para. 1(d), Exhibit "F" to the Affidavit of Khashayar Khavari, MR, Tab 2, p. 998-999.

(d) an order imposing a constructive trust in favour of Khash over any such property.¹¹

17. Given subsequent amalgamations, the remedies sought over One8One would extend to 181 as well.¹²

18. It is to protect the availability of these and other remedies in the Khash Litigation that Khash now seeks leave to intervene in the PwC Application.

PART III – LAW AND ANALYSIS

19. The balance of this factum addresses two issues: (1) why Khash should be granted leave to intervene in the PwC Application; and (2) if granted leave, Khash's position on the PwC Application.

A. Kash's Motion for Leave to Intervene

20. Khash has moved for leave to intervene in the PwC Application pursuant to Rule 13.01 of the *Rules of Civil Procedure*. That Rule provides that:

13.01 (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

(a) an interest in the subject matter of the proceeding;

(b) that the person may be adversely affected by a judgment in the proceeding; or

(c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.

¹¹ Fresh as Amended Statement of Claim, para. 1(b), Exhibit "F" to the Affidavit of Khashayar Khavari, MR, Tab 2, p. 998-999.

¹² Affidavit of Khashayar Khavari, paras. 9-11, MR, Tab 2, pp. 15-16

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may such order as is just.¹³

21. The leading case on interventions under Rule 13.01 is Dubin C.J.O.'s decision in *Peel*. In that case, Dubin C.J.O. held that “the matters to be considered are the nature of the case, the issues which and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.”¹⁴

22. Ontario courts have confirmed that the three components to the test in Rule 13.01 are disjunctive. In *OSPCA v. Toronto Humane Society*, Brown J. (as he then was) reviewed the legal framework for motions to intervene under Rule 13.01 in granting leave to intervene to a member of the Toronto Humane Society. He noted that, while “Ontario courts have interpreted Rule 13 more narrowly in convention, non-constitutional litigation,” even in private litigation the criteria are disjunctive.¹⁵

23. It appears that the only case to consider a motion for leave to intervene under Rule 13.01 in a contested application to appoint a receiver is Brown J.'s (as he then was) decision in *Central 1 Credit Union*.¹⁶ Brown J. noted that

[C]ounsel were unable to point me to any prior decision of this court where a stranger to the debtor-creditor relationship was granted status as a party intervention on a contested application to appoint a receiver over the assets and undertaking of the debtor.”¹⁷

¹³ *Rules of Civil Procedure*, [R.R.O. 1990, Reg. 194](#), r. [13.01](#).

¹⁴ *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.*, [1990 CanLII 6886](#) (Ont. C.A.).

¹⁵ *OSPCA v. Toronto Humane Society*, [2010 ONSC 824](#), at para. [14](#).

¹⁶ *Central 1 Credit Union v. UM Financial*, [2011 ONSC 5612](#).

¹⁷ *Central 1 Credit Union v. UM Financial*, [2011 ONSC 5612](#), at para. [21](#).

By the same token, apart from *Central Credit 1 Union*, there do not appear to be any cases that have denied leave to intervene on a contested application to appoint a receiver.

24. The outcome in *Central 1 Credit Union* does not bind this court on this motion because it is distinguishable from the present motion for leave to intervene. In *Central 1 Credit Union*, the creditor sought to appoint a receiver over two companies that offered financial products to the Canadian Muslim community. The proposed intervenor, Multicultural Consultancy Canada Inc. (“MCC”), was a Shari’a advisory board for mortgage-like products. MCC sought leave to intervene to, among other things, provide the court assistance in interpreting Shari’a law. In dismissing its motion for leave to intervene, Brown J. noted that the proposed intervenor “does not put itself forward as a possible creditor of [the respondent], and the material does not disclose that any contractual relationship existed between it and [the respondent].”¹⁸ In other words, the proposed intervenor was truly a stranger to the issues in the litigation.

25. Here, the opposite is true. While Khash may not be a party to the loans themselves that have given rise to the PwC application to appoint a receiver, he is far from a stranger in the manner that MCC was in *Central 1 Credit Union*. Unlike MCC, Khash is a creditor of the debtor corporations. He is a shareholder of the debtor corporations—in one case having a right to 100% of the shares. He also has contractual rights respecting these corporations, including through the Trust Agreement. And he has claims over these corporations as part of the Khash Litigation.

26. Moreover, unlike MCC he does not seek leave to provide submissions to the Court on general legal or cultural or religions principles, as MCC did. Rather, he wishes to provide the Court

¹⁸ *Central 1 Credit Union v. UM Financial*, [2011 ONSC 5612](#), at para. [23](#).

with practical submissions that will assist the court in insuring it does not make inconsistent decision in different proceedings involving the same corporations.

27. Khash should be granted leave to intervene because he satisfies either of the first two branches of the test in Rule 13.01. As the test is disjunctive, the court need only be persuaded that Khash satisfies one branch in order grant his motion for leave to intervene.

28. *First*, Khash has “an interest in the subject matter of the litigation.” In *Lafarge*, the Divisional Court held that to satisfy this criterion, the party’s interest must be greater than that of the “general public.”¹⁹ In *Central 1 Credit Union*, for the purposes of this branch of the test Brown J. described the subject matter of an application to appoint a receiver as follows:

Typically the issues for a court to determine on such an application include: (i) the existence of a debt and default; (ii) the quality of the creditor’s security; and (iii) the need for the appointment of a receiver in view of alternate remedies available to the creditor, the nature of the property, the likelihood of maximizing the return to the parties, the costs associated with the appointment, and any need to preserve the property pending realization. Those issues normally require an adjudication of private rights as between the applicant secured creditor and the debtor respondent with, as well, some consideration of the potential effect of the order sought on other creditors, whether secured or otherwise, and other stakeholders of the debtor corporation who might be affected by a receivership order.²⁰

29. Here, unlike MCC in *Central 1 Credit Union*, Khash has interests in the subject matter of the litigation that are significantly greater than a member of the general public. Given the relief he seeks in the Khash Litigation with respect to the Respondent companies, which include the return of property that the Respondent companies are alleged to have (or to have had), Khash has an interest in the nature of the property at issue in the PwC Application. He also has an interest in

¹⁹ *Lafarge Canada Inc. v. Ontario Environmental Review Tribunal*, [2008 CanLII 6870](#) (Ont. Div. Ct.), at para. 9.

²⁰ *Central 1 Credit Union v. UM Financial*, [2011 ONSC 5612](#), at para. 22 (emphasis added.)

preserving that property pending realization, as some of it may be the subject of relief he seeks in the Khash litigation. Moreover, as a shareholder of the debtor companies Khash is, at a minimum, an “other creditor” or “stakeholder” within the meaning of Brown J.’s description in *Central 1 Credit Union*.

30. **Second**, Khash could be “adversely affected by a judgment in the proceeding.” In *Lafarge*, the Divisional Court similarly noted that to satisfy this requirement, “the party must show that it will be affected in a greater way than any member of the general public but the party need not show that the adverse effect is direct.”²¹ Here, granting the receivership would give the Receiver powers that could adversely affect Khash’s interests in a much greater way than a member of the general public.

31. Specifically, Paragraph 4 of the draft receivership order that the Applicant has submitted would give the receiver significant powers that do not require any further court approval to exercise. These include, by way of example only, the power to (1) exercise shareholder rights of the Respondents, and (2) to cause the Respondent to file for bankruptcy. Should the Receiver exercise either of these powers without regard to Khash’s interest and without any need further court approval, Khash could be adversely affected. For example, as Khash is the only shareholder of Northern Citadel, should the Receiver make us of its power to exercise shareholder rights, it would effectively be exercising Khash’s rights. Similarly, a bankruptcy proceeding, which could result in the winding up of the Respondent companies, could make it impossible for Khash to obtain the remedies he seeks in the Khash Litigation.

²¹ *Lafarge Canada Inc. v. Ontario Environmental Review Tribunal*, [2008 CanLII 6870](#) (Ont. Div. Ct.), at para. 9.

32. In addition, the draft receivership order provides for an automatic stay of all proceedings against the Respondents. Given that two of the Respondents are named defendants in the Khash Litigation from which he expressly seeks remedies, a stay of all or part of that proceeding could adversely affect Khash's interests.

33. Finally, Khash respectfully submits that the court should exercise its discretion to grant him leave to intervene. Where one or more of the factors under Rule 13.01(1) is satisfied, the court retains discretion to make any order as is just under Rule 13.01(2).²² Among the factors the court may consider is whether the proposed intervenor has a useful contribution to make.²³ As set out below, Khash's contributions are aimed at assisting the court in proactively resolving tensions that may arise between this receivership and the Khash Litigation, and are not duplicative of other parties' submissions.

B. Khash's Position on the PwC Application

34. If granted leave to intervene as an added party pursuant to Rule 13.01 (or otherwise), Khash makes three submissions on the PwC Application.

35. *First*, Khash supports in principle the appointment of a receiver over any of the Respondents.

36. *Second*, if a receiver is appointed over any or all of the Respondents, Khash respectfully requests that the Order appointing that receiver provide certain protections for Khash's interests. In particular, as noted above, the draft order that PwC has submitted would confer significant

²² *OSPCA v. Toronto Humane Society*, [2010 ONSC 84](#), at paras. [7](#), [10](#), [15](#).

²³ *Lafarge Canada Inc. v. Ontario Environmental Review Tribunal*, [2008 CanLII 6870](#) (Ont. Div. Ct.), at para. [9](#)

powers on the Receiver that can be exercised without requiring court approval. Paragraph 4 provides that the Receiver is “expressly empowered and authorized” to take a number of different actions where “the Receiver considers it necessary and desirable.” It further specifies that, where the Receiver does exercise these powers, it “shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Respondents, and without interference from any other Person.” The list that follows includes two powers that, as set out above, have the potential to adversely impact Khash: (1) the power to exercise shareholder rights (para. 4(r)); and (2) the power to cause the Respondents to file for bankruptcy (para. 4(t)).²⁴

37. Before the Receiver exercises those powers, the court should have the opportunity to consider how to balance the Receiver’s purpose with Khash’s interests in the Respondent companies, including as it relates to the remedies he seeks in the Khash Litigation. This will avoid the risk that the Receiver unilaterally takes an action under either para. 4(r) or 4(t) that inadvertently preclude Khash’s rights, interests, or remedies sought or as the court may grant in the Khash Litigation.

38. Accordingly, Khash respectfully requests that, should a Receiver be appointed over any or all of the Respondents, that Order specify that the Receiver shall not exercise the powers under paras. 4(r) or 4(t) without first obtaining one of: (1) Khash’s consent; or (2) prior judicial authorization following a hearing at which Khash is entitled to make submissions.

²⁴ Draft Order, para. 4, Exhibit “B” to the Affidavit of Kashayar Khavari, MR, Tab 2, p. 747-751.

39. *Third*, Khash requests that, should the court order a Receivership over any or all of the Respondents, that it expressly confirm and/or grant leave to Khash to continue the Khash Litigation notwithstanding the stay of proceedings in the receivership order (para. 11).

40. The Khash Litigation is at an advanced stage. It was previously set down for trial in June 2020, but was adjourned as a consequence of the COVID-19 pandemic. An appearance is currently scheduled before Justice McEwen on October 31, 2022 to set new trial dates. Given the advanced stage of this litigation, it should be allowed to proceed despite any receivership over the Respondents in this application.

PART IV—ORDER REQUESTED

41. Khash respectfully requests that he be granted leave to intervene as an added party pursuant to Rule 13.01.


42. Khash requests that any Receivership Order include the following or similar language:

Notwithstanding anything else in this Order, the Receiver shall not exercise any shareholder, partnership, joint venture or other rights which the Respondents may have, nor cause the Respondents to file an application for bankruptcy under the BIA, without first obtaining either (1) the written consent of Khashayar Khavari, or (2) prior judicial authorization following a hearing at which Khashayar Khavari is entitled to make full submissions.

43. Khash requests that, if the court does appoint a receiver, it grant leave to continue the Khash Litigation, including as against the Respondents to the PwC Application, or otherwise exempt the Khash Litigation from the stay of proceedings provision in the Receivership Order.

-14-

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of October, 2022.



Simon Bieber / Sean Pierce

ADAIR GOLDBLATT BIEBER LLP

95 Wellington Street West

Suite 1830, P.O. Box 14

Toronto ON M5J 2N7

Tel: 416.499.9940

Fax: 647.689.2059

Lawyers for the Applicants
(Responding Parties)

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.*, [1990 CanLII 6886](#) (Ont. C.A.)
2. *OSPCA v. Toronto Humane Society*, [2010 ONSC 824](#)
3. *Central 1 Credit Union v. UM Financial*, [2011 ONSC 5612](#)
4. *Lafarge Canada Inc. v. Ontario Environmental Review Tribunal*, [2008 CanLII 6870](#) (Ont. Div. Ct.)

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. *Rules of Civil Procedure, R.R.O. 1990, Reg. 194* r. 13.01 H [R.R.O. 1990, Reg. 194: RULES OF CIVIL PROCEDURE](#)

13.01 (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

- (a) an interest in the subject matter of the proceeding;
- (b) that the person may be adversely affected by a judgment in the proceeding; or
- (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may such order as is just.

terhousecoopers Inc
in its capacity as court-appointed receiver and manager of Bridging
Inc. and certain related entities and investment funds)
ant

-and- Northern Citadel Capital Inc. et al.
Respondents

F22

Court File No. CV 22-006852

**ONTARIO
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PROCEEDING COMMENCED AT
TORONTO

**FACTUM OF THE NON-PARTY
KHASHAYAR KHAVARI**

ADAIR GOLDBLATT BIEBER LLP

95 Wellington Street West
Suite 1830, P.O. Box 14
Toronto ON M5J 2N7

Simon Bieber (56219Q)

Tel: 416.351.2781

Email: sbieber@agblp.com

Sean Pierce (78100M)

Email: spierce@agblp.com

Tel: 416.499.9940

Fax: 647.689.2059

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Court File No. CV 22-006852-0000CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.,
(In its Capacity As Court-Appointed Receiver And Manager Of Bridging Finance Inc.)
Applicant

and

NORTHERN CITADEL CAPITAL INC.; ONE8ONE DAVENPORT INC.; 181 DAVENPORT
RETAIL INC.
Respondents

**MOTION RECORD OF THE NON-PARTY KHASHAYAR KHAVARI
(motion to intervene as an added party under Rule 13.01)**

October 20, 2022

ADAIR GOLDBLATT BIEBER LLP
95 Wellington Street West
Suite 1830, P.O. Box 14
Toronto ON M5J 2N7

Simon Bieber (56219Q)
Tel: 416.351.2781
Email: sbieber@agbllp.com
Sean Pierce (78100M)
Tel: 647.237.3314
Email: spierce@agbllp.com

Tel: 416.499.9940

Lawyers for the Non-Party
Khashayar Khavari

TO: THORNTON GROUT FINNIGAN LLP
TD West Tower, Toronto-Dominion Centre
3200 – 100 Wellington Street
West Toronto, ON M5K 1K7

John L. Finnigan (24040L)

Email: jfinnigan@tgf.ca

Grant B. Moffat (32380L)

Email: gmoffat@tgf.ca

Adam Driedger (77296F)

Email: adriedger@tgf.ca

Tel: 416-304-1616

Lawyers for the Applicant

AND TO: HENEIN HUTCHISON LLP
235 King Street East
First Floor Toronto, ON M5A 1J9

Scott C. Hutchison (29912J)

Email: shutchison@hhllp.ca

Ewa Krajewska (57704D)

Email: ekrajewska@hhllp.ca

David Postel (78102E)

Email: dpostel@hhllp.ca

Tel: (416) 368-5000

Lawyers for the Respondents

AND TO: PRICEWATERHOUSE COOPERS INC.
18 York Street, Suite 2600
Toronto, ON M5J 0B2

Greg Prince

Email: gregory.n.prince@pwc.com

Michael McTaggart

Email: michael.mctaggart@pwc.com

Christine Sinclair

Email: christine.l.sinclair@pwc.com

Tyler Ray

Email: tyler.ray@pwc.com

Tel: (416) 687-8200

Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds

AND TO: **OSLER, HOSKIN & HARCOURT LLP**
100 King Street West - Suite 6200
Toronto, ON M5K 1K8

John MacDonald
Email: jmacdonald@osler.com
Blair McRadu
Email: bmcradu@osler.com

Tel: (416) 862-5672

Lawyers for Richter Inc. as Proposed Receiver

AND TO: **RICHTER INC.**
181 Bay Street, Suite 3320
Bay Wellington Tower
Toronto, ON M5J 2T3

Adam Sherman
Email: asherman@richter.ca
Megha Sharma
Email: msharma@richter.ca

Tel: (416) 646-8378

Proposed Receiver

AND TO: **KEB HANA BANK**
627 Bloor Street West
Toronto, ON M6G 1K8

Theo Ikonomou
Email: t.ikonomou@hanafn.com

Tel: (416) 227-5570

PPSA registrant with respect to 181 Davenport Retail Inc.

AND TO: **LAX O'SULLIVAN LISUS GOTTLIEB LLP**
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8

Nadia Campion
Email: ncampion@lolg.ca
Matthew Law
Email: mlaw@lolg.ca

Tel: (416) 642-3134
Lawyers for Mizrahi Inc. and 2495159 Ontario Inc.

AND TO: **DEPARTMENT OF JUSTICE (CANADA)**
Ontario Regional Office
120 Adelaide Street West
Suite 400
Toronto, ON M5H 1T1

Diane Winters
Email: diane.winters@justice.gc.ca

AND TO: **HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF
ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE
INSOLVENCY UNIT**
6th Floor, 33 King Street West
Oshawa, ON L1H 8H5

Leslie Crawford
Email: leslie.crawford@ontario.ca
Insolvency Unit
Email: insolvency.unit@ontario.ca

Tel: (905) 433-5657

INDEX

Tab	Description	Page No.
1.	Notice of Motion dated October 20, 2022 F27	1
2.	Affidavit of Khashayar Khavari affirmed October 20, 2022 F39	13
A.	Application Record dated August 8, 2022 F45	18
B.	Respondents' Application Record dated October 13, 2022 F823	796
C.	Supplemental Affidavit of T. Ray sworn September 20, 2022 F874	848
D.	Factum of the Applicant dated September 16, 2022 F990	963
E.	Fresh as Amended Statement of Claim (CV-15-11187-00CL) F1019	992
F.	Fresh as Amended Statement of Defence and Counterclaim (CV-15-11187-00CL) F1056	1029
G.	Fresh as Amended Reply and Defence to Counterclaim (CV-15-11187-00CL) F1114	1086
H.	Trust Agreement dated October 11, 2011, Exhibit B to the Affidavit of Khashayar Khavari affirmed December 7, 2015 F1146	1118

Court File No. CV 22-006852-0000CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.,
(In its Capacity As Court-Appointed Receiver And Manager Of Bridging Finance Inc.)
Applicant

and

NORTHERN CITADEL CAPITAL INC.; ONE8ONE DAVENPORT INC.; 181 DAVENPORT
RETAIL INC.
Respondents

NOTICE OF MOTION OF THE NON-PARTY KHASHAYAR KHAVARI
(motion to intervene as an added party under Rule 13.01)

The non-party Khashayar Khavari will make a Motion to a Judge presiding over the Commercial List on a date to be scheduled by the Court at Toronto, Ontario, in accordance with all applicable practice directions and Notices to the Profession.

PROPOSED METHOD OF HEARING: By video conference at a Zoom link to be provided.

THE MOTION IS FOR

- (a) an Order granting leave to the non-party, Khashayar Khavari (“**Khash**”), to bring this motion;

-2-

- (b) an Order granting leave to Khash to intervene in the within application PricewaterhouseCoopers Inc. (the “**PwC Application**”);
- (c) if necessary, an Order abridging the time for service and/or validating service of Khash’s motion materials, so that the motion is properly returnable on the date it is heard, and dispensing with further service thereof;
- (d) the costs of this motion, if opposed; and
- (e) such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

- (f) Khash brings this motion to intervene as an added party in this proceeding because he has an interest in the subject matter of the proceeding that may be adversely affected by a judgment of this proceeding;
- (g) the issues in this proceeding relate to the relief sought in another proceeding (the “**Khash Litigation**”) involving some of the same companies and property that are the subject of the PwC Application;

The PwC Application

- (h) in 2021, PwC was appointed as receiver for Bridging Finance Inc. and related companies (“**Bridging**”);

-3-

- (i) PwC alleges in its Notice of Application that Bridging entities loaned a principal amount of approximately \$41 million to Northern Citadel, One8One Davenport, and a third company, all controlled by Sam Mizrahi (“**Sam**”), for the development of property located at 181 Davenport Avenue, Toronto;
- (j) PwC alleges that this loan has come due and remains unpaid, and has an outstanding balance of approximately \$55 million;
- (k) PwC further alleges that the respondents in the PwC application granted Bridging security over all of their property;
- (l) PwC seeks to appoint Richter Inc. as receiver and manager of “all the current and future assets, undertakings and properties” of each of the respondent companies;

The Khash Litigation

- (m) in 2015, Khash commenced an action against Sam and related individuals and companies seeking *inter alia* \$125 million in damages and declaratory relief that:
 - (i) Khash has 50% ownership interest in a number of companies, including One8one Davenport Inc., (a respondent in the PwC Application); and
 - (ii) Khash is the sole shareholder of Northern Citadel Capital Inc. (“**Northern Citadel**”), another one of the respondents in the PwC Application;
 - (iii) rectification of records to reflect the proper state of these companies;

-4-

- (n) in addition, the Khash Litigation seeks accounting, tracing, constructive trust remedies with respect to both One8one Davenport Inc. and Northern Citadel;
- (o) the Khash Litigation stems from the breakdown of a business partnership between Khash and Sam;
- (p) in 2010, Khash and Sam agreed to develop condominium projects together. They agreed to be 50/50 business partners, splitting all profits on each development project (the “**Partnership Agreement**”);
- (q) each project was carried out through a series of corporate entities (the “**Project Companies**”);
- (r) one of the projects Khash and Sam successfully developed was located at 181 Davenport Road, Toronto (“**181 Davenport**”);
- (s) as part of the financing for a real estate development at 181 Davenport Avenue, Toronto (“**181 Davenport**”), Sam had arranged for a loan (or loans) from a Bridging entity, which was secured by the assets of the 181 Davenport Project Companies. It now appears that the failure to repay this loan is the subject of the PwC Application;
- (t) the Project Companies that carried out the development of 181 Davenport included One8one Davenport Inc;

-5-

- (u) One8One Davenport subsequently transferred its assets to 181 Davenport Retail Inc., in which Khash also has an interest;
- (v) a trust agreement (dated October 11, 2011) and written addendum (dated December 5, 2011) were executed to give effect to the agreement between Sam and Khash (the “**Trust Agreement**”). The Trust Agreement provides that:
 - (i) Mizrahi Enterprises Inc. would act as a bare trustee, holding Khash’s 50% shareholding in the 181 Davenport companies; and holding 100% of Khash’s shareholding in Northern Citadel for Khash’s benefit; and
 - (ii) Khash remained the equitable owner of the shares, had an express right to their return, and was entitled to an accounting for amounts due as a shareholder and other information relating to the shares;
- (w) subsequently, Khash and Sam used loan proceeds secured by the Partnership’s assets, including the assets of 181 Davenport, to acquire and develop several other properties pursuant to the terms of the Partnership Agreement;
- (x) in 2015, Khash began asking Sam questions about the financial state of the various businesses, including with respect to the 181 Davenport development. Khash learned that Sam had removed funds from the development projects and refused to return them;
- (y) in 2015, after Khash demanded the return of his shares held in trust, Sam locked Khash out of their offices;

-6-

- (z) Khash then commenced the Khash Litigation to protect his interests in the various projects;

This Motion to Add a Non-Party

- (aa) Khash now brings this motion to intervene as a non-party in the PwC Application;
- (bb) Rule 13.01 provides that the court may grant leave to a non-party to intervene in a proceeding as an “added party” where the non-party claims: (a) an interest in the subject matter of the proceeding; (b) that the non-party may be adversely affected by a judgment in the proceeding; or (c) that there exists between the non-party and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in the proceeding;
- (cc) on a motion under Rule 13.01, the court may make such order as is just;
- (dd) Khash has an interest in the subject matter of the PwC application. Specifically, the companies and property over which PwC seeks to appoint a receiver and manager include the interests that Khash seeks to protect in the Khash Litigation: his 50% shareholding of the 181 Davenport development and his 100% shareholdings of Northern Citadel along with his interest in the property of those companies, and his right to 50% of the profits from the 181 Davenport projects, including the respondents to the PwC Application;
- (ee) Khash’s interests may be adversely affected by a judgment in in the PwC Application. If Richter is appointed as receiver and manager, it may have powers

-7-

to dispose of assets over which Khash has an interest, including through shareholdings in One8One Davenport Inc. and Northern Citadel and his right to profits from the 181 Davenport projects;

- (ff) it is in the interests of justice to grant Khash leave to intervene as an added party, including to ensure there is no risk that any action taken by a receiver pursuant to court authorization in the PwC Application would be inconsistent with an order made in the Khash Litigation;

Other Grounds

- (gg) Rules 1.04, 1.05, 2.01, 2.03, 3.02(1), 13, 16, 37, 39, and 57;
- (hh) this Honourable Court's jurisdiction to control its own process; and
- (ii) such further and other grounds as the lawyers may advise and this Honourable Court may permit.

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

- (a) the Affidavit of Khashayar Khavari, affirmed October 20, 2022, and the exhibits thereto;
- (b) such further and other evidence as counsel may advise and this Honourable Court may permit.

-8-

October 20, 2022

ADAIR GOLDBLATT BIEBER LLP

95 Wellington Street West
Suite 1830, P.O. Box 14
Toronto ON M5J 2N7

Simon Bieber (56219Q)

Tel: 416.351.2781

Email: sbieber@agblp.com

Sean Pierce (78100M)

Email: spierce@agblp.com

Tel: 416.499.9940

Lawyers for the Non-Party Khashayar
Khavari

TO:

Thornton Grout Finnigan LLP

TD West Tower, Toronto-Dominion Centre
3200 – 100 Wellington Street
West Toronto, ON M5K 1K7

John L. Finnigan (24040L)

Email: jfinnigan@tgf.ca

Grant B. Moffat (32380L)

Email: gmoffat@tgf.ca

Adam Driedger (77296F)

Email: adriedger@tgf.ca

Tel: 416-304-1616

Lawyers for the Applicant

-9-

AND TO: **HENEIN HUTCHISON LLP**
235 King Street East
First Floor Toronto, ON M5A 1J9

Scott C. Hutchison (29912J)
Email: shutchison@hhllp.ca

Ewa Krajewska (57704D)
Email: ekrajewska@hhllp.ca

David Postel (78102E)
Email: dpostel@hhllp.ca

Tel: (416) 368-5000
Lawyers for the Respondents

AND TO: **PRICEWATERHOUSE COOPERS INC.**
18 York Street, Suite 2600
Toronto, ON M5J 0B2
Tel: (416) 687-8200

Greg Prince
Email: gregory.n.prince@pwc.com

Michael McTaggart
Email: michael.mctaggart@pwc.com

Christine Sinclair
Email: christine.l.sinclair@pwc.com

Tyler Ray
Email: tyler.ray@pwc.com
Court-appointed receiver and manager of Bridging Finance Inc. and certain
related entities and investment funds

AND TO: **OSLER, HOSKIN & HARCOURT LLP**
100 King Street West - Suite 6200
Toronto, ON M5K 1K8
Tel: (416) 862-5672

John MacDonald
Email: jmacdonald@osler.com

-10-

John MacDonald
Email: jmacdonald@osler.com

Blair McRadu
Email: bmcradu@osler.com
Lawyers for Richter Inc. as Proposed Receiver

AND TO: **RICHTER INC.**
181 Bay Street, Suite 3320
Bay Wellington Tower
Toronto, ON M5J 2T3
Tel: (416) 488-2345

Adam Sherman
Email: asherman@richter.ca

Megha Sharma
Email: msharma@richter.ca
Tel: (416) 646-8378
Proposed Receiver

AND TO: **KEB HANA BANK**
627 Bloor Street West
Toronto, ON M6G 1K8
Tel: (416) 227-5570

Theo Ikonomou
Email: tikonomou@hanafn.com
PPSA registrant with respect to 181 Davenport Retail Inc.

AND TO: **LAX O'SULLIVAN LISUS GOTTLIEB LLP**
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8
Tel: (416) 642-3134

Nadia Campion
Email: ncampion@lolg.ca

Matthew Law
Email: mlaw@lolg.ca

Lawyers for Mizrahi Inc. and 2495159 Ontario Inc.

-11-

AND TO: **DEPARTMENT OF JUSTICE (CANADA)**

Ontario Regional Office
120 Adelaide Street West
Suite 400
Toronto, ON M5H 1T1

Diane Winters
Email: diane.winters@justice.gc.ca

AND TO: **HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF
ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE
INSOLVENCY UNIT**

6th Floor, 33 King Street West
Oshawa, ON L1H 8H5
Tel: (905) 433-5657

Leslie Crawford
Email: leslie.crawford@ontario.ca

Insolvency Unit
Email: insolvency.unit@ontario.ca

RCP-E 37A (September 1, 2020)

Waterhousecoopers Inc
in its capacity as court-appointed receiver and manager of Bridging
Inc. and certain related entities and investment funds)
ant

-and- Northern Citadel Capital Inc. et al.
Respondents

Court File No. CV 22-006852

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

ADAIR GOLDBLATT BIEBER LLP

95 Wellington Street West
Suite 1830, P.O. Box 14
Toronto ON M5J 2N7

Simon Bieber (56219Q)

Tel: 416.351.2781

Email: sbieber@agblp.com

Sean Pierce (78100M)

Email: spierce@agblp.com

Tel: 416.499.9940

Fax: 647.689.2059

Court File No. CV 22-006852-0000CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.,
(In its Capacity As Court-Appointed Receiver And Manager Of Bridging Finance Inc.)
Applicant

and

NORTHERN CITADEL CAPITAL INC.; ONE8ONE DAVENPORT INC.; 181 DAVENPORT
RETAIL INC.
Respondents

AFFIDAVIT OF KHASHAYAR KHAVARI
(affirmed October 20, 2022)

I, Khashayar Khavari, of the City of Toronto, in the Province of Ontario, AFFIRM:

1. I am not a party to the present application (the “**PwC Application**”). I am, however, a plaintiff in an Action that raises related issues (the “**Khash Litigation**”). As such, I have personal knowledge of the matters contained in this affidavit except where, as indicated, I have relied on information provided by others, which information I believe to be true.
2. I affirm this affidavit in support of my motion to intervene as an added party in the PwC Application.

-2-

The PwC Application

3. My lawyers have provided me with copies of the materials in the PwC Application (CV-22-00685200-00CL). For convenience, these are attached hereto as follows:

- (a) The Application Record of the Applicant, PricewaterhouseCoopersInc., dated August 8, 2022, is attached hereto as **Exhibit “A”**;
- (b) The Respondents’ Application Record, dated October 13, 2022 is attached hereto as **Exhibit “B”**;
- (c) The Supplemental Affidavit of Tyler Ray, sworn September 20, 2022 is attached hereto as **Exhibit “C”**; and
- (d) The Factum of the Applicant, dated September 16, 2022 is attached hereto as **Exhibit “D”**.

4. The PwC Application concerns the appointment of a receiver and manager of all assets, undertakings and properties of three companies involved in a real estate development at 181 Davenport Avenue, Toronto (“**181 Davenport**”), including: (1) Northern Citadel Capital Inc.; (2) One8One Davenport Inc; and (3) 181 Davenport Retail Inc.

The Khash Litigation

5. In 2015, I and my brother-in-law Mohammad Mahdi Tajbakhsh commenced litigation against my former business partner Sam Mizrahi (“**Sam**”), a number of individuals connected to

-3-

Sam, and a number of companies Sam (or Sam and I) owns and/or controls. For convenience, the relevant pleadings in that proceeding are attached hereto as follows:

- (a) My Fresh as Amended Statement of Claim of September 21, 2016 is attached hereto as **Exhibit “E”**;
- (b) Sam’s Fresh as Amended Statement of Defence and Counterclaim of February 17, 2017 is attached hereto as **Exhibit “F”**; and
- (c) My Fresh as Amended Reply and Defence to Counterclaim of March 22, 2017, is attached hereto as **Exhibit “G”**.

6. The Khash Litigation concerns my interest in a number of real estate developments, including at 181 Davenport. Among the issues in the Khash litigation are my interest in both Northern Citadel, One8One Davenport Inc., and 181 Davenport Retail Inc.

Background to the Khash Litigation

7. The Khash Litigation arises out of my business relationship with Sam.

8. In or about 2010, Sam and I agreed to become business partners. We incorporated a number of entities to carry out the development or real estate projects (the “**Project Companies**”). I own fifty percent of the shares in the Project Companies. The remaining fifty percent were owned by Mizrahi Enterprises Inc. (“**MEI**”), a company Sam controls.

9. In or around October 2011, Sam and I entered into an agreement whereby I agreed to transfer my shares in a number of these entities into trust. A Trust Agreement, dated October 11,

-4-

2011, was executed to give effect to this arrangement. On December 5, 2011, Sam and I agreed to an Addendum adding several more companies in which I held a fifty percent shareholding. The Trust Agreement, together with the Addendum, is attached as **Exhibit “H”** to this Affidavit.

10. As a result of the Trust Agreement, MEI would hold my shareholdings in a variety of companies in trust for me, while I remained the beneficiary of my share of the equity in those companies. Consequently, while Sam controlled these companies, I retained my beneficial interest in them.

11. The Trust Agreement specifies that I am the beneficiary of 50% of the equity in a number of the Project Companies, including those for the development project at 181 Davenport. Sam subsequently effected a series of amalgamations among the Project Companies. Through these amalgamations, some of the Project Companies listed in the Trust Agreement, of which I am the beneficiary of 50% of the equity (including MDG 185 Davenport Inc., and Mizrahi Soaring Developments Inc.), combined to form One8One Davenport Inc. (Corp. No. 1922751). One8One Davenport Inc. is responsible for the development at 181 Davenport. Through the Trust Agreement and the subsequent amalgamations, I have a 50% beneficial interest in that company.

12. Subsequently, the property of One8One Davenport Inc. was transferred to 181 Davenport Retail Inc., in which I also have an interest.

13. The Trust Agreement also specifies that I am the beneficiary of one hundred percent of the equity in Northern Citadel Capital Inc. (“**Northern Citadel**”), another one of the Respondents in the PwC Application.

-5-

14. I note that in his Fresh as Amended Statement of Defence, Sam admits the existence and the key terms of the Trust Agreement attached as **Exhibit “H”**.

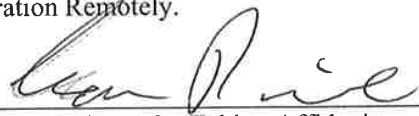
15. On or around July 2015, following a breakdown in my relationship with Sam, Sam locked me out of our offices. Subsequently, I and my brother-in-law commenced the Khash litigation.

Motion to Intervene as an Added Party

16. I have an interest in the subject matter of the PwC Application because it seeks to appoint a receiver and manager over the property and assets of companies in which I have a significant beneficial interest, including Northern Citadel, One8One Davenport Inc., and 181 Davenport Retail Inc., which are currently at issue in the Khash Litigation.

17. A judgment in the PwC Application could adversely affect my beneficial interests in the 181 Project Companies, including Northern Citadel, One8One Davenport Inc., and 181 Davenport Retail Inc. if, for example, it empowers a receiver and/or manager to proceed without regard to my interests in these companies.

AFFIRMED remotely by Khashayar Khavari of the City of Toronto, before me at the City of Toronto, in the Province of Ontario, on October 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

SEAN PIERCE
LSO# 78100M



KHASHAYAR KHAVARI

This is Exhibit "A" referred to in the Affidavit of Khashayar Khavari affirmed by Khashayar Khavari at the City of Toronto, in the Province of Ontario, before me on October 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

SEAN PIERCE

Court File No.: CV-22 _____-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and
in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as
amended*

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

– and –

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC.,
and 181 DAVENPORT RETAIL INC.**

APPLICATION RECORD

Respondents

August 8, 2022

Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
3200 – 100 Wellington Street West
Toronto, ON M5K 1K7

John L. Finnigan (LSO# 24040L)
Email: jfinnigan@tgf.ca

Grant B. Moffat (LSO# 32380L)
Email: gmoffat@tgf.ca

Adam Driedger (LSO# 77296F)
Email: adriedger@tgf.ca

Tel: 416-304-1616

Lawyers for the Applicant

Court File No.: CV-22 _____-00CL

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and
in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended*

B E T W E E N:

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(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

– and –

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC.,
and 181 DAVENPORT RETAIL INC.**

Respondents

APPLICATION RECORD

INDEX

Tab	Document
1.	Notice of Application dated August 8, 2022
2.	Affidavit of Tyler Ray sworn August 8, 2022
	<u>Exhibits to the Affidavit of Tyler Ray</u>
A.	Exhibit “A” – Appointment Orders Re: Bridging Receiver
B.	Exhibit “B” – Corporate Profile Reports for each of the Respondents
C.	Exhibit “C” - Northern Citadel General Security Agreement dated December 17, 2014
D.	Exhibit “D” - Certified PPSA search of Northern Citadel dated August 8, 2022
E.	Exhibit “E” – Copy of the Guarantee dated December 17, 2014

Tab	Document
F.	Exhibit “ F ” – One8One General Security Agreement dated December 17, 2014
G.	Exhibit “ G ” – Certified PPSA search of One8One dated August 8, 2022
H.	Exhibit “ H ” – 181 Retail General Security Agreement dated May 2, 2018
I.	Exhibit “ I ” - Certified PPSA search of 181 Retail dated August 8, 2022
J.	Exhibit “ J ” – 2017 Organizational Chart Re: 1 Bloor Project
K.	Exhibit “ K ” – Corporate Profile Searches of entities involved in 1 Bloor Project
L.	Exhibit “ L ” – Corporate Profile search of SMI
M.	Exhibit “ M ” – Corporate Profile search of 889 Canada and 128 Canada
N.	Exhibit “ N ” – Unanimous Shareholders Agreement for 1 Bloor Commercial GP
O.	Exhibit “ O ” – Limited Partnership Agreement for 1 Bloor Residential LP
P.	Exhibit “ P ” – Email from Jenny Coco to Natasha Sharpe dated October 24, 2015 (with attachment)
Q.	Exhibit “ Q ” – Email from Jenny Coco to Natasha Sharpe regarding Dundonald Property dated December 30, 2020
R.	Exhibit “ R ” – Email from Sam Mizrahi to Natasha Sharpe and Graham Marr dated November 19, 2016
S.	Exhibit “ S ” – Email from Sam Mizrahi dated November 9, 2017
T.	Exhibit “ T ” – Amended and Restated Section 37 agreement between The One, 249 Ontario and City of Toronto dated July 21, 2020
U.	Exhibit “ U ” – Parcel Abstract of the Dundonald Property
V.	Exhibit “ V ” – Parcel Abstract of the Unit
W1.	Exhibit “ W1 ” – Email from Graham Marr to Sam Mizrahi regarding dated March 10, 2021 (with attachment)
W2.	Exhibit “ W2 ” – Email from Sam Mizrahi to Graham Marr dated March 10, 2021

Tab	Document
X.	Exhibit “ X ” – Email from Graham Marr to Sam Mizrahi dated March 30, 2021 (with attachment and blackline comparison of the attachment)
Y.	Exhibit “ Y ” – Email from Graham Marr to Sam Mizrahi dated March 30, 2021 (with attachment and blackline comparison of the attachment)
Z.	Exhibit “ Z ” – Email from Graham Marr to Sam Mizrahi dated March 30, 2021 (with attachment and blackline comparison of the attachment)
AA.	Exhibit “ AA ” – Email from Sam Mizrahi to Graham Marr dated March 30,2021 (with attachment)
BB.	Exhibit “ BB ” – Email from Graham Marr to Sam Mizrahi RE:181 dated March 30, 2021 (with attachment)
CC.	Exhibit “ CC ” – Email from Sam Mizrahi to Graham Marr FWD: Commissions dated March 30, 2021 (with attachment)
DD.	Exhibit “ DD ” – Email from Graham Marr (BFI) to Mark Kilfoyle (Chief Financial Officer and Chief Operating Officer of Mizrahi Developments) RE: Commissions dated March 30, 2021
EE.	Exhibit “ EE ” – Email from Mark Kilfoyle to Graham Marr dated March 30, 2021
FF.	Exhibit “ FF ” – Email chain between Mark Kilfoyle, Graham Marr and Brian Champ RE: KPMG Audit- Bridging Request-Mizrahi dated March 30, 2021
GG.	Exhibit “ GG ” – Email chain between Bridging Receiver and the Credit Parties between July 24, 2021 and September 28, 2021
HH.	Exhibit “ HH ” – Copy of the November Letter
II.	Exhibit “ II ” – Copy of the Cerieco Claim
JJ.	Exhibit “ JJ ” – Email from Sam Mizrahi to Jenny Coco dated April 21, 2017
KK.	Exhibit “ KK ” – Copy of the Default Letter
LL.	Exhibit “ LL ” – Copies of the Demand Letters and BIA Notices
MM.	Exhibit “ MM ” – Consent of Richter to act as Receiver

Tab	Document
NN.	Exhibit “NN” – Email from Kevin Skells to Natasha Sharpe RE: Return of Investor funds dated March 12, 2015
OO.	Exhibit “OO” – Email chain between Jenny Coco and Natasha Sharpe dated December 6, 2016
3.	Draft Receivership Order
4.	Blackline of draft Receivership Order against the Model Receivership Order

TAB 1

Court File No.: CV-22_____00CL

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and
in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended*

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

– and –

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC.,
and 181 DAVENPORT RETAIL INC.**

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person
- By telephone conference
- By video conference, via Zoom, the details of which will be provided by the Court

before Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on a date to be scheduled, at Toronto, Ontario, in accordance with the changes to the Commercial List operations in light of the COVID-19 pandemic, and the regional and provincial Notices to the Profession effective April 19, 2022 and August 2, 2022, respectively. Please advise if you intend to attend the hearing by emailing Adam Driedger at adriedger@tgf.ca.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of*

Civil Procedure, serve it on the Applicant’s lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant’s lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____ Issued by _____
Local Registrar

Address of 330 University Avenue, 9th Floor
court office: Toronto ON M5G 1R7

TO: THIS HONOURABLE COURT

AND TO THE RESPONDENTS: NORTHERN CITADEL CAPITAL INC.
189 Forest Hill Road
Toronto, ON
M5P 2N3

ONE8ONE DAVENPORT INC.
125 Hazelton Avenue
Toronto, ON
M5R 2E4

181 DAVENPORT RETAIL INC.
125 Hazelton Avenue
Toronto, Ontario
M5R 2E4

APPLICATION

1. PricewaterhouseCoopers Inc., solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. (“**BFI**”) and certain related entities and investment funds (the “**Applicant**” or the “**Bridging Receiver**”) makes this Application for an Order (the “**Receivership Order**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), substantially in the form attached at Tab 3 of the Applicant’s application record, among other things:
 - (a) authorizing service of this Notice of Application and the materials filed in support of the Application via electronic mail and dispensing with further service thereof;
 - (b) appointing Richter Inc. (“**Richter**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the current and future assets, undertakings, and properties (the “**Property**”) of each of Northern Citadel Capital Inc. (“**Northern Citadel**”), One8One Davenport Inc. (“**One8One**”), and 181 Davenport Retail Inc. (“**181 Retail**” and together with Northern Citadel and One8One, the “**Respondents**”); and
 - (c) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

Overview

2. All capitalized terms not expressly defined herein are defined in the Affidavit of Tyler Ray sworn August 8, 2022, located at Tab 2 of the Bridging Receiver’s Application Record (the “**Ray Affidavit**”).
3. By orders of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 30, 2021 (the “**Appointment Order**”), May 3, 2021 (the “**Additional Appointment Order**”), and May 14, 2021 (the “**Continuation Order**” and collectively, the “**Appointment Orders**”), PwC was appointed as the Bridging Receiver.

4. PwC was appointed as the Bridging Receiver pursuant to section 129 of the *Securities Act* R.S.O. 1990, c. S. 5, as amended (the “**Securities Act**”) upon application by the Ontario Securities Commission (the “**Commission**”) as a result of the Commission’s ongoing investigation into Bridging and certain related individuals and entities.
5. The Bridging Receiver was appointed to protect the interests of, and maximize value for, Bridging’s investors and the other stakeholders. There are approximately 26,000 Bridging investors (both retail and institutional) primarily located across Canada. As detailed in the Bridging Receiver’s various reports to the Court, Bridging’s investors are facing significant losses on their investments in the Bridging Funds.
6. One of the loans in Bridging’s portfolio is the Loan made by BFI on behalf of certain of the Bridging Funds to the Respondents and certain related entities. The Loan is currently past maturity and in default. On May 12, 2022, the Bridging Receiver issued the Demand Letters and BIA Notices to the Respondents. The Respondents have failed to make any payments in reduction of the Loan notwithstanding the maturity of the Loan and the issuance of the Demand Letters and the BIA Notices.
7. The Bridging Receiver also has significant concerns regarding certain events and transactions involving the Respondents, certain related entities, and the former principals of Bridging, some of which are described in the Ray Affidavit and summarized below.
8. The Bridging Receiver brings this application to appoint Richter as Receiver of the Respondents as part of its broader investigation into the affairs of Bridging and in an effort to minimize the losses that Bridging’s investors and other stakeholders will suffer as a result of the Loan. The appointment of an independent court officer as Receiver of the Respondents is required in these circumstances to investigate the financial situation and affairs of the Respondents and to realize on their assets (to the extent any such assets are available or recoverable) for the benefit of all stakeholders.

Corporate Information & Business of the Respondents

9. Each of the Respondents is a corporation incorporated under the laws of the Province of Ontario. The registered head office of Northern Citadel is located at 189 Forest Hill Road, Toronto, Ontario. The registered head office of both One8One and 181 Retail is located at 125 Hazelton Avenue, Toronto, Ontario.
10. Sam Mizrahi was listed as the sole director of each of the Respondents up until May 15, 2022. It appears that Sam Mizrahi was removed as a director of each of the Respondents effective as of May 15, 2022, three days after the Bridging Receiver delivered the Demand Letters and BIA Notices to the attention of Sam Mizrahi. Sam Mizrahi remains listed as the sole officer of each of the Respondents. Amanda Brown is now listed as the sole director of each of the Respondents. The Respondents developed and marketed the condominium project located at 181 Davenport Road, Toronto, Ontario (the “**181 Davenport Project**”).

The Loan Agreement & Advances

11. Pursuant to the Loan Agreement, BFI, as agent (in such capacity, the “**Agent**”) on behalf of Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) and the related investment funds from time to time acting as lender (collectively, the “**Lender**”) made available to Northern Citadel, Mizrahi Inc. (“**MI**”), and 2495159 Ontario Inc. (“**249 Ontario**”) and together with Northern Citadel and MI, the “**Borrower**”) a non-revolving term credit facility (the “**Loan**”) in the principal amount of \$41,412,501.00.
12. MI and 249 Ontario are not Respondents to this Application and no relief is being sought by the Bridging Receiver in respect of MI and 249 Ontario on this Application. MI and 249 Ontario were added as entities comprising the “Borrower” pursuant to the November 2016 Amendment. There is a dispute as to whether MI and 249 Ontario still comprise the “Borrower” under the Loan Agreement and have any continuing liability thereunder. The issue of whether MI and 249 Ontario still comprise the “Borrower” under the Loan Agreement and have any continuing liability thereunder is not being addressed in this application, but may be addressed by the Bridging Receiver at a later date.

13. Interest currently accrues on the Loan at the rate of 12% per annum. The Lender has received cash payments from the Borrower on only four occasions since the inception of the Loan in December 2014. All of those payments were received prior to expiry of the Term of the Loan on April 30, 2022.
14. As at June 30, 2022, the total amount owing by the Respondents to the Lender under the Loan is \$54,866,885.69, consisting of principal in the amount of \$17,054,655.33 and accrued and unpaid interest in the amount of \$37,812,230.36, together with all accrued costs to the date of payment.
15. The original purpose of the Loan was to finance a portion of Northern Citadel's equity in the 181 Davenport Project. The Bridging Receiver also understands that, as set out in the Loan Agreement, certain Loan advances were used to:
 - (a) fund cost overruns on the 181 Davenport Project;
 - (b) make improvements to the approximately 4,097 square foot unit (the "**Unit**") at the 181 Davenport Project to be used as a sales and presentation gallery for "The One" construction project located at 1 Bloor Street West, Toronto, Ontario (the "**1 Bloor Project**"). The Unit is owned by the Respondent 181 Retail; and
 - (c) fund 249 Ontario's purchase of the real property located at 14 Dundonald Street, Toronto, Ontario (the "**Dundonald Property**"). The Dundonald Property was subsequently conveyed in 2020 by 249 Ontario to the City of Toronto (the "**Dundonald Conveyance**") for the benefit of Mizrahi Development Group (The One) Inc. ("**The One**") and/or certain other entities involved in the development of the 1 Bloor Project. The Dundonald Property does not appear to have any connection to the 181 Davenport Project.
16. The Bridging Receiver does not have full and complete information regarding the apparent inability of the Respondents to repay the Indebtedness. The Bridging Receiver has not obtained complete financial disclosure from the Respondents.

Security & Guarantees

17. As security for all of the present and future indebtedness and obligations of the Respondents to the Lender under the Loan, each of the Respondents granted to the Agent and the Lender, among other things, security over all of its present and after-acquired property pursuant to separate general security agreements.
18. The Agent made a registration against 181 Retail pursuant to the PPSA on May 2, 2018. As permitted by the Loan Agreement, the Bridging Receiver, on behalf of the Agent and the Lender, made a PPSA registration against each of Northern Citadel and One8One on May 12, 2022 following the failure by the Borrower to repay the Loan upon expiry of the Term.
19. Pursuant to section 12.8 of the Original Loan Agreement, upon any Event of Default, the Lender may appoint a receiver or a receiver and manager of the Collateral.¹
20. The PPSA searches appended to the Ray Affidavit indicate that the only registration against each of Northern Citadel and One8One is the registration made by the Bridging Receiver on behalf of the Agent and the Lender. There are two registrations against 181 Retail. The first registration was made by KEB Hana Bank Canada and a subsequent registration was made by the Agent.

Events & Transactions Leading up to Application

21. As set out in detail in the Ray Affidavit, the Bridging Receiver has significant concerns regarding certain events and transactions involving the Respondents, certain related entities, and the former principals of Bridging, some of which are summarized below:

¹ “Collateral” is defined in the Original Loan Agreement to mean all of the Credit Parties’ rights, title and interests in and to the Assets and the Subsidiaries and all cash flow therefrom and all other property and assets subject to the Security. “Assets” is defined in the Original Loan Agreement to mean collectively all of the property, personal or real, and assets of the Credit Parties as of the date of the Original Loan Agreement, including, without limitation, the Property (defined as the 181 Davenport Project), or hereafter acquired or otherwise obtained by the Credit Parties in any manner whatsoever.

- (a) **1 Bloor Project & Conflicts of Interest.** The books and records of Bridging indicate that the 1 Bloor Project was indirectly owned by Sam Mizrahi, Jenny Coco, and Natasha Sharpe during the Applicable Period, which coincides with a substantial majority of the lifespan of the Loan. Jenny Coco and Natasha Sharpe are directors and indirect shareholders of BFI, and were also both members of BFI's credit committee. The Bridging Receiver has significant concerns regarding the potential conflicts of interest between Jenny Coco and Natasha Sharpe in their capacities as principals of Bridging and members of the BFI credit committee, and separately as indirect owners of the 1 Bloor Project.
- (b) **November 2016 Amendment & Accounts.** Pursuant to the November 2016 Amendment, the definition of "Borrower" was amended to include Northern Citadel, 249 Ontario, and MI. Leading up to the November 2016 Amendment, Bridging lacked sufficient collateral coverage for the Loan. In order to cover this shortfall, MI was added as a Borrower under the Loan and the Accounts (primarily comprised of the sales commissions owing to MI in connection with the 1 Bloor Project) were pledged in favour of the Lender. The Accounts formed a material proportion of the collateral subject to the Lender's security. On multiple occasions, the Credit Parties represented to Bridging that the estimated Loan repayments sourced through the 1 Bloor Project (by way of the Accounts) would exceed \$20 million in aggregate.
- (c) **Conveyance of Dundonald Property & July 2020 Partial Repayments.** Part of the November 2016 Advance was used to fund 249 Ontario's purchase of the Dundonald Property. The Dundonald Charge in the principal amount of \$15 million was granted by 249 Ontario as New Security for the Loan. The Dundonald Property was subsequently conveyed by 249 Ontario to the City of Toronto in 2020 for the benefit of the 1 Bloor Project. The purpose of the Dundonald Conveyance was to partially satisfy the 1 Bloor Project's municipal parkland obligations owing to the City of Toronto. 249 Ontario received approximately \$6.2 million in connection with the Dundonald Conveyance and directed payment of this amount to Bridging. Bridging agreed to discharge the Dundonald Charge notwithstanding that this amount was less than the \$15 million principal amount of the Dundonald Charge.

The Dundonald Property does not appear to have any connection to the 181 Davenport Project. The Bridging Receiver has significant concerns regarding the involvement of Jenny Coco and Natasha Sharpe in the original Dundonald Property acquisition (and the subsequent Dundonald Conveyance) as both principals of Bridging and part owners of the 1 Bloor Project.

- (d) **December 2020 Amendment & 2020 Bridging Audit.** The final amendment to the Loan Agreement was the December 2020 Amendment. The execution of the December 2020 Amendment was one day prior to the date of the audit opinion of Bridging Income Fund LP by KPMG. It appears that the December 2020 Amendment may have been executed to satisfy inquiries from KPMG regarding the status of the Loan and whether it was past due. The December 2020 Amendment was executed after a series of emails and phone calls between Graham Marr of BFI and Sam Mizrahi. As a result of those emails and phone calls, among other things, MI and 249 Ontario were removed from the subject line and signature block of the December 2020 Amendment. MI and 249 Ontario now take the position that this had the effect of extinguishing their continuing liability under the Loan (which would leave the Lender with little to no other sources of recovery for the Loan). The Bridging Receiver continues to investigate this matter.
- (e) **Communications since Commencement of Bridging Receivership.** The Bridging Receiver has engaged with the Credit Parties on multiple occasions in an effort to understand their financial position and formulate a repayment plan for the Loan. These efforts have been unsuccessful. The Respondents have largely failed to provide basic financial reporting required under the Loan Agreement and have failed to provide any plan for repayment of the Loan.
- (f) **Alleged Cerieco Secret Guarantee.** The Bridging Receiver has also become aware of an Alleged Secret Guarantee pursuant to which Sprott Bridging Income Fund LP allegedly guaranteed a loan (the “**Cerieco Loan**”) by Cerieco to Mizrahi Commercial (The One) LP in the amount of approximately \$213 million in connection with the construction of the 1 Bloor Project. The Bridging Receiver understands that Cerieco has filed a statement of claim (the “**Cerieco Claim**”)

claiming over \$200 million in damages against, among others, Sam Mizrahi, Jenny Coco, and certain entities related to the 1 Bloor Project in connection with the Cerieco Loan. The Cerieco Claim, among other things, alleges that Jenny Coco and Natasha Sharpe, on a confidential basis, effectively leveraged the balance sheet of Bridging Income Fund LP through the Alleged Secret Guarantee in order to obtain the Cerieco Loan for the 1 Bloor Project. The Bridging Receiver continues to investigate this matter and the documents and information related to the Cerieco Claim and the Alleged Secret Guarantee.

Event of Default & Demands

22. Pursuant to the Loan Agreement, the Term of the Loan expired on April 30, 2022. Pursuant to section 3.4 of the Original Loan Agreement, the principal amount of the Loan, together with accrued interest, is due and payable on the expiry of the Term.
23. The Respondents failed to repay the full amount outstanding under the Loan on the expiry of the Term, contrary to section 3.4 of the Original Loan Agreement (the “**Payment Default**”). The Payment Default is continuing as at the date hereof. The Bridging Receiver has not waived the Payment Default.
24. Pursuant to section 12.1(a) of the Original Loan Agreement, an Event of Default occurs if the Borrower fails to observe or perform any term, condition, covenant, or undertaking involving the payment of money under the Loan Agreement. Pursuant to section 12.2 of the Original Loan Agreement, a default referred to under section 12.1 shall not constitute an Event of Default unless, in the case of default in payment of money, it has continued for at least 10 days after the due date for payment.
25. On May 2, 2022 (the first business day after the expiry of the Term), counsel for the Bridging Receiver sent the Default Letter to the Respondents confirming the existence of the Payment Default and advising that, if the Payment Default continued for at least 10 days after the due date for payment, the Payment Default would constitute an Event of Default under the Loan Agreement.

26. Notwithstanding the Default Letter, the Respondents failed to make any payments in respect of the Indebtedness or otherwise provide the Bridging Receiver with a response regarding the Payment Default.
27. On May 12, 2022, the Bridging Receiver delivered the Demand Letters to each of the Respondents advising that the Payment Default has continued for at least 10 days after the due date for payment and therefore constitutes an Event of Default under the Loan Agreement. Pursuant to section 12.1 of the Original Loan Agreement, the Indebtedness is immediately due and payable upon the occurrence of an Event of Default. Accordingly, as set out in the Demand Letters, the Bridging Receiver demanded payment of the Indebtedness from each of the Respondents and enclosed a separate Notice of Intention to Enforce Security pursuant to section 244 of the BIA (collectively, the “**BIA Notices**”).
28. The 10-day notice period set out in the BIA Notices expired on May 22, 2022. As at the date hereof, the Respondents have failed to repay the Indebtedness.

Necessity for Appointment of Receiver

29. The appointment of the proposed Receiver over the Property of the Respondents is necessary and appropriate in the circumstances as a result of the following:
 - (a) pursuant to the Loan Agreement, the Borrower agreed to permanently repay the Loan on the expiry of the Term. The Respondents have failed to make any payments in respect of the Indebtedness notwithstanding the expiry of the Term;
 - (b) as a result of the Payment Default, which constitutes an Event of Default under the Loan Agreement, the Bridging Receiver, on behalf of the Lender, is contractually entitled under the Original Loan Agreement to seek the appointment of Richter as Receiver of the Property of the Respondents;
 - (c) the 10-day notice period set out in the BIA Notices has expired;
 - (d) the Bridging Receiver does not have full disclosure regarding the financial situation of the Respondents or the use of the principal advances of approximately \$35.5 million under the Loan. The appointment of the proposed Receiver, with the benefit of the investigatory powers set out in the proposed Receivership Order, will provide

the Court and the stakeholders of the Respondents with the means to investigate the use of the Loan proceeds and the financial situation of the Respondents;

- (e) the Bridging Receiver has significant concerns regarding the events and transactions summarized herein and more particularly described in the Ray Affidavit involving the Respondents, certain related entities, and the former principals of Bridging. The Bridging Receiver does not have full and complete information regarding these events and transactions. The appointment of the Receiver over the Respondents will assist in advancing the investigation into these matters and the Bridging Receiver's broader investigation into the affairs of Bridging; and
- (f) based on the limited reporting delivered to the Bridging Receiver and the Agent by the Respondents, it does not appear that the Respondents have assets of any meaningful value. The appointment of the proposed Receiver over the Property of the Respondents is necessary in the circumstances to determine if there are any assets available to satisfy the claims of the Lender and the other stakeholders of the Respondents and, if appropriate, to realize upon any such assets for the benefit of all stakeholders.

- 30. Richter has consented to act as Receiver, subject to obtaining a Receivership Order on terms that are satisfactory to Richter.
- 31. Rules 2.03, 3.02, 14.05(2), 16, 41 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, Section 243(1) of the BIA and Section 101 of the CJA.
- 32. Such other grounds as counsel may advise and this Court may deem just.

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

- 1. the Ray Affidavit;
- 2. the consent of Richter to act as Receiver; and
- 3. such further and other evidence as counsel may advise and this Court may permit.

August 8, 2022

Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
3200 – 100 Wellington Street West
Toronto, ON M5K 1K7

John L. Finnigan (LSO# 24040L)
Email: jfinnigan@tgf.ca

Grant B. Moffat (LSO# 32380L)
Email: gmoffat@tgf.ca

Adam Driedger (LSO# 77296F)
Email: adriedger@tgf.ca

Tel: 416-304-1616

Lawyers for the Applicant

THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

<p>PRICEWATERHOUSECOOPERS INC. (solely in its capacity as court-appointed receiver and manager of of Irving Finance Inc. and certain related entities and investment funds)</p> <p style="text-align: right;">Applicant</p>	<p>- and -</p>	<p>NORTHERN CITADEL CAPITAL INC., ONE DAVENPORT INC., and 181 DAVENPORT RETAIL</p> <p style="text-align: right;">Respo</p>
		<p>Court File No. CV-22-_____</p>
		<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceedings commenced at Toronto, Ontario</p>
		<p style="text-align: center;">NOTICE OF APPLICATION</p>
		<p>Thornton Grout Finnigan LLP TD West Tower, Toronto-Dominion Centre 3200 –100 Wellington Street West Toronto, ON M5K 1K</p> <p>John L. Finnigan (LSO# 24040L) Email: jfinnigan@tgf.ca</p> <p>Grant B. Moffat (LSO# 32380L) Email: gmoffat@tgf.ca</p> <p>Adam Driedger (LSO# 77296F) Email: adriedger@tgf.ca</p> <p>Tel: 416-304-1616</p> <p>Lawyers for the Applicant</p>

SERVICE LIST
(as at August 8, 2022)

TO:	<p>THORNTON GROUT FINNIGAN LLP TD West Tower, Toronto-Dominion Centre 100 Wellington Street West, Suite 3200 Toronto, ON M5K 1K7 Fax: (416) 304-1313</p> <p>John L. Finnigan (LSO# 24040L) Email: jfinnigan@tgf.ca Tel: (416) 304-0558</p> <p>Grant B. Moffat (LSO# 32380L) Email: gmoffat@tgf.ca Tel: (416) 304-0599</p> <p>Adam Driedger Email: adriedger@tgf.ca Tel.: (416) 304-1152</p> <p>Lawyers for the Applicant, PricewaterhouseCoopers Inc. in its capacity as Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds</p>
AND TO:	<p>MILLER THOMSON LLP 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1 Fax: (416) 595-8695</p> <p>Bobby Sachdeva Email: bsachdeva@millერთhompson.com Tel: (416) 595-8592</p> <p>Kevin D. Sherkin Email: ksherkin@millერთhompson.com Tel: (416) 597-6028</p> <p>Lawyers for the Respondents</p>

AND TO:	<p>PRICEWATERHOUSE COOPERS INC. 18 York Street, Suite 2600 Toronto, ON M5J 0B2</p> <p>Greg Prince Email: gregory.n.prince@pwc.com Tel: (416) 814-5752</p> <p>Michael McTaggart Email: michael.mctaggart@pwc.com Tel: (416) 687-8924</p> <p>Christine Sinclair Email: christine.l.sinclair@pwc.com Tel: (416) 687-8938</p> <p>Tyler Ray Email: tyler.ray@pwc.com Tel: (416) 687-8200</p> <p>Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds</p>
AND TO:	<p>OSLER, HOSKIN & HARCOURT LLP 100 King Street West – Suite 6200 Toronto, ON M5K 1K8</p> <p>John MacDonald Email: jmacdonald@osler.com Tel: (416) 862-5672</p> <p>Blair McRadu Email: bmcradu@osler.com Tel: (416) 862-4204</p> <p>Lawyers for Richter Inc. as proposed Receiver</p>

AND TO:	<p>RICHTER INC. 181 Bay Street, Suite 3320 Bay Wellington Tower Toronto, ON M5J 2T3</p> <p>Adam Sherman Email: asherman@richter.ca Tel: (416) 488-2345 ext. 2318</p> <p>Megha Sharma Email: msharma@richter.ca Tel: (416) 646-8378</p> <p>Proposed Receiver</p>
AND TO:	<p>KEB HANA BANK 627 Bloor Street West Toronto, ON M6G 1K8</p> <p>Theo Ikonomou Chief Compliance & Privacy Officer Email: t.ikonomou@hanafn.com Tel: (416) 227-5570 Fax: (416) 222-5822</p> <p>PPSA registrant with respect to 181 Davenport Retail Inc.</p>
AND TO:	<p>LAX O'SULLIVAN LISUS GOTTLIEB LLP Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p> <p>Nadia Champion Email: ncampion@lolg.ca Tel: (416) 642-3134</p> <p>Matthew Law Email: mLaw@lolg.ca Tel: (416) 849-9050</p> <p>Lawyers for Mizrahi Inc. and 2495159 Ontario Inc.</p>

AND TO:	DEPARTMENT OF JUSTICE (CANADA) Ontario Regional Office 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 Diane Winters Email: diane.winters@justice.gc.ca
AND TO:	HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE INSOLVENCY UNIT 6th Floor, 33 King Street West Oshawa, ON L1H 8H5 Leslie Crawford Tel: (905) 433-5657 Email: leslie.crawford@ontario.ca Insolvency Unit Email: insolvency.unit@ontario.ca

EMAIL SERVICE LIST
(as at August 8, 2022)

jfinnigan@tgf.ca; gmoftat@tgf.ca; adriedger@tgf.ca; bsachdeva@millertomson.com;
kskerkin@millertomson.com; gregory.n.prince@pwc.com; michael.mctaggart@pwc.com;
christine.l.sinclair@pwc.com; tyler.ray@pwc.com; jmacdonald@osler.com;
bmcradu@osler.com; asherman@richter.ca; msharma@richter.ca; t.ikonomou@hanafn.com;
ncampion@lolg.ca; maw@lolg.ca; diane.winters@justice.gc.ca; leslie.crawford@ontario.ca;
insolvency.unit@ontario.ca

TAB 2

Court File No. CV-22_____00CL

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,
as amended*

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC.,
and 181 DAVENPORT RETAIL INC.**

Respondents

**AFFIDAVIT OF TYLER RAY
(Sworn August 8, 2022)**

I, Tyler Ray of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY
AS FOLLOWS:

I. INTRODUCTION

1. I am a Senior Manager at PricewaterhouseCoopers Inc. (“**PwC**”), the court-appointed receiver and manager (in such capacity, the “**Bridging Receiver**”) of Bridging Finance Inc. (“**BFI**”) and certain related entities and investment funds (collectively, “**Bridging**”). As such, I have knowledge of the matters deposed to herein, save where I have obtained information from others. Where I have obtained information from others, I have stated the source of that information and believe it to be true.

2. This affidavit is sworn in support of an application by the Bridging Receiver pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for an order (the “**Receivership Order**”), substantially in the form located at Tab 3 of the Bridging Receiver’s Application Record, among other things:
 - (a) appointing Richter Inc. (“**Richter**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the current and future assets, undertakings, and properties (the “**Property**”) of each of Northern Citadel Capital Inc. (“**Northern Citadel**”), One8One Davenport Inc. (“**One8One**”), and 181 Davenport Retail Inc. (“**181 Retail**” and together with Northern Citadel and One8One, the “**Respondents**”); and
 - (b) such further and other relief as this Honourable Court may deem just.
3. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

II. BACKGROUND & APPOINTMENT OF THE BRIDGING RECEIVER

4. By orders of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 30, 2021 (the “**Appointment Order**”), May 3, 2021 (the “**Additional Appointment Order**”), and May 14, 2021 (the “**Continuation Order**” and collectively, the “**Appointment Orders**”), PwC was appointed as the Bridging Receiver. Copies of the Appointment Orders are attached hereto as **Exhibit “A”**.

5. PwC was appointed as the Bridging Receiver pursuant to section 129 of the *Securities Act* R.S.O. 1990, c. S. 5, as amended (the “**Securities Act**”) upon application by the Ontario Securities Commission (the “**Commission**”) as a result of the Commission’s ongoing investigation into Bridging and certain related individuals and entities. As reflected in the endorsement of Justice Hainey issued in connection with the Appointment Order (a copy of which is attached to the Appointment Order located at Exhibit “A”), the Court determined that, as required by section 129 of the Securities Act, the appointment of the Bridging Receiver was in the best interests of Bridging’s investors and will further the due administration of securities law in Ontario.
6. BFI is a privately held investment management firm that, prior to the appointment of the Bridging Receiver, offered alternative investment options to investors through the various Bridging investment funds managed by BFI (the “**Bridging Funds**”). Bridging would, among other things, raise capital from investors through the Bridging Funds for the purpose of making private debt loans to third-party borrowers. BFI would act as agent on behalf of the applicable Bridging Fund(s) that advanced funds to third-party borrowers.
7. The Bridging Receiver was appointed to protect the interests of, and maximize value for, Bridging’s investors and the other stakeholders. There are approximately 26,000 Bridging investors (both retail and institutional) primarily located across Canada. As detailed in the Bridging Receiver’s various reports to the Court, Bridging’s investors are facing significant losses on their investments in the Bridging Funds.
8. One of the loans in Bridging’s portfolio is the Loan (as defined and described in greater detail below) made by BFI on behalf of certain of the Bridging Funds to the Respondents

and certain related entities. The Loan is currently past maturity and in default. On May 12, 2022, the Receiver issued the Demand Letters and BIA Notices (each as defined below) to the Respondents. The Respondents have failed to make any payments in reduction of the Loan notwithstanding the maturity of the Loan and the issuance of the Demand Letters and the BIA Notices.

9. The Bridging Receiver is concerned that it does not have insight into the financial situation of the Respondents or the use of the principal advances of approximately \$35.5 million under the Loan. As of June 30, 2022, principal advances of \$17.1 million remain outstanding. The Bridging Receiver has significant concerns regarding the apparent inability of the Respondents to repay the Loan notwithstanding the significant amounts advanced thereunder.
10. The Bridging Receiver also has significant concerns regarding certain events and transactions involving the Respondents, certain related entities, and the former principals of Bridging, some of which are described below.
11. The Bridging Receiver brings this application to appoint Richter as Receiver of the Respondents as part of its broader investigation into the affairs of Bridging and in an effort to minimize the losses that Bridging's investors and other stakeholders will suffer as a result of the Loan. The appointment of an independent court officer as Receiver of the Respondents is required in these circumstances to investigate the financial situation and affairs of the Respondents and to realize on their assets (to the extent any such assets are available or recoverable) for the benefit of all stakeholders.

III. CORPORATE INFORMATION AND BUSINESS OF THE RESPONDENTS

12. According to the records maintained by the Ontario Ministry of Government and Consumer Services, each of Northern Citadel, One8One, and 181 Retail is a corporation incorporated under the laws of the Province of Ontario. The registered head office of Northern Citadel is located at 189 Forest Hill Road, Toronto, Ontario. The registered head office of both One8One and 181 Retail is located at 125 Hazelton Avenue, Toronto, Ontario. Copies of the corporate profile reports in respect of Northern Citadel, One8One, and 181 Retail are attached as **Exhibit “B”**.

13. Sam Mizrahi was listed as the sole director of each of the Respondents up until May 15, 2022. According to the foregoing corporate profile searches, Sam Mizrahi was removed as a director of each of the Respondents effective as of May 15, 2022, three days after the Bridging Receiver delivered the Demand Letters and BIA Notices to the attention of Sam Mizrahi. Sam Mizrahi remains listed as the sole officer of each of the Respondents. However, Amanda Brown is now listed as the sole director of each of the Respondents. The Respondents are in the real estate development business. The Bridging Receiver understands from the books and records of Bridging that the Respondents developed and marketed the condominium project located at 181 Davenport Road, Toronto, Ontario (the “**181 Davenport Project**”), which is described in greater detail below.

IV. THE LOAN AGREEMENT & ADVANCES

14. Pursuant to a loan agreement dated December 17, 2014 (the “**Original Loan Agreement**”), as amended by a first amending agreement dated February 24, 2015, a second amending agreement dated March 11, 2015, a third amending agreement dated April 10, 2015, a

fourth amending agreement dated November 27, 2015, a fifth amending agreement dated June 30, 2016, a sixth amending agreement dated November 30, 2016 (the “**November 2016 Amendment**”), a seventh amending agreement dated November 1, 2017 (the “**November 2017 Amendment**”), an eighth amending agreement dated May 2, 2018, and a ninth amending agreement dated December 31, 2020 (the “**December 2020 Amendment**” and collectively, the “**Loan Agreement**”), BFI, as agent (in such capacity, the “**Agent**”) on behalf of Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) and the related investment funds from time to time acting as lender (collectively, the “**Lender**”) made available to Northern Citadel, Mizrahi Inc. (“**MI**”), and 2495159 Ontario Inc. (“**249 Ontario**” and together with Northern Citadel and MI, the “**Borrower**”) a non-revolving term credit facility (the “**Loan**”) in the principal amount of \$41,412,501.00.

15. MI and 249 Ontario are not Respondents to this Application and no relief is being sought by the Bridging Receiver in respect of MI and 249 Ontario on this Application. MI and 249 Ontario were added as entities comprising the “Borrower” pursuant to the November 2016 Amendment. There is a dispute as to whether MI and 249 Ontario still comprise the “Borrower” under the Loan Agreement and have any continuing liability thereunder. Some of the issues related to that dispute are summarized below for the purposes of describing the history of the Loan and certain events leading up to this application in respect of which the Bridging Receiver has significant concerns. The issue of whether MI and 249 Ontario still comprise the “Borrower” under the Loan Agreement and have any continuing liability

thereunder is not being addressed in this application, but may be addressed by the Bridging Receiver at a later date.

16. Interest currently accrues on the Loan at the rate of 12% per annum. Based on the books and records of Bridging, the Lender has received cash payments from the Borrower on only four occasions since the inception of the Loan in December 2014.
17. According to the books and records of Bridging, as at June 30, 2022, the total amount owing by the Respondents to the Lender under the Loan is \$54,866,885.69, consisting of principal in the amount of \$17,054,655.33 and accrued and unpaid interest in the amount of \$37,812,230.36, together with all accrued costs to the date of payment (collectively, the “**Indebtedness**”).
18. The original purpose of the Loan was to finance a portion of Northern Citadel’s equity in the 181 Davenport Project¹. Based on Bridging’s records and certain reporting delivered by the Borrower to Bridging, the Bridging Receiver understands that construction of the 181 Davenport Project began in 2013 and initial occupancy occurred in February 2017. According to the books and records of Bridging, the closing of the sale of the last condominium unit at the 181 Davenport Project was in July 2020.

¹ A loan was originally made in 2012 from Bridging Capital Inc. (a precursor of BFI) to Northern Citadel in the principal amount of \$16,326,000.00 (the “**852 Loan**”). I understand Bridging Capital Inc. subsequently assigned its interest in the 852 Loan in 2013 to 8527504 Canada Inc. (“**852 Canada**”), a company controlled by Jenny Coco, Rock-Anthony Coco and Natasha Sharpe. I understand from the books and records of Bridging that the four principal advances made available by the Lender to the Borrower under the Loan between December 17, 2014 and April 10, 2015 were directed by the Borrower to 852 Canada to repay the 852 Loan. 852 Canada was dissolved on June 28, 2021, approximately two months after the appointment of the Bridging Receiver.

19. Based on the books and records of Bridging, the Bridging Receiver understands that certain Loan advances were also used to:

- (a) fund cost overruns on the 181 Davenport Project;
- (b) make improvements to the approximately 4,097 square foot unit (the “**Unit**”) at the 181 Davenport Project to be used as a sales and presentation gallery for “The One” construction project located at 1 Bloor Street West, Toronto, Ontario (the “**1 Bloor Project**”). The 1 Bloor Project is described in further detail below. The Unit is owned by the Respondent 181 Retail; and
- (c) fund 249 Ontario’s purchase of the real property located at 14 Dundonald Street, Toronto, Ontario (the “**Dundonald Property**”). According to the books and records of Bridging and public property records, the Dundonald Property was subsequently conveyed in 2020 by 249 Ontario to the City of Toronto (the “**Dundonald Conveyance**”) for the benefit of Mizrahi Development Group (The One) Inc. (“**The One**”) and/or certain other entities involved in the development of the 1 Bloor Project. Sam Mizrahi is listed as a director and officer of both 249 Ontario and The One. The Dundonald Property does not appear to have any connection to the 181 Davenport Project. The Dundonald Conveyance is described in greater detail below.

20. The following chart provides an overview of the principal advances made under the Loan according to the books and records of Bridging:

Date	Principal Amount Advanced	Total Amount Outstanding	Purpose of Advance (as Stated in Loan Agreement)
December 17, 2014	\$9,813,424.66	\$9,813,424.66	To finance a portion of the Borrower's equity in the 181 Davenport Project
February 24, 2015	\$3,887,260.27	\$13,931,204.70	Not specified
March 11, 2015	\$5,791,780.82	\$19,742,836.10	Not specified
April 10, 2015	\$3,845,471.24	\$23,647,459.67	Not specified
November 30, 2016	\$6,556,500.00	\$35,827,750.68	To fund legal fees, the work fee (\$56,500), improvements to the Unit (\$2,500,000), and the purchase of the Dundonald Property (\$4,000,000)
November 1, 2017	\$5,584,750.00	\$45,560,938.61	To fund the work fee (\$84,750) and the completion of the 181 Davenport Project
Total Advances	\$35,479,186.99		

21. The following chart provides an overview of the historical partial repayments made by the Borrower under the Loan according to the books and records of Bridging:

Repayment Date	Repayment Amount	Total Amount Outstanding²	Description of Repayment
June 21, 2018	(\$1,445,280.00)	\$47,387,620.18	Commissions received by MI from the 1 Bloor Project and directed to the Lender
October 10, 2018	(\$2,970,729.12)	\$46,356,160.16	Receipt of proceeds from 181 Davenport Project unit
July 9, 2020	(\$10,085,635.61)	\$47,082,092.86	Repayment of advances related to the Unit (\$3.9 million) and Dundonald Property (\$6.2 million)

² Total Amount Outstanding reflects the balance outstanding net of each Repayment Amount, plus any accrued interest between each Repayment Date.

July 27, 2020	(\$3,922,886.93)	\$43,159,205.93	Receipt of proceeds from sale of final 181 Davenport Project unit
Total Repayments	(\$18,424,531.66)		
Add: Accrued Interest Since July 27, 2020		\$11,707,679.76	
Total Amount Outstanding at June 30, 2022		\$54,866,885.69	

22. As described above, the total Indebtedness is approximately \$55 million. The Bridging Receiver does not have full and complete information regarding the apparent inability of the Respondents to repay the Indebtedness. The Bridging Receiver has not obtained complete financial disclosure from the Respondents.

V. SECURITY & GUARANTEES HELD BY BRIDGING

23. As security for all of the present and future indebtedness and obligations of Northern Citadel to the Lender under the Loan, Northern Citadel granted the Agent and the Lender, among other things, security over all of its present and after-acquired property pursuant to a General Security Agreement dated December 17, 2014 (the “**Northern Citadel GSA**”), a copy of which is attached hereto as **Exhibit “C”**.

24. Pursuant to section 5.1(d) of the Original Loan Agreement, upon the occurrence of an Event of Default (as defined in the Loan Agreement), which has not been remedied, the Lender is permitted to register its security interest in respect of all of the Credit Parties³ under the *Personal Property Security Act* (Ontario) (the “**PPSA**”). As described in greater

³ Credit Parties is defined in the Loan Agreement to mean the Borrower and the Guarantors (and includes each of the Respondents).

detail below, due to the Event of Default committed by the Respondents, which remains ongoing as at the date hereof, the Bridging Receiver, on behalf of the Agent and the Lender, made a registration pursuant to the PPSA against Northern Citadel on May 12, 2022. A copy of a certified PPSA search in respect of Northern Citadel current as of August 2, 2022 is attached hereto as **Exhibit “D”**.

25. The indebtedness and obligations of the Borrower under the Loan Agreement have been guaranteed on a joint and several basis by each of One8One⁴ and 181 Retail⁵ pursuant to a guarantee dated December 17, 2014 (the “**Guarantee**”). A copy of the Guarantee is attached as **Exhibit “E”**.
26. The obligations of One8One pursuant to the Guarantee are secured by, among other things, a security interest granted to the Lender in all of One8One’s present and after acquired property pursuant to a general security agreement dated December 17, 2014 (the “**One8One GSA**”), a copy of which is attached hereto as **Exhibit “F”**. As a result of the Event of Default committed by the Respondents, which remains ongoing as at the date hereof, the Bridging Receiver, on behalf of the Agent and the Lender, made a registration

⁴ The former One8One Davenport Inc. (Ontario Corporation Number: 1912202) (“**191 Ontario**”) amalgamated with Mizrahi Soaring Developments Inc. (Ontario Corporation Number: 1822736) (“**182 Ontario**”) on January 1, 2015 to create One8One Davenport Inc. (Ontario Corporation Number: 1927751), which is defined and referred to herein as “One8One”. Each of 191 Ontario and 182 Ontario is a “Guarantor” under the Guarantee and a “Debtor” under the One8One GSA (as herein defined). The Guarantee is binding on One8One as a successor to 191 Ontario and 182 Ontario pursuant to section 6.1 of the Guarantee. The One8One GSA is binding on One8One as a successor to 191 Ontario and 182 Ontario pursuant to section 5.8 of the GSA.

⁵ Pursuant to section 2 of the November 2016 Amendment, 181 Retail was added as a Guarantor of the Loan on a joint and several basis as though it were an original party to the Loan Agreement and the Existing Security (which is defined in the Loan Agreement to include, among other things, the Guarantee).

against One8One pursuant to the PPSA on May 12, 2022. A copy of a certified PPSA search in respect of One8One current as of August 2, 2022 is attached as **Exhibit “G”**.

27. The obligations of 181 Retail pursuant to the Guarantee are secured by, among other things, a security interest granted to the Lender in all of 181 Retail’s present and after acquired property pursuant to a general security agreement dated May 2, 2018 (the “**181 Retail GSA**”), a copy of which is attached hereto as **Exhibit “H”**. In accordance with section 14(a)(ii) of the November 2016 Amendment, the Agent made a registration against 181 Retail pursuant to the PPSA on May 2, 2018. A copy of a certified PPSA search in respect of 181 Retail current as of August 2, 2022 is attached hereto as **Exhibit “I”**.
28. Pursuant to section 12.8 of the Original Loan Agreement, upon any Event of Default, the Lender may appoint a receiver or a receiver and manager of the Collateral.⁶
29. Based on the PPSA searches referred to above, the only registration against each of Northern Citadel and One8One is the registration made by the Bridging Receiver on behalf of the Agent and the Lender. There are two registrations against 181 Retail. The first registration was made by KEB Hana Bank Canada (“**KEB**”) and a subsequent registration was made by the Agent.

⁶ “Collateral” is defined in the Original Loan Agreement to mean all of the Credit Parties’ rights, title and interests in and to the Assets and the Subsidiaries and all cash flow therefrom and all other property and assets subject to the Security. “Assets” is defined in the Original Loan Agreement to mean “collectively all of the property, personal or real, and assets of the Credit Parties as of the date of the Original Loan Agreement, including, without limitation, the Property [defined as the 181 Davenport Project], or hereafter acquired or otherwise obtained by the Credit Parties in any manner whatsoever”.

VI. EVENTS & TRANSACTIONS LEADING UP TO APPLICATION

30. The foregoing sections provided an overview of the Loan Agreement, the advances thereunder, and the security held by the Agent and the Lender. This section provides a more detailed chronology of certain events and transactions leading up to this application, in respect of which the Bridging Receiver has significant concerns. To provide necessary context regarding these events and transactions, this section also provides an overview of the ownership structure of the 1 Bloor Project based on the books and records of Bridging and the intertwined nature of the relationship between the former principals of Bridging, the Credit Parties, and the 1 Bloor Project. The Bridging Receiver continues to investigate these matters and is of the view that the appointment of an independent court officer over the Respondents is required to advance this investigation and maximize recoveries (if any) for the Respondents' stakeholders.

(i) *1 Bloor Project & Conflicts of Interest*

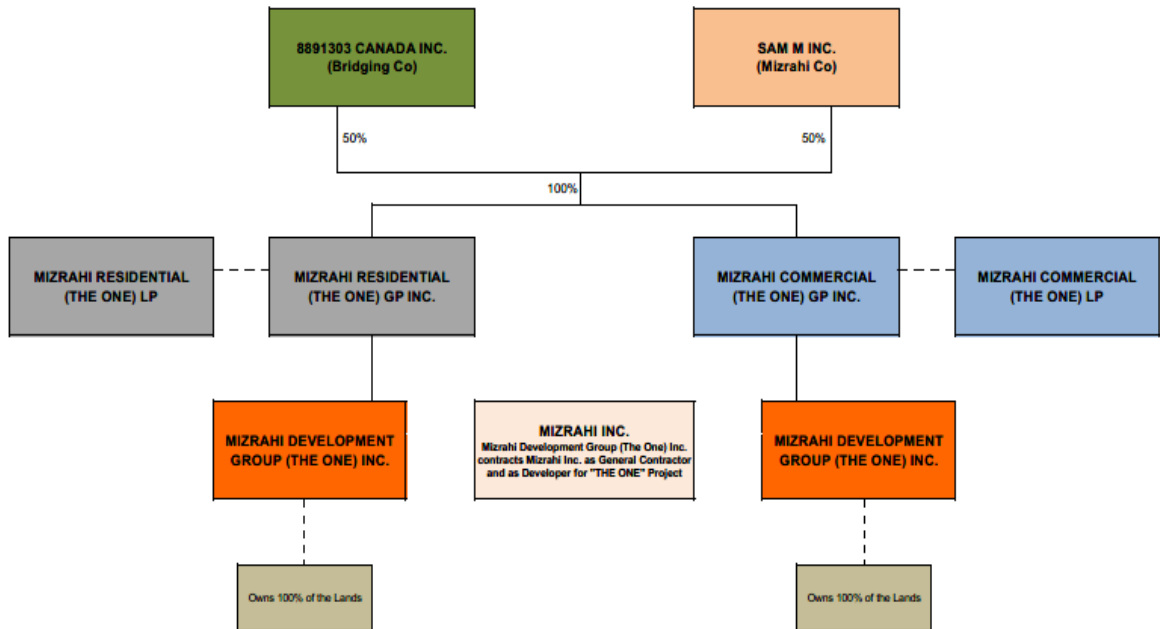
31. Although no relief is being sought in respect of the 1 Bloor Project, a brief overview of its ownership structure provides context for certain of the Bridging Receiver's concerns described below given the numerous ways in which the former principals of Bridging, the Credit Parties, and the 1 Bloor Project are connected.

32. The Bridging Receiver has obtained an organizational chart of the 1 Bloor Project that was emailed in 2017 from the Bridging file server⁷ (the "**2017 Organizational Chart**"), a copy

⁷ Prior to the migration to the current Office 365 email environment, Bridging maintained a backup of the exchange server ("**Backup Exchange**"). Multiple emails restored from the Backup Exchange were missing header information (i.e. email does not show the sender or recipient details), including an email that appears to have been sent by Roy Booth, Chief Financial Officer of the Coco Group on August 9, 2017. The body of the email indicates it was sent by

of which is attached hereto as **Exhibit “J”**. According to the 2017 Organizational Chart, the companies involved in developing the 1 Bloor Project include Mizrahi Residential (The One) LP (“**1 Bloor Residential LP**”), Mizrahi Residential (The One) GP Inc. (“**1 Bloor Residential GP**”), Mizrahi Commercial (The One) LP, Mizrahi Commercial (The One) GP Inc. (“**1 Bloor Commercial GP**”), The One, and MI. Corporate profile searches in respect of the foregoing entities are attached hereto as **Exhibit “K”**.

33. For ease of reference, a screenshot of the 2017 Organizational Chart is below:



Roy Booth and attached the referenced organizational chart. The Bridging Receiver could not locate copies of this email in the current Office 365 email environment, which would confirm the header information.

34. The 2017 Organizational Chart indicates that the 1 Bloor Project is effectively 50% owned by 8891303 Canada Inc. (“**889 Canada**”)⁸ and 50% owned by Sam M Inc. (“**SMI**”). The books and records of Bridging, including various emails, spreadsheets, and legal documents (some of which are referred to below), indicate that between approximately March 12, 2015 and December 30, 2020 (the “**Applicable Period**”):
- (a) Jenny Coco and related individuals indirectly owned 95% of the shares of 889 Canada (and therefore indirectly owned 47.5% of the 1 Bloor Project);
 - (b) Natasha Sharpe indirectly owned 5% of the shares of 889 Canada (and therefore indirectly owned 2.5% of the 1 Bloor Project); and
 - (c) Sam Mizrahi indirectly owned 100% of the shares of SMI (and therefore indirectly owned 50% of the 1 Bloor Project).
35. As described above, Sam Mizrahi is the sole officer (and was, up until May 15, 2022, three days after the delivery of the Demand Letters and the BIA Notices, the sole director) of the Respondents and Jenny Coco and Natasha Sharpe are directors and indirect shareholders of BFI⁹. Jenny Coco and Natasha Sharpe were also both members of BFI’s credit

⁸ The Bridging Receiver notes that 889 Canada amalgamated with 12787601 Canada Ltd. on March 13, 2021 to become 12823543 Canada Ltd. (“**128 Canada**”). The directors of 128 Canada are Jenny Coco, Rock-Anthony Coco, and Nina Coco. The directors of 889 Canada prior to the foregoing amalgamation were Jenny Coco and Rock-Anthony Coco. 128 Canada has the same registered head office as 889 Canada.

⁹ As of December 31, 2020 (the date of the last financial statement audit of BFI), I understand that BFI was 58.3% owned by 2693600 Ontario Inc. (“**Coco Holdco**”) and 41.7% owned by 2693602 Ontario Inc. (“**Sharpe Holdco**”). Coco Holdco was owned by 8156247 Canada Inc., an entity indirectly controlled by Jenny Coco and Rock-Anthony Coco. Sharpe Holdco was owned by 8156379 Canada Inc., an entity indirectly controlled by Natasha Sharpe. I understand that while the allocation of share ownership has changed between 2012 and April 30, 2021, Natasha Sharpe and Jenny Coco have been involved since Bridging’s founding in 2012.

committee, which was primarily responsible for the review and approval of loans made by BFI as agent on behalf of the Bridging Funds, including the Loan.

36. It is unclear whether the foregoing ownership structure remains in place. The books and records of Bridging do not contain information regarding the ownership of the 1 Bloor Project beyond the Applicable Period. However, it is notable that:
- (a) Sam Mizrahi is currently listed as the sole officer and director of SMI. A copy of a corporate profile search in respect of SMI is attached as **Exhibit “L”**;
 - (b) Jenny Coco and Rock-Anthony Coco were listed as the sole directors of 889 Canada prior to its amalgamation with another entity to become 128 Canada. Jenny Coco, Rock-Anthony Coco, and Nina Coco are currently listed as the sole directors of 128 Canada. According to publicly filed corporation documents for 889 Canada dated February 26, 2021, Natasha Sharpe was removed as a director of 889 Canada on January 28, 2021. Copies of corporate profile searches in respect of 889 Canada and 128 Canada are attached as **Exhibit “M”**;
 - (c) Sam Mizrahi and Jenny Coco are currently listed as the sole directors of 1 Bloor Commercial GP. Sam Mizrahi, Jenny Coco, Natasha Sharpe, and Rock-Anthony Coco are currently listed as the officers of 1 Bloor Commercial GP;
 - (d) Sam Mizrahi, Jenny Coco, Natasha Sharpe, and Rock-Anthony Coco are listed as the directors and officers of 1 Bloor Residential GP; and

- (e) Sam Mizrahi and Jenny Coco are currently listed as the directors and officers of The One.

37. The Bridging Receiver has obtained various documents that establish the direct ownership of the 1 Bloor Project during the Applicable Period, including:

- (a) a Unanimous Shareholders Agreement for 1 Bloor Commercial GP dated July 25, 2014 between 889 Canada, SMI and 1 Bloor Commercial GP. This agreement provides that 889 Canada and SMI each own 50 common shares of 1 Bloor Commercial GP.¹⁰ As of the date of the agreement, 100 common shares had been issued. This indicates 889 Canada and SMI were each 50% owners of 1 Bloor Commercial GP at the time. A copy of this agreement is attached hereto as **Exhibit “N”**; and
- (b) a Limited Partnership Agreement for 1 Bloor Residential LP dated July 25, 2014 between 1 Bloor Residential GP, 889 Canada and Mizrahi Enterprises Inc. that sets out the partnership interests. This agreement stipulates that 889 Canada will hold 10 Class A1 Units in the partnership and Mizrahi Enterprises Inc. will hold 10 Class B Units in the partnership.¹¹ A total of 10 Class A1 Units and 10 Class B units in 1 Bloor Residential LP were outstanding as of the date of the agreement, indicating

¹⁰ Jenny Coco and Natasha Sharpe appear to have signed this agreement on behalf of each of 889 Canada and 1 Bloor Commercial GP. The copy of the agreement I have reviewed is not signed on behalf of SMI.

¹¹ Jenny Coco and Natasha Sharpe appear to have signed the agreement on behalf of each of 889 Canada and 1 Bloor Residential GP. The copy of the agreement I have reviewed is not signed on behalf of Mizrahi Enterprises Inc.

50% ownership by each of 889 Canada and Mizrahi Enterprises Inc. A copy of this agreement is attached hereto as **Exhibit “O”**.

38. I have reviewed an affidavit sworn by Sam Mizrahi on January 18, 2021 in the court file Khavari et al. v. Mizrahi et al., No. CV-15-11187-00CL. In that affidavit, Sam Mizrahi states “I am the President, owner and sole director of Mizrahi Enterprises Inc., and Sam M Inc.”¹²
39. Based on an email sent by Jenny Coco to Natasha Sharpe on October 24, 2015, the Bridging Receiver understands that 889 Canada was 95% owned by entities controlled by Jenny Coco and related individuals¹³ and 5% owned by 2333065 Ontario Inc. (“**233 Ontario**”), an entity controlled by Natasha Sharpe. More specifically, the spreadsheet attachment suggests that between August 20, 2014 and March 12, 2015, Natasha Sharpe invested \$1,507,500 into 889 Canada through 233 Ontario, which equates to an approximately 5% share¹⁴ of total capital invested into the company. A copy of this email and the spreadsheet attachment are attached hereto as **Exhibit “P”**.

¹² In the same affidavit, Sam Mizrahi states “The One Bloor West project is owned by Mizrahi Commercial (The One) GP Inc. [...], which is the general partner of Mizrahi Commercial (The One) LP”. He also states “I own 50% of [1 Bloor Commercial GP] through a company called Sam M. Inc. The remaining 50% is owned by 8891303 Canada Inc., a corporation controlled by my partner Jenny Coco”.

¹³ I understand from the October 24, 2015 spreadsheet attachment that the other entities invested in 889 Canada are companies controlled by relatives of Jenny Coco.

¹⁴ I have reviewed an email sent by Kevin Skells (listed at the time as Director, Finance of The Coco Group of Companies) to Natasha Sharpe on March 12, 2015. He notes that Natasha will “Invest \$101,137.72 into 8891303, the Yonge-Bloor venture. This will bring your [Natasha’s] investment up to 5%, or \$1,500,000.” This appears to corroborate the spreadsheet attachment sent by Jenny Coco to Natasha Sharpe on October 24, 2015. A copy of this email is attached as **Exhibit “NN”**.

40. It appears that Natasha Sharpe had a 5% ownership interest in 889 Canada as of March 12, 2015. I have reviewed internally prepared financial statements for 233 Ontario as at fiscal years ending 2015 through 2020¹⁵. For each year, the 233 Ontario financial statements note an asset of \$5 labelled as “Investment - 8891303 Canada Inc” or “Investment - 8891303” and \$1,507,495 labelled as “Loan Receivable - 8891303 Canada Inc.”.
41. On December 30, 2020, Jenny Coco emailed Natasha Sharpe in response to questions regarding the Dundonald Property, “allow me to remind you, both Sharpe and Coco were lenders of 181 Davenport and remain investors in THE ONE, both Mizrahi Developments.” A copy of this email is attached hereto as **Exhibit “Q”**. Based on this email and the documents and communications referred to above, it appears that Jenny Coco and Natasha Sharpe both held an ownership interest in the 1 Bloor Project together with Sam Mizrahi during the Applicable Period (which overlaps with a substantial majority of the time period of the Loan).
42. As noted above, the books and records of Bridging indicate that the ultimate beneficial ownership of the 1 Bloor Project during the Applicable Period was as follows:
- (a) 50% owned by Sam Mizrahi (through 100% indirect ownership of SMI);
 - (b) 47.5% owned by Jenny Coco and related individuals (through 95% indirect ownership of 889 Canada); and
 - (c) 2.5% owned by Natasha Sharpe (through 5% indirect ownership of 889 Canada).

¹⁵ Each financial statement is prepared as of December 31. While I note these files are stored on the Bridging servers, I have not been able to ascertain who prepared the documents.

43. It is unclear if these ownership percentages changed after December 2020, including as a result of the Alleged Secret Guarantee (as defined and described below). The Bridging Receiver has significant concerns regarding the potential conflicts of interest between Jenny Coco and Natasha Sharpe in their capacities as principals of Bridging and members of the Bridging credit committee, and separately as indirect owners of the 1 Bloor Project. The following sections highlight some of these concerns and provide a more detailed chronology of certain events and transactions leading up to this application.

(ii) November 2016 Amendment & the Accounts

44. Pursuant to the November 2016 Amendment, the maximum principal amount under the Loan was increased by \$6,556,500.00 to \$35,827,751.00. In addition, the Term was extended until the earlier of: (i) the first draw by The One under its construction loan facility for the 1 Bloor Project; and (ii) November 30, 2018. The definition of “Borrower” was amended to include Northern Citadel, 249 Ontario, and MI. The definition of “Guarantors” was amended to include 191 Ontario and 182 Ontario (the predecessor corporations to the Respondent One8One) and 181 Retail. The definition of “Obligors” was amended to include the Borrower, the Guarantors, Sam Mizrahi, and Mizrahi Enterprises Inc.

45. As described above, the Bridging Receiver understands that the primary purpose of the advance under the November 2016 Amendment (the “**November 2016 Advance**”) was to fund improvements to the Unit and 249 Ontario’s acquisition of the Dundonald Property. Jenny Coco and Natasha Sharpe arranged for 249 Ontario to obtain financing from the Lender pursuant to the November 2016 Amendment (for the ultimate benefit of the 1 Bloor

Project) after a third-party lender withdrew from providing a mortgage for the Dundonald Property.¹⁶

46. Natasha Sharpe approved the credit committee submission related to the November 2016 Amendment.

47. As part of the November 2016 Amendment, the Obligors agreed to cause the following security, among others, to be provided to the Lender (collectively, the “**New Security**”):

- (a) a second ranking collateral charge against the Unit from 181 Retail in the amount of the principal amount of the Loan then outstanding plus \$5 million subject to a first mortgage in favour of a third-party lender (which I understand was subsequently provided by KEB);
- (b) the 181 Retail GSA registered under the PPSA subject only to a prior registration in favour of the lender under the first mortgage;
- (c) a security interest from MI in the Accounts¹⁷ not registrable until an Event of Default has occurred; and

¹⁶ I have reviewed a series of emails dated December 6, 2016, around the time of the closing of the November 2016 Amendment. Jenny Coco emailed Natasha Sharpe “Alternative financing shall need to be secured as we are unable to obtain from Coco.” Natasha Sharpe responded “I have thought about that and asked Sam to procure term sheets for mortgage financing. He is unable to find someone who can close in six days so I think the only alternative is for bridging to bridge to a new mortgage provider.” Jenny Coco responded “Precisely!”. A copy of this email chain is attached hereto as **Exhibit “OO”**.

¹⁷ “Accounts” is defined in the November 2016 Amendment to include 50% of all sales commissions, marketing and advertising fees, 100% of the reimbursement of all costs incurred in respect of the Presentation Gallery, including, without limitation, leasehold improvements and furniture, earned and actually received by Mizrahi Inc. from The One in connection with the 1 Bloor Project (as set out in the Budget) and 100% of the reimbursement of the parkland dedication costs in respect of the Dundonald Property as set out in the Budget.

- (d) a first charge against the Dundonald Property in the principal amount of \$15 million plus an assignment of rents (the “**Dundonald Charge**”).
48. The books and records of Bridging indicate that leading up to the November 2016 Amendment, Bridging lacked sufficient collateral coverage for the Loan. A submission prepared by Graham Marr, then VP, Business Development at BFI, presented to the Bridging credit committee in relation to the November 2016 Amendment, anticipated that there would be a shortfall on the collateral available from the 181 Davenport Project due to, among other things, construction delays, interest accruing on the Loan due to these delays, and a contractor strike in the summer of 2016. I note that both Natasha Sharpe and Jenny Coco (as members of the Bridging credit committee) received this submission by email.
49. In order to cover this shortfall, MI was added as a Borrower under the Loan and the Accounts (primarily comprised of the sales commissions owing to MI in connection with the 1 Bloor Project) were pledged in favour of the Lender until the Loan was indefeasibly repaid in full. Attached hereto as **Exhibit “R”** is an email from Sam Mizrahi to Natasha Sharpe and Graham Marr of Bridging dated November 19, 2016 wherein Sam Mizrahi states that MI would be added as a Borrower and pledge the Accounts to the Lender in order to “cover the delta shortfall of the current loan” and to “repay the shortfall and retire the outstanding debt shortfall of the 181 amounts”.
50. The definition of “Accounts” was amended pursuant to the November 2017 Amendment to increase the percentage of sales commissions pledged by MI to the Lender in connection

with the 1 Bloor Project from 50% to 100% (less certain costs).¹⁸ Natasha Sharpe and Jenny Coco both approved the credit committee submission related to the November 2017 Amendment.

51. At the time of the November 2017 Amendment, the books and records of Bridging suggest that the Loan was anticipated to be repaid from the following four key collateral sources:

- (a) approximately \$10 million from the sales of units on the top two floors of the 181 Davenport Project;
- (b) approximately \$25 million from the Accounts;
- (c) the proceeds of the Dundonald Property (in respect of which the Lender had a first mortgage in the principal amount of \$15 million); and
- (d) the sale of the Unit (in respect of which the Lender has a second mortgage in the principal amount of \$12 million).¹⁹

52. The books and records of Bridging indicate that the Accounts formed a material proportion of the collateral subject to the Lender's security after the November 2016 Amendment. On multiple occasions, the Credit Parties represented to Bridging that the estimated Loan

¹⁸ The definition of "Accounts" was amended pursuant to the November 2017 Amendment to include **100%** of all sales commissions, less payments made to any unaffiliated or related co-operating real estate brokers (provided said percentage does not exceed 50%), 50% of all marketing and advertising fees, 100% of the reimbursement of all costs incurred in respect of the Presentation Gallery, including, without limitation, leasehold improvements and furniture, earned and actually received by Mizrahi Inc. (which the Obligors represent and warrant is the entity entitled to such funds) from The One in connection with the 1 Bloor Project (as set out in the Budget) and 100% of the reimbursement of the parkland dedication costs in respect of the Dundonald Property as set out in the Budget.

¹⁹ The Respondents have advised the Bridging Receiver that the Agent agreed to discharge the second mortgage held by the Agent against the Unit prior to the appointment of the Bridging Receiver. Based on the books and records of Bridging, the Bridging Receiver is unaware of any written agreement to that effect.

repayments sourced through the 1 Bloor Project (by way of the Accounts) would exceed \$20 million in aggregate. For example, attached hereto as **Exhibit “S”** is an email sent by Sam Mizrahi on November 9, 2017 estimating 1 Bloor Project commissions as “\$24.45 Million”.

(iii) Conveyance of Dundonald Property & July 2020 Partial Repayments

53. As described above, one of the primary purposes of the November 2016 Advance was to fund 249 Ontario’s purchase of the Dundonald Property. The Dundonald Charge in the principal amount of \$15 million was granted by 249 Ontario as New Security for the Loan.

54. According to the books and records of Bridging, the Dundonald Property was conveyed by 249 Ontario to the City of Toronto in 2020 for the benefit of The One and/or certain other entities involved in the development of the 1 Bloor Project. As noted above, Sam Mizrahi is listed as a director and officer of both 249 Ontario and The One. The purpose of the Dundonald Conveyance was to partially satisfy the 1 Bloor Project’s municipal parkland obligations owing to the City of Toronto. Attached hereto as **Exhibit “T”** is an amended and restated section 37 agreement among The One, 249 Ontario, and the City of Toronto dated as of July 21, 2020. Attached hereto as **Exhibit “U”** is a copy of the parcel abstract in respect of the Dundonald Property.

55. I understand from the books and records of Bridging that The One and/or certain other entities involved in the development of the 1 Bloor Project paid 249 Ontario approximately \$6.2 million in connection with the Dundonald Conveyance (being the sum of the \$4 million originally advanced pursuant to the November 2016 Amendment, plus accrued and

outstanding interest on that particular advance). 249 Ontario directed payment of this amount to Bridging (the “**Dundonald Payment**”), after which Bridging agreed to discharge the Dundonald Charge notwithstanding that this amount was less than the \$15 million principal amount of the Dundonald Charge. Natasha Sharpe approved the credit committee submission allowing the discharge of the Dundonald Charge. The Dundonald Property does not appear to have any connection to the 181 Davenport Project.

56. In July 2020, the Credit Parties made a partial repayment of the Loan in the amount of \$10,085,635.61, which includes the Dundonald Payment (the “**First July 2020 Partial Repayment**”), comprised of the principal amounts originally advanced in respect of the Dundonald Property and the Unit, plus accrued and outstanding interest on that advance. Also in July 2020, the Credit Parties made a second partial repayment of the Loan in the amount of \$3,922,886.93 from the proceeds of sale of the final residential unit of the 181 Davenport Project (together with the First July 2020 Partial Repayment, the “**July 2020 Partial Repayments**”).
57. After the July 2020 Partial Repayments, the outstanding amount of the Loan was \$43,159,205.93. At this time, given that the Dundonald Property and the remaining units in the 181 Davenport Project had been sold, the two key remaining collateral sources for the Loan were the Accounts (which were estimated by Sam Mizrahi on November 9, 2017 as “24.45 Million”) and the Unit (in respect of which Bridging has a second charge in the principal amount of \$12 million). I have not reviewed a recent real-estate appraisal of the Unit, but understand from discussions with PwC’s Real Estate Advisory practice that there is likely limited value in the Unit above and beyond the first-ranking mortgage granted to

KEB in the principal amount of \$4.5 million. A copy of the parcel abstract in respect of the Unit is attached hereto as **Exhibit “V”**.

58. The Bridging Receiver has significant concerns regarding the involvement of Jenny Coco and Natasha Sharpe in the original Dundonald Property transaction (and the subsequent Dundonald Conveyance) as both principals of Bridging and part owners of the 1 Bloor Project. The Bridging Receiver continues to investigate these matters.

(iv) December 2020 Amendment & 2020 Bridging Audit

59. The final amendment to the Loan Agreement was the December 2020 Amendment. Pursuant to the December 2020 Amendment, the Loan maturity date was extended until April 30, 2022. As at December 31, 2020, each of Northern Citadel, One8One, Mizrahi Enterprises Inc., Mizrahi Soaring Developments Inc., and 181 Retail acknowledged and agreed that \$45,892,107.79 was outstanding under the Loan.²⁰
60. Although the December 2020 Amendment was dated as of December 31, 2020, the agreement itself was executed by the parties on March 30, 2021 and backdated to December 31, 2020 (being the fiscal year-end of the applicable Bridging Funds). The execution of the December 2020 Amendment was one day prior to the date of the audit opinion of Bridging Income Fund LP by KPMG LLP (“**KPMG**”).

²⁰ The December 2020 Amendment provides that “the Obligors acknowledge and agree that there is \$45,892,107.79 outstanding under the Loan and that they do not dispute their liability to the Lender on any ground whatsoever...”. The definition of “Obligors” under the Loan Agreement was amended pursuant to the November 2016 Amendment to include Northern Citadel, MI, 249 Ontario, Mizrahi Enterprises Inc., One8One, 181 Retail, and Sam Mizrahi. As described below, MI, 249 Ontario, and Sam Mizrahi were not included as signatories in the December 2020 Amendment. However, there is no provision in the December 2020 Amendment that expressly defines or amends the definition of “Obligors”.

61. On March 30, 2021, at 2:09 p.m.²¹, a representative of KPMG emailed Brian Champ (Portfolio Manager and Chief Risk Officer of BFI) saying “We are trying to wrap up Mizrahi. Can you provide us with support (agreement, communication) that Mizrahi loan is not past due. If not available, an explanation as to why there is no updated agreement.”. I note that prior to the execution of the December 2020 Amendment (providing an extension of the maturity date to April 30, 2022), the Loan appeared to have matured on November 30, 2018.
62. The following chain of correspondence between Graham Marr (then the President of BFI) and Sam Mizrahi leading up to the execution of the December 2020 Amendment provides some background on the circumstances surrounding the removal of MI and 249 Ontario from the subject line and signature block of the December 2020 Amendment. The email discussion is noted below, and the various drafts of the December 2020 Amendment are summarized in paragraph 63:
- (a) on March 10, 2021 at 9:14 a.m., Graham Marr emailed Sam Mizrahi a draft of the December 2020 Amendment and advised that “as discussed, we need to update our files for the 181 loan as we are at the tail end of our audit and they [KPMG] are asking us about this file. I have drafted a simple extension to the prior extension basically showing that the loan is not out of maturity ... Can you please review and sign back at your earliest convenience?”. A copy of this email and attachment are attached hereto as **Exhibit “W1”**;

²¹ All times in this section are noted in Eastern Time (ET) unless otherwise noted.

- (b) on March 10, 2021 at 10:17 a.m., Sam Mizrahi responded to Graham Marr saying “what was the last one we signed as this one seems different on the initial read. Can you send me the one we did last time”. It is unclear whether Graham Marr responded to this email. A copy of this email is attached hereto as **Exhibit “W2”**;
- (c) approximately three weeks later, on March 30, 2021 at 2:18 p.m. (one day before March 31, 2021, the date of the audit opinion of Bridging Income Fund LP by KPMG), Graham Marr forwarded his previous email, sent on March 10, 2021 at 9:14 a.m., saying to Sam Mizrahi “can you please call me as soon as you can”. The Bridging Receiver understands from the books and records of Bridging that KPMG had continued to follow up on the status of the Loan in order to finalize the 2020 audit. A copy of this email is attached as **Exhibit “X”**;
- (d) approximately 12 minutes later, on March 30, 2021 at 2:30 p.m., Graham Marr emailed Sam Mizrahi “As discussed” and attached a revised version of the December 2020 Amendment. The critical difference between this revised version and the version that was sent by Graham Marr to Sam Mizrahi 12 minutes prior is the removal of MI and 249 Ontario from the subject line and signature block. A copy of this email, the attachment, and a blackline comparison of the attachment to the previous version are attached as **Exhibit “Y”**;
- (e) on March 30, 2021 at 2:52 p.m., Graham Marr emailed Sam Mizrahi saying “Updated attached” and attached a further revised version of the December 2020 Amendment. In addition to the changes noted in paragraph 63 below, this version also struck out the clause stating “If there are any such claims for setoff, counter-

claim, damages or otherwise, they are hereby expressly released and discharged”.

A copy of this email, the attachment, and a blackline comparison of the attachment to the previous version are attached as **Exhibit “Z”**;

(f) Sam Mizrahi sent an executed version to Graham Marr at 2:58 p.m. on March 30, 2021 saying “Attached. As discussed”. This version is consistent with the version sent by Graham Marr at 2:52 p.m. A copy of this email and attachment are attached as **Exhibit “AA”**;

(g) on March 30, 2021 at 4:58 p.m., Graham Marr emailed Sam Mizrahi saying “I realized that it was dated November 30th and referencing a Dec 31 balance. I’ve redated that attached December 31 to be consistent. If u you (sic) could please sign back, many thanks”. A copy of this email and attachment are attached as **Exhibit “BB”**; and

(h) on March 30, 2021 at 9:38 p.m.²², Sam Mizrahi sent a partially executed²³ version to Graham Marr saying “Please find attached. Wishing you a restful evening”. This version is consistent with the version sent by Graham Marr at 4:58 p.m. and appears to be the final version signed by Sam Mizrahi. A copy of this email and attachment are attached as **Exhibit “CC”**.

²² Brian Champ provided a version of the December 2020 Amendment to KPMG via email on March 30, 2021 at 9:15 p.m. This is 23 minutes prior to Sam Mizrahi providing Graham Marr with a partially executed copy dated December 31, 2020 (which Graham Marr then forwarded on to Brian Champ at 9:43 p.m.). The copy provided to KPMG by Brian Champ is dated December 31, 2020 and appears to be executed by Sam Mizrahi in all five signature blocks. As noted below, the final version sent by Sam Mizrahi is only executed in three of the signature blocks. The Bridging Receiver continues to investigate the discrepancies in these documents.

²³ Sam Mizrahi appears to have executed on behalf of Northern Citadel, One8One and Mizrahi Enterprises Inc. The signature blocks for Mizrahi Soaring Developments Inc. and 181 Retail are blank in this version.

63. The drafts of the December 2020 Amendment sent by Graham Marr are summarized as follows (emphases added):

Time of Email attaching Draft Amendment	Date Listed on Draft Amendment	Borrowers included in Signature Block	Guarantors included in Signature Block	Obligors included in Signature Block
9:14 a.m. on March 10, 2021	November 30, 2020	Northern Citadel, <u>MI, 249 Ontario</u>	One8One, Mizrahi Soaring Developments Inc., 181 Retail	Northern Citadel, <u>MI, 249 Ontario</u> , One8One, <u>Mizrahi Enterprises Inc.</u> , Mizrahi Soaring Developments Inc., 181 Retail, <u>Sam Mizrahi</u>
2:18 p.m. on March 30, 2021	November 30, 2020	Northern Citadel, <u>MI, 249 Ontario</u>	One8One, Mizrahi Soaring Developments Inc., 181 Retail	Northern Citadel, <u>MI, 249 Ontario</u> , One8One, <u>Mizrahi Enterprises Inc.</u> , Mizrahi Soaring Developments Inc., 181 Retail, <u>Sam Mizrahi</u>
2:30 p.m. on March 30, 2021	November 30, 2020	Northern Citadel	One8One, Mizrahi Soaring Developments Inc., 181 Retail	Northern Citadel, One8One, Mizrahi Soaring Developments Inc., 181 Retail, <u>Sam Mizrahi</u>
2:52 p.m. on March 30, 2021	November 30, 2020	Northern Citadel	One8One, Mizrahi Soaring Developments Inc., 181 Retail	Northern Citadel, One8One, <u>Mizrahi Enterprises Inc.</u> , Mizrahi Soaring Developments Inc., 181 Retail
4:58 p.m. on March 30, 2021	December 31, 2020	Northern Citadel	One8One, Mizrahi Soaring Developments Inc., 181 Retail	Northern Citadel, One8One, <u>Mizrahi Enterprises Inc.</u> , Mizrahi Soaring Developments Inc., 181 Retail

64. As noted above, there is a dispute as to whether MI and 249 Ontario still comprise the “Borrower” under the Loan Agreement and have any continuing liability under the Loan. This dispute primarily relates to the December 2020 Amendment. In the subject line of the final version of the December 2020 Amendment, neither MI nor 249 Ontario are included in the definition of “Borrower”. These entities are also not included in the signature block.
65. The Bridging Receiver has investigated the circumstances leading up to the execution of the December 2020 Amendment and has conducted an examination of a key BFI employee under oath and an unsworn interview of another key BFI employee but still does not have full and complete information. The Bridging Receiver continues to investigate this matter.
66. MI is the party that provided a covenant to remit the Accounts to the Lender (in both the November 2016 Amendment and November 2017 Amendment). If it is determined that neither MI nor 249 Ontario have any continuing liability under the Loan, the Lender will have no recourse to the Accounts (the primary collateral for the Loan, estimated by Sam Mizrahi as “24.45 Million”) and will in all likelihood suffer a substantial shortfall on the Loan, to the detriment of Bridging’s investors whose funds were used to make advances under the Loan. It is unclear to the Bridging Receiver if any other sources of recovery would be available.
67. It is notable that on March 30, 2021 at 2:19 p.m., Graham Marr of BFI emailed Mark Kilfoyle (Chief Financial Officer and Chief Operating Officer of Mizrahi Developments) saying “our auditors are asking what the total commissions that Mizrahi is entitled to in respect of the sales from 1 Bloor. Can you please let me know at your earliest convenience what this rough number is? They are looking to sign off on our audit end of day today and

they are trying to finalize their review of the Mizrahi [sic] loan”. A copy of this email is attached as **Exhibit “DD”**.

68. On March 30, 2021 at 3:04 p.m., Mark Kilfoyle responded to Graham Marr, copying Sam Mizrahi, by saying “The rough number is \$24M less any third party commissions we will be required to pay on any sales”. A copy of this email is attached as **Exhibit “EE”**.

69. On March 30, 2021 at 3:06 p.m., the foregoing email from Mark Kilfoyle regarding the value of the Accounts to which MI was entitled was forwarded by Graham Marr to Brian Champ and then forwarded by Brian Champ to KPMG at 9:15 p.m. Copies of these emails are attached as **Exhibit “FF”**.

70. The Bridging Receiver does not have full and complete information as to why Mark Kilfoyle (with Sam Mizrahi copied) represented to Bridging (and, by extension, Bridging’s auditor) that the value of the Accounts was approximately “\$24M less any third party commissions” on the same day and during approximately the same time that MI was allegedly removed from the Loan Agreement as a Borrower pursuant to the December 2020 Amendment.

71. The appointment of the Receiver over the Respondents will assist in advancing the investigation into these matters.

(v) ***Communications since Commencement of Bridging Receivership Proceeding***

72. The Receivership Proceeding commenced on April 30, 2021, approximately one month after the execution of the December 2020 Amendment. The Bridging Receiver conducted

a strategic review of each loan in Bridging's portfolio and took steps to communicate with borrowers regarding, among other things, plans and timelines for repayment.

73. As part of this process, the Bridging Receiver engaged with the Credit Parties on multiple occasions in an effort to understand their financial position and formulate a repayment plan for the Loan. These efforts have been unsuccessful. As set out below, the Respondents have largely failed to provide basic financial reporting required under the Loan Agreement and have failed to provide any plan for repayment of the Loan.²⁴
74. The Credit Parties are required under the Loan Agreement to provide certain reporting to the Lender, including monthly cash flow projections in respect of the Borrower²⁵ and annual financial statements of the Borrower and each of the Subsidiaries²⁶ (including a balance sheet and statements of income and retained earnings), and any other information concerning the financial position and business operations of the Borrower (including, but not limited to, the supporting schedules to the financial statements) which the Lender may from time to time request, acting reasonably.²⁷
75. Since July 24, 2021, the Bridging Receiver has made multiple requests for certain documents and information in accordance with the reporting obligations under the Loan Agreement. In particular, the Bridging Receiver has requested: (i) a detailed accounting with respect to all amounts received by MI or any of the other Credit Parties in respect of

²⁴ As described below, MI and 249 Ontario have since taken the position that they are not required to deliver any financial reporting because they are no longer parties to the Loan Agreement and have no obligations thereunder.

²⁵ Pursuant to section 9.1(i)(ii) of the Original Loan Agreement.

²⁶ "Subsidiaries" is defined in the Loan Agreement to mean the Guarantors and any other subsidiary of such entities at any time or from time to time.

²⁷ Pursuant to section 9.1(m) of the Original Loan Agreement.

the Accounts; (ii) cash flow projections in respect of the Borrower; and (iii) financial statements and other general financial information in respect of each of the Credit Parties.

76. As of today's date, the Credit Parties have only provided the Bridging Receiver with the following reporting: (i) a spreadsheet setting out the outstanding amount under the Loan Agreement (which incorrectly reflected an \$8,000,000 reduction to the outstanding balance) and providing the total amount of sales commissions earned by MI in connection with the 1 Bloor Project, but without sufficient detail or accounting information in support of such amounts; (ii) an Altus report from 2020 concerning the 181 Davenport Project, which had previously been provided to Bridging in July 2020; and (iii) the 2019 unaudited financial statements of One8One.
77. Attached hereto as **Exhibit "GG"** is a chain of correspondence between the Bridging Receiver and the Credit Parties between July 24, 2021 and September 28, 2021 wherein the Bridging Receiver, among other things, requested the documents and information described above and noted that the failure to provide such documents and information would constitute a default under the Loan Agreement. The Bridging Receiver also requested a repayment plan for the Loan. The Bridging Receiver's requests have largely been refused or ignored and no repayment plan has been provided.
78. As such, on November 2, 2021, counsel for the Bridging Receiver delivered a letter (the "**November Letter**") to the Credit Parties requesting various reporting required under the Loan Agreement (the "**Reporting**") and noted that if the Credit Parties failed to provide the Reporting by November 16, 2021, the Bridging Receiver reserved its right to declare that a default occurred under section 12.1(b) of the Original Loan Agreement and, if such

default was not remedied within the 30 day period referenced in section 12.2 of the Original Loan Agreement, to declare that an Event of Default has occurred. A copy of the November Letter is attached as **Exhibit “HH”**.

79. After the delivery of the November Letter, the Bridging Receiver has engaged with counsel to MI and 249 Ontario regarding various issues, including the issue of whether MI and 249 Ontario continue to comprise the Borrower. MI and 249 Ontario have taken the position that they are not required to deliver any Reporting because they are no longer parties to the Loan Agreement and have no obligations thereunder. The Respondents failed to provide most of the Reporting and never provided a response to the November Letter.

80. The Bridging Receiver continues to have significant concerns regarding the failure of the Respondents to provide basic financial reporting or any plan to repay the Indebtedness.

(vi) *Alleged Cerieco Secret Guarantee*

81. The Bridging Receiver has also become aware of an alleged agreement between Cerieco Canada Corp. (“**Cerieco**”) and Coco Paving Inc., Sprott Bridging Income Fund LP (the former name of Bridging Income Fund LP, one of the Bridging investment funds that comprises the Lender), Sam M. Inc. and The One, pursuant to which Sprott Bridging Income Fund LP allegedly guaranteed a loan (the “**Cerieco Loan**”) by Cerieco to Mizrahi Commercial (The One) LP in the amount of approximately \$213 million in connection with the construction of the 1 Bloor Project (the “**Alleged Secret Guarantee**”).

82. The Bridging Receiver understands that Cerieco has filed a statement of claim (the “**Cerieco Claim**”) claiming over \$200 million in damages against, among others, Sam

Mizrahi, Jenny Coco, and certain entities related to the 1 Bloor Project in connection with the Cerieco Loan. A copy of the Cerieco Claim is attached hereto as **Exhibit “II”**.

83. The Cerieco Claim, among other things, alleges that Jenny Coco and Natasha Sharpe, on a confidential basis, effectively leveraged the balance sheet of Bridging Income Fund LP through the Alleged Secret Guarantee in order to obtain the Cerieco Loan for the 1 Bloor Project. As noted above, it appears that the 1 Bloor Project was partly owned by Jenny Coco and Natasha Sharpe during the Applicable Period. Jenny Coco and Natasha Sharpe also remain listed as directors and/or officers of certain key entities involved in the development of the 1 Bloor Project.
84. On or about April 21, 2017, Sam Mizrahi sent an email²⁸ to Jenny Coco saying “The 5% share being given to Natasha is for Bridging/Sprott putting up its balance sheet and guarantees so that we can get rid of China in the next 18 month period we have with them and that would allow us as discussed to have full 100% ownership and you and I having 47.5% each and Natasha having 5%, respectively.” The Bridging Receiver continues to investigate whether this additional ownership share was ever provided to Natasha Sharpe, in either her personal capacity or to a corporate vehicle under her control. A copy of this email is attached hereto as **Exhibit “JJ”**.
85. The basis of the damages sought in the Cerieco Claim are that Coco Paving Inc. and Bridging Income Fund LP were improperly released from the Alleged Secret Guarantee in

²⁸ As previously noted, multiple emails restored from the Backup Exchange were missing header information (i.e. does not show the sender or recipient details). The Bridging Receiver has only obtained a copy of this email that was forwarded from Jenny Coco to Natasha Sharpe on or about April 21, 2017. I have not reviewed an original copy of the email that appears to have been sent from Sam Mizrahi to Jenny Coco on or about April 21, 2017.

May 2021. Cerieco is challenging the validity of the release of the Alleged Secret Guarantee.

86. The Bridging Receiver continues to investigate this matter and the documents and information related to the Cerieco Claim and the Alleged Secret Guarantee. The Bridging Receiver has significant concerns regarding the transactions and events described herein, particularly as it relates to the relationship between the former principals of Bridging, the Credit Parties, and the 1 Bloor Project.

VII. EVENT OF DEFAULT, DEMAND LETTERS AND BIA NOTICES

87. Pursuant to the Loan Agreement, the Term (as defined in the Loan Agreement) of the Loan expired on April 30, 2022. Pursuant to section 3.4 of the Original Loan Agreement, the principal amount of the Loan, together with accrued interest, is due and payable on the expiry of the Term.
88. The Respondents failed to repay the full amount outstanding under the Loan on the expiry of the Term, contrary to section 3.4 of the Original Loan Agreement (the “**Payment Default**”). The Payment Default is continuing as at the date hereof. The Bridging Receiver has not waived the Payment Default.
89. Pursuant to section 12.1(a) of the Original Loan Agreement, an Event of Default occurs if the Borrower fails to observe or perform any term, condition, covenant, or undertaking involving the payment of money under the Loan Agreement. Pursuant to section 12.2 of the Original Loan Agreement, a default referred to under section 12.1 shall not constitute

an Event of Default unless, in the case of default in payment of money, it has continued for at least 10 days after the due date for payment.

90. On May 2, 2022 (the first business day after the expiry of the Term), counsel for the Bridging Receiver sent a letter to the Respondents (the “**Default Letter**”) confirming the existence of the Payment Default and advising that, if the Payment Default continued for at least 10 days after the due date for payment, the Payment Default would constitute an Event of Default under the Loan Agreement. A copy of the Default Letter is attached hereto as **Exhibit “KK”**.
91. Notwithstanding the Default Letter, the Respondents failed to make any payments in respect of the Indebtedness or otherwise provide the Bridging Receiver with a response regarding the Payment Default.
92. On May 12, 2022, the Bridging Receiver delivered letters (collectively, the “**Demand Letters**”) to each of the Respondents advising that the Payment Default has continued for at least 10 days after the due date for payment and therefore constitutes an Event of Default under the Loan Agreement. Pursuant to section 12.1 of the Original Loan Agreement, the Indebtedness is immediately due and payable upon the occurrence of an Event of Default. Accordingly, as set out in the Demand Letters, the Bridging Receiver demanded payment of the Indebtedness from each of the Respondents and enclosed a separate Notice of Intention to Enforce Security pursuant to section 244 of the BIA (collectively, the “**BIA Notices**”). Copies of the Demand Letters and the BIA Notices are attached hereto as **Exhibit “LL”**.

93. The 10-day notice period set out in the BIA Notices expired on May 22, 2022. As at the date hereof, the Respondents have failed to repay the Indebtedness.

VIII. NECESSITY FOR THE APPOINTMENT OF A RECEIVER

94. The appointment of the proposed Receiver over the Property of the Respondents is necessary and appropriate in the circumstances as a result of the following:

- (a) pursuant to the Loan Agreement, the Borrower agreed to permanently repay the Loan on the expiry of the Term. The Respondents have failed to make any payments in respect of the Indebtedness notwithstanding the expiry of the Term;
- (b) as a result of the Payment Default, which constitutes an Event of Default under the Loan Agreement, the Bridging Receiver, on behalf of the Lender, is contractually entitled under the Original Loan Agreement to seek the appointment of Richter as Receiver of the Property of the Respondents;
- (c) the 10-day notice period set out in the BIA Notices has expired;
- (d) the Bridging Receiver does not have full disclosure regarding the financial situation of the Respondents or the use of the principal advances of approximately \$35.5 million under the Loan. The appointment of the proposed Receiver, with the benefit of the investigatory powers set out in the proposed Receivership Order, will provide the Court and the stakeholders of the Respondents with the means to investigate the use of the Loan proceeds and the financial situation of the Respondents;
- (e) the Bridging Receiver has significant concerns regarding the events and transactions described herein involving the Respondents, certain related entities,

and the former principals of Bridging. The Bridging Receiver does not have full and complete information regarding these events and transactions. The appointment of the Receiver over the Respondents will assist in advancing the investigation into these matters and the Bridging Receiver's broader investigation into the affairs of Bridging; and



- (f) based on the limited reporting delivered to the Bridging Receiver and the Agent by the Respondents, it does not appear that the Respondents have assets of any meaningful value. The appointment of the proposed Receiver over the Property of the Respondents is necessary in the circumstances to determine if there are any assets available to satisfy the claims of the Lender and the other stakeholders of the Respondents and, if appropriate, to realize upon any such assets for the benefit of all stakeholders.

- 95. Richter has consented to act as Receiver, subject to obtaining a Receivership Order on terms that are satisfactory to Richter. A copy of Richter's consent to act as Receiver is attached as **Exhibit "MM"**.

IX. CONCLUSION

- 96. For the reasons set out above, the Bridging Receiver seeks the appointment of Richter as Receiver of the Respondents to protect the interests of the Lender and the other stakeholders of the Respondents on the terms of the draft Receivership Order located at Tab 3 of its Application Record.

97. This affidavit is sworn in support of the within application and for no other or improper purpose.

<p>SWORN remotely via videoconference, by TYLER RAY stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 8th day of August 2022, in accordance with <i>O. Reg 431/20, Administering Oath or Declaration Remotely.</i></p> 			<p>DocuSigned by:  7C3ED508CD4B44B...</p>
<p>Commissioner for Taking Affidavits</p> <p>Adam Driedger (LSO# 77296F)</p>			<p>TYLER RAY</p>

This is Exhibit "A" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

DSC

V.

BRIDGING FINANCE INC
et al

① I am satisfied that the order sought on this application is in the best interests of the investors and will further the due administration of Ontario Securities Law. The Motion is therefore granted on the terms of the attached Orders

Hainey J.

April 30, 2021

Court File No. CV-21-00661458-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) FRIDAY, THE 30th
)
JUSTICE HAINEY) DAY OF APRIL, 2021
)

ONTARIO SECURITIES COMMISSION

Applicant

- and -

BRIDGING FINANCE INC., BRIDGING INCOME FUND LP, BRIDGING MID-MARKET DEBT FUND LP, SB FUND GP INC., BRIDGING FINANCE GP INC., BRIDGING INCOME RSP FUND, BRIDGING MID-MARKET DEBT RSP FUND, BRIDGING PRIVATE DEBT INSTITUTIONAL LP, BRIDGING REAL ESTATE LENDING FUND LP, BRIDGING SMA 1 LP, BRIDGING INFRASTRUCTURE FUND LP, BRIDGING MJ GP INC., BRIDGING INDIGENOUS IMPACT FUND, and BRIDGING FERN ALTERNATIVE CREDIT FUND

Respondents

Application under Section 129 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended

**ORDER
(Appointment of Receiver)**

THIS APPLICATION made without notice by the Ontario Securities Commission (the “Applicant” or the “Commission”) for an Order pursuant to section 129 of the *Securities Act* (Ontario), R.S.O. 1990, c. S. 5, as amended (the “Securities Act”), appointing PricewaterhouseCoopers Inc. (“PwC”) as receiver and manager (in such capacities, the “Receiver”), without security, of all of the assets, undertakings and properties of each of Bridging Finance Inc., Bridging Income Fund LP, Bridging Mid-Market Debt Fund LP, SB Fund GP Inc., Bridging Finance GP Inc., Bridging Income RSP Fund, Bridging Mid-Market Debt RSP Fund, Bridging Private Debt Institutional LP, Bridging Real Estate Lending Fund LP, Bridging

SMA 1 LP, Bridging Infrastructure Fund LP, Bridging MJ GP Inc., Bridging Indigenous Impact Fund, and Bridging Fern Alternative Credit Fund (collectively, the “**Respondents**”), was heard this day by Zoom videoconference due to the COVID-19 pandemic.

ON READING the affidavit of Daniel Tourangeau sworn April 29, 2021 and the Exhibits thereto (the “**Tourangeau Affidavit**”), the first supplemental affidavit of Daniel Tourangeau sworn April 30, 2021 and the Exhibits thereto, and the affidavit of Sandy McMurrich sworn April 29, 2021 and the Exhibits thereto, and on hearing the submissions of counsel for Applicant and on reading the consent of PwC to act as the Receiver,

APPOINTMENT OF RECEIVER

1. **THIS COURT ORDERS** that, pursuant to section 129 of the Securities Act, PwC is hereby appointed Receiver, without security, of all of the present and future assets, undertakings and properties of each of the Respondents, including all of the assets held in trust or required to be held in trust by or for each of the Respondents or by their lawyers, agents, or any other Person (as defined below), and all proceeds thereof (collectively, the “**Property**”). Without limiting the foregoing, “**Property**” shall include any present or future assets or funds held by Odyssey Trust Company as trustee for the benefit of Bridging Income RSP Fund, Bridging Mid-Market Debt RSP Fund, Bridging Indigenous Impact Fund, and Bridging Fern Alternative Credit Fund, and all proceeds thereof. In accordance with section 129(3) of the Securities Act, the period of the Receiver’s appointment shall not exceed 15 days from the date of this Order unless otherwise ordered by the Court.

RECEIVER’S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of each of the Respondents, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the businesses, or cease to perform any contracts of each of the Respondents;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of each of the Respondents, or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to each of the Respondents and to exercise all remedies of each of the Respondents in collecting such monies, including, without limitation, to enforce any security held by each of the Respondents;
- (g) to settle, extend or compromise any indebtedness owing to each of the Respondents;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of each the Respondents, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to each

of the Respondents, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding:

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business as follows:

- (i) without the approval of this Court, any exchange-traded securities or fixed income non-exchange traded securities held by any of the Respondents;
- (ii) without the approval of this Court, any other Property of the Respondents in which consideration for the transaction does not exceed \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$2,000,000; and
- (iii) with the approval of this Court in respect of any transaction in respect of the Property in which the consideration for the transaction or the aggregate consideration for all such transactions exceeds \$250,000 and \$2,000,000, respectively;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (iv) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver considers advisable;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental or regulatory authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of any of the Respondents;
- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Respondents including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any of the Respondents;
- (p) to exercise any shareholder, partnership, joint venture or other rights which each of the Respondents may have;
- (q) to examine under oath any person the Receiver reasonably considers to have knowledge of the affairs of the Respondents, including, without limitation, any present or former director, officer, employee, or other person registered or previously registered with the Commission or subject to or formerly subject to the jurisdiction of the Commission or any other regulatory body respecting or having jurisdiction over the Property and the affairs of any of the Respondents;
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (s) in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other

Persons (as defined below), including the Respondents, and without interference from any other Person.

3. **THIS COURT ORDERS** that the Receiver may engage Thornton Grout Finnigan LLP as its legal counsel, notwithstanding that Thornton Grout Finnigan LLP has had an advisory role with respect to the Commission in connection with this proceeding.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Respondents; (ii) all of their current and former directors, officers, employees, partners, unit holders, persons registered or previously registered or subject or formerly subject to the jurisdiction of the Commission or any other regulatory body, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall forthwith deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not required, to take possession and control of any monies, funds, deposit instruments, securities, or other Property held by or in the name of any of the Respondents, or by any third party for the benefit of any of the Respondents.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondents, or the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities

relating thereto, provided, however, that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure, provided that, for greater certainty, law firm trust ledgers requested by the Receiver pursuant to this Order are not subject to solicitor-client privilege and shall be produced to the Receiver.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords of the Respondents with notice of the Receiver's intention to remove any fixtures from any leased premises of the Respondents at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO ISSUANCE OR REDEMPTION OF UNITS

9. **THIS COURT ORDERS** that none of the Respondents shall: (i) issue any new units in any of the Respondents or any of the partnerships or investment funds controlled by any of the Respondents; or (ii) redeem any of the existing units in any of the Respondents or any of the partnerships or investment funds controlled by any of the Respondents.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY

11. **THIS COURT ORDERS** that no Proceeding against or in respect of the Respondents or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Respondents or the Property are hereby stayed and suspended pending further Order of this Court, provided that nothing herein shall prevent the commencement or continuation of any investigation or proceedings in respect of the Respondents, or any of them, by or before any regulatory authority, including, without limitation, the Commission and its enforcement staff.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that all rights and remedies against the Respondents, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the "**BIA**"), and further provided that nothing in this paragraph shall: (i) empower the Receiver or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on; (ii) exempt the Receiver or the Respondents from compliance with statutory or regulatory provisions relating to health, safety or

the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

15. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements

provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated,

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

LIMITATION ON THE RECEIVER’S LIABILITY

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

RECEIVER’S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

23. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

INTERCOMPANY LENDING

27. **THIS COURT ORDERS** that the Receiver may cause any of the Respondents to make any payment to or on behalf of, or incur any obligation on behalf of, or discharge any obligation of, any of the other Respondents, or otherwise transfer value to, or for the benefit of, any of the other Respondents for the purpose of funding the Respondents' ongoing activities and the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures.

28. **THIS COURT ORDERS** that, to the extent any of the Respondents (in each case, an "Intercompany Lender") after the date of this Order makes any payment to or on behalf of, or incurs any obligation on behalf of, or discharges any obligation of, any other of the Respondents or otherwise transfers value to, or for the benefit of, any other of the Respondents (in each case, the "Borrowing Respondent"), such Intercompany Lender is hereby granted a charge (each, an "Intercompany Charge") on all of the Property of the Borrowing Respondent in the amount of such payment, obligation, or transfer of value. The Receiver shall take into account the amount of each Intercompany Charge granted by and to each Respondent to determine the net amount secured by each Intercompany Charge.

29. **THIS COURT ORDERS** that each Intercompany Charge shall rank subordinate to the Receiver's Charge and the Receiver's Borrowings Charge, but in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person in respect of the Property of the applicable Borrowing Respondent. For greater certainty, each Intercompany Charge shall rank *pari passu* with any other Intercompany Charge, as applicable.

PRIORITY OF CHARGES CREATED BY THIS ORDER

30. **THIS COURT ORDERS** that the priorities of the Receiver's Charge, the Receiver's Borrowings Charge, and the Intercompany Charges, as among them, shall be as follows:

- (a) First – Receiver’s Charge;
- (b) Second – Receiver’s Borrowings Charge; and
- (c) Third – Intercompany Charge.

SEALING

31. **THIS COURT ORDERS** that the Commission is authorized to redact any Personal Information (as defined below) contained in the Exhibits to the Tourangeau Affidavit (as so redacted, the “**Redacted Exhibits**”) and file with the Court the Tourangeau Affidavit with the Redacted Exhibits. “Personal Information” means information about an identifiable individual, including, but not limited to, the following: (i) social insurance number; (ii) driver’s license number; (iii) passport number; (iv) license plate number; (v) health plan number; (vi) date of birth; (vii) address (not including city or province); (viii) telephone number; and (ix) bank or trading account number (including a joint account). For greater certainty, “Personal Information” does not include an individual’s name or the title, contact information, or designation of an individual in a business, professional, or official capacity.

32. **THIS COURT ORDERS** that the Commission shall file with the Court the Tourangeau Affidavit without Exhibits pending filing of the Redacted Exhibits with the Court. The Commission shall file the Redacted Exhibits with the Court as soon as reasonably practicable.

33. **THIS COURT ORDERS** that the Commission is authorized to deliver the Tourangeau Affidavit containing the unredacted Exhibits to each of the following parties and its respective lawyers: the Respondents, the directors of the Respondent Bridging Finance Inc., the shareholders of the Respondent Bridging Finance Inc. and David Sharpe (each such party, a “**Recipient**”). Each Recipient shall keep the unredacted Exhibits to the Tourangeau Affidavit confidential and shall not disclose the unredacted Exhibits to the Tourangeau Affidavit to any other party without further order of the Court.

34. **THIS COURT ORDERS** that the unredacted Exhibits to the Tourangeau Affidavit shall be sealed, kept confidential, and shall not form part of the public record pending further Order of the Court.

SERVICE AND NOTICE

35. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) (the “**Rules**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.pwc.com/ca/BF1>.

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

GENERAL

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

38. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondents, or any of them.

39. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this

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

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

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

42. **THIS COURT ORDERS** that the Receiver, its counsel and counsel for the Applicant may serve or distribute this Order, or any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the applicable Respondent's creditors or other interested parties and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

43. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.



SCHEDULE "A"
RECEIVER'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that PricewaterhouseCoopers Inc., the receiver and manager (in such capacities, the "**Receiver**") of the assets, undertakings and properties of each of Bridging Finance Inc., Bridging Income Fund LP, Bridging Mid-Market Debt Fund LP, SB Fund GP Inc., Bridging Finance GP Inc., Bridging Income RSP Fund, Bridging Mid-Market Debt RSP Fund, Bridging Private Debt Institutional LP, Bridging Real Estate Lending Fund LP, Bridging SMA 1 LP, Bridging Infrastructure Fund LP, Bridging MJ GP Inc., Bridging Indigenous Impact Fund, and Bridging Fern Alternative Credit Fund (collectively, the "**Respondents**") acquired for, or used in relation to a business carried on by the Respondents, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the [DAY] day of April, 2021 (the "**Appointment Order**") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Appointment Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

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

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

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

Per: _____

Name:

Title:

106
F2400

Application under Section 129 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended

SECURITIES COMMISSION

- and -

BRIDGING FINANCE INC. *et al*

Applicant

Respondents

Court File No. CV-21-00661458-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER
(Appointment of Receiver)**

Ontario Securities Commission
20 Queen Street West
20th Floor
Toronto, ON
M5H 3S8

Carlo Rossi (LSO# 59054T)
Email: CROSSI@osc.gov.on.ca
Tel: 416.204.8987

Counsel for the Ontario Securities Commission

107

F2401

F133

OSC

v.

BRIDGINS FINANCE INC.
et al.

① I am satisfied that this motion made ex parte should be granted on the terms of the attached Additional Appointment Order.

Haney J.

May 3, 2021

Court File No. CV-21-00661458-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) MONDAY, THE 3rd
)
JUSTICE HAINEY) DAY OF MAY, 2021
)

ONTARIO SECURITIES COMMISSION

Applicant

- and -

BRIDGING FINANCE INC., BRIDGING INCOME FUND LP, BRIDGING MID-MARKET DEBT FUND LP, SB FUND GP INC., BRIDGING FINANCE GP INC., BRIDGING INCOME RSP FUND, BRIDGING MID-MARKET DEBT RSP FUND, BRIDGING PRIVATE DEBT INSTITUTIONAL LP, BRIDGING REAL ESTATE LENDING FUND LP, BRIDGING SMA 1 LP, BRIDGING INFRASTRUCTURE FUND LP, BRIDGING MJ GP INC., BRIDGING INDIGENOUS IMPACT FUND, and BRIDGING FERN ALTERNATIVE CREDIT FUND

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 129 OF THE
SECURITIES ACT (ONTARIO), R.S.O. 1990, c. S. 5, AS AMENDED

ADDITIONAL APPOINTMENT ORDER
(Appointment of Receiver)

THIS MOTION made without notice by PricewaterhouseCoopers Inc. (“**PwC**”), in its capacity as receiver and manager of the Respondents, for an Order pursuant to section 101 of the *Courts of Justice Act* (Ontario), R.S.O. 1990, c. C. 43, among other things, appointing PwC as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties of each of Bridging SMA 2 LP, Bridging SMA 2 GP Inc. and

Bridging Private Debt Institutional RSP Fund (collectively, the “**Additional Bridging Entities**”), was heard this day by Zoom videoconference due to the COVID-19 pandemic.

ON READING the First Report of the Receiver dated May 3, 2021 (the “**First Report**”), and the appendices thereto, and on hearing the submissions of counsel for Receiver,

APPOINTMENT OF RECEIVER

1. **THIS COURT ORDERS** that, pursuant to section 101 of the *Courts of Justice Act* (Ontario), R.S.O. 1990, c. C. 43, PwC is hereby appointed Receiver, without security, of all of the present and future assets, undertakings, and properties of each of the Additional Bridging Entities, including all of the assets held in trust or required to be held in trust by or for each of the Additional Bridging Entities or by their lawyers, agents, or any other person or entity, and all proceeds thereof (collectively, the “**Property**”) all in accordance with the provisions of the Order (the “**Appointment Order**”) of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) dated April 30, 2021 in Court File No. CV-21-00661458-00CL (the “**Receivership Proceeding**”). Without limiting the foregoing, “Property” shall include any present or future assets or funds held by Odyssey Trust Company as trustee for the benefit of Bridging Private Debt Institutional RSP Fund and all proceeds thereof.

2. **THIS COURT ORDERS** that, in accordance with the Appointment Order, the period of the Receiver’s appointment in respect of the Property of the Additional Bridging Entities shall not exceed 15 days from the date of the Appointment Order unless otherwise ordered by the Court.

3. **THIS COURT ORDERS** that the definition of “Respondents” in the Appointment Order is hereby amended to include the Additional Bridging Entities.

4. **THIS COURT ORDERS** that the style of cause and the title of the Receivership Proceeding is hereby amended to include the Additional Bridging Entities, substantially in the form attached hereto as Schedule “A”.

GENERAL

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

6. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Additional Bridging Entities, or any of them.

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

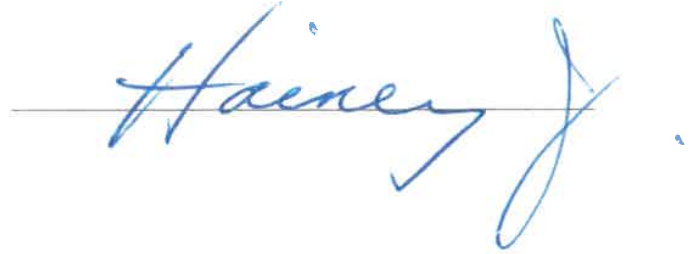
8. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is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

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

10. **THIS COURT ORDERS** that the Receiver, its counsel and counsel for the Applicant may serve or distribute this Order, or any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the applicable Respondent's creditors or other interested parties and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the

meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

11. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

A handwritten signature in blue ink is written over a horizontal line. The signature appears to be "Hainey J." with a large, stylized flourish at the end.

SCHEDULE "A"
AMENDED STYLE OF CAUSE AND TITLE OF PROCEEDING

Court File No. CV-21-00661458-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

BRIDGING FINANCE INC., BRIDGING INCOME FUND LP, BRIDGING MID-MARKET DEBT FUND LP, SB FUND GP INC., BRIDGING FINANCE GP INC., BRIDGING INCOME RSP FUND, BRIDGING MID-MARKET DEBT RSP FUND, BRIDGING PRIVATE DEBT INSTITUTIONAL LP, BRIDGING REAL ESTATE LENDING FUND LP, BRIDGING SMA 1 LP, BRIDGING INFRASTRUCTURE FUND LP, BRIDGING MJ GP INC., BRIDGING INDIGENOUS IMPACT FUND, BRIDGING FERN ALTERNATIVE CREDIT FUND, BRIDGING SMA 2 LP, BRIDGING SMA 2 GP INC., and BRIDGING PRIVATE DEBT INSTITUTIONAL RSP FUND

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 129 OF THE
SECURITIES ACT (ONTARIO), R.S.O. 1990, c. S. 5, AS AMENDED

114
F2408

AN APPLICATION UNDER SECTION 129 OF THE SECURITIES ACT (ONTARIO), R.S.O. 1990, c. S. 5, AS

SECURITIES COMMISSION

- and -

BRIDGING FINANCE INC. *et al*

Applicant

Respondents

Court File No. CV-21-00661458-00CL

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

Proceedings commenced at Toronto, Ontario

ADDITIONAL APPOINTMENT ORDER

Thornton Grout Finnigan LLP
3200 – 100 Wellington Street West
Toronto, ON M5K 1K7

John L. Finnigan (LSO# 24040L)
Email: jfinnigan@tgf.ca

Grant B. Moffat (LSO# 32380L)
Email: gmoffat@tgf.ca

Adam Driedger (LSO# 77296F)
Email: adriedger@tgf.ca

Tel: 416-304-1616
Fax: 416-304-1313

115
F2409

F141

OSC

v.

BRIDGING FINANCE INC
et al.

① I am satisfied that this motion, which is not opposed, should be granted on the terms of the attached Continuation Order.

Hainey J.

May 14, 2021

Court File No. CV-21-00661458-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) FRIDAY, THE 14th
)
JUSTICE HAINEY) DAY OF MAY, 2021

ONTARIO SECURITIES COMMISSION

Applicant

- and -

BRIDGING FINANCE INC., BRIDGING INCOME FUND LP, BRIDGING MID-MARKET DEBT FUND LP, SB FUND GP INC., BRIDGING FINANCE GP INC., BRIDGING INCOME RSP FUND, BRIDGING MID-MARKET DEBT RSP FUND, BRIDGING PRIVATE DEBT INSTITUTIONAL LP, BRIDGING REAL ESTATE LENDING FUND LP, BRIDGING SMA 1 LP, BRIDGING INFRASTRUCTURE FUND LP, BRIDGING MJ GP INC., BRIDGING INDIGENOUS IMPACT FUND, BRIDGING FERN ALTERNATIVE CREDIT FUND, BRIDGING SMA 2 LP, BRIDGING SMA 2 GP INC., and BRIDGING PRIVATE DEBT INSTITUTIONAL RSP FUND

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 129 OF THE
SECURITIES ACT (ONTARIO), R.S.O. 1990, c. S. 5, AS AMENDED

CONTINUATION ORDER

THIS MOTION made by the Ontario Securities Commission (the "**Applicant**" or the "**Commission**") for an Order pursuant to section 129(4) of the *Securities Act* (Ontario), R.S.O. 1990, c. S. 5, as amended, continuing and extending the period of appointment of PricewaterhouseCoopers Inc. ("**PwC**") as receiver and manager (in such capacities, the "**Receiver**"), without security, of all of the assets, undertakings, and properties (collectively, the

“**Property**”) of each of Bridging Finance Inc., Bridging Income Fund LP, Bridging Mid-Market Debt Fund LP, SB Fund GP Inc., Bridging Finance GP Inc., Bridging Income RSP Fund, Bridging Mid-Market Debt RSP Fund, Bridging Private Debt Institutional LP, Bridging Real Estate Lending Fund LP, Bridging SMA 1 LP, Bridging Infrastructure Fund LP, Bridging MJ GP Inc., Bridging Indigenous Impact Fund, Bridging Fern Alternative Credit Fund, Bridging SMA 2 LP, Bridging SMA 2 GP Inc., and Bridging Private Debt Institutional RSP Fund (collectively, the “**Respondents**”), until further Order of the Court all in accordance with the provisions of the Order (the “**Appointment Order**”) of the Honourable Justice Hainey dated April 30, 2021, as amended by the Order (the “**Additional Appointment Order**”) of the Honourable Justice Hainey dated May 3, 2021, was heard this day by Zoom videoconference due to the COVID-19 pandemic.

ON READING the affidavit of Daniel Tourangeau sworn April 29, 2021 and the Exhibits thereto, the first supplemental affidavit of Daniel Tourangeau sworn April 30, 2021 and the Exhibits thereto, the affidavit of Sandy McMurrich sworn April 29, 2021 and the Exhibits thereto, the First Report of the Receiver dated May 3, 2021, and the Second Report of the Receiver dated May 12, 2021 (the “**Second Report**”) and on hearing the submissions of counsel for Applicant, counsel for the Receiver, and those other parties listed on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Nicole Armanious sworn May 13, 2021, and on reading the consent of PwC to act as the Receiver.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Applicant’s notice of motion and motion record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

CONTINUATION OF APPOINTMENT

2. **THIS COURT ORDERS** that, pursuant to section 129(4) of the *Securities Act* (Ontario), R.S.O. 1990, c. S. 5, as amended, the Receiver’s appointment in respect of the Property of the Respondents shall continue until further Order of the Court in accordance with the provisions of the Appointment Order, as amended by the Additional Appointment Order.

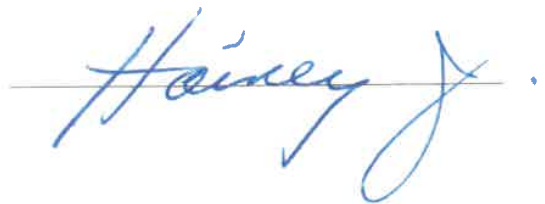
APPROVAL OF ACTIVITIES OF THE RECEIVER

3. **THIS COURT ORDERS** that the Second Report, and the activities, decisions, and conduct of the Receiver as set out therein, are hereby authorized and approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

4. **THIS COURT ORDERS** that the Receiver, its counsel and counsel for the Applicant may serve or distribute this Order, or any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the applicable Respondent's creditors or other interested parties and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

5. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.



120
F2414

under Section 129 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended

ONTARIO SECURITIES COMMISSION

- and -

BRIDGING FINANCE INC. *et al*

Applicant

Respondents

Court File No. CV-21-00661458-00CL

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

Proceedings commenced at Toronto, Ontario

CONTINUATION ORDER

Ontario Securities Commission
20 Queen Street West – 20th Floor
Toronto, ON M5H 3S8

Carlo Rossi (LSO# 59054T)
Email: crossi@osc.gov.on.ca
Tel: 416.204.8987

Adam Gotfried (LSO# 67044K)
Email: agotfried@osc.gov.on.ca
Tel: 416.263.7680

Counsel for the Ontario Securities Commission

This is Exhibit "B" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

122

Transaction Number: APP-11216-353
Report Generated on August 08, 2022, 11:05

F2416

Ministry of Government and
Consumer Services



Profile Report

NORTHERN CITADEL CAPITAL INC. as of August 08, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	NORTHERN CITADEL CAPITAL INC.
Ontario Corporation Number (OCN)	1860705
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	October 12, 2011
Registered or Head Office Address	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F148

Page 1 of 7

123

Transaction Number: APP-11067953
Report Generated on August 08, 2022, 11:05

F2417

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name	Amanda BROWN
Address for Service	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Resident Canadian	Yes
Date Began	May 11, 2022

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F149

Active Officer(s)

Name
Position
Address for Service
Date Began

Sam MIZRAHI
President
189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
October 12, 2011

Name
Position
Address for Service
Date Began

Sam MIZRAHI
Secretary
189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
October 12, 2011

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

Corporate Name History

Name

Effective Date

NORTHERN CITADEL CAPITAL INC.

October 12, 2011

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

Active Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

Expired or Cancelled Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: Jeffrey HALMAN	May 15, 2022
CIA - Initial Return PAF: JEFFREY A. HALMAN - OTHER	June 15, 2012
BCA - Articles of Incorporation	October 12, 2011

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

129

F2423

F155

130

Transaction Number: APP-1927751020
Report Generated on August 08, 2022, 11:05

F2424

Ministry of Government and
Consumer Services



Profile Report

ONE8ONE DAVENPORT INC. as of August 08, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	ONE8ONE DAVENPORT INC.
Ontario Corporation Number (OCN)	1927751
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Amalgamation	January 01, 2015
Registered or Head Office Address	125 Hazelton Avenue, Toronto, Ontario, Canada, M5R 2E4

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F156

Page 1 of 8

F2425

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name Amanda BROWN
Address for Service 125 Hazelton Avenue, Toronto, Ontario, Canada, M5R 2E4
Resident Canadian No
Date Began May 11, 2022

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F157

Active Officer(s)

Name	Sam MIZRAHI
Position	President
Address for Service	126 Hazelton Avenue, Toronto, Ontario, Canada, M5R 2E5
Date Began	January 01, 2015

Name	Sam MIZRAHI
Position	Secretary
Address for Service	126 Hazelton Avenue, Toronto, Ontario, Canada, M5R 2E5
Date Began	January 01, 2015

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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133

Transaction Number: APP-1127020
Report Generated on August 08, 2022, 11:05

Corporate Name History

Name

Effective Date

ONE8ONE DAVENPORT INC.

January 01, 2015

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V. Quintanilla W.

Director/Registrar

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F159

Amalgamating Corporations

Corporation Name

ONE8ONE DAVENPORT INC.

Ontario Corporation Number

1912202

Corporation Name

MIZRAHI SOARING DEVELOPMENTS INC.

Ontario Corporation Number

1822736

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Director/Registrar

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Active Business Names

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

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V. Quintanilla W.

Director/Registrar

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Expired or Cancelled Business Names

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Director/Registrar

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Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: Jeffrey HALMAN	May 15, 2022
Annual Return - 2019 PAF: REMY DEL BEL - OTHER	October 20, 2020
Annual Return - 2017 PAF: REMY DELBELI - OTHER	January 23, 2019
Annual Return - 2016 PAF: SAM MIZRAHI - DIRECTOR	July 10, 2017
Annual Return - 2014 PAF: REMY DERBER - OTHER	August 10, 2015
CIA - Initial Return PAF: MARTIN HOUSER - OTHER	January 19, 2015
BCA - Articles of Amalgamation	January 01, 2015

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

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V. Quintanilla W.

Director/Registrar

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138

F2432

F164

139

Transaction Number: APP-11270087
Report Generated on August 08, 2022, 11:05

F2433

Ministry of Government and
Consumer Services



Profile Report

181 DAVENPORT RETAIL INC. as of August 08, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	181 DAVENPORT RETAIL INC.
Ontario Corporation Number (OCN)	2486749
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	October 13, 2015
Registered or Head Office Address	125 Hazelton Avenue, Toronto, Ontario, Canada, M5R 2E4

Certified a true copy of the record of the Ministry of Government and Consumer Services.

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Director/Registrar

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F165

Page 1 of 7

140

Transaction Number: APP-11271087
Report Generated on August 08, 2022, 11:05

F2434

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name	Amanda BROWN
Address for Service	125 Hazelton Avenue, Toronto, Ontario, Canada, M5R 2E4
Resident Canadian	Yes
Date Began	May 11, 2022

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V. Quintanilla W.

Director/Registrar

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F166

141

Transaction Number: APP-1127-087
Report Generated on August 08, 2022, 11:05

F2435

Active Officer(s)

Name
Position
Address for Service
Date Began

Sam MIZRAHI
President
189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
October 13, 2015

Name
Position
Address for Service
Date Began

Sam MIZRAHI
Secretary
189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
October 13, 2015

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Director/Registrar

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F167

Corporate Name History

Name

Effective Date

181 DAVENPORT RETAIL INC.

October 13, 2015

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Active Business Names

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Expired or Cancelled Business Names

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Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: Jeffrey HALMAN	May 15, 2022
Annual Return - 2020 PAF: SAM MIZRAHI - DIRECTOR	April 04, 2021
Annual Return - 2019 PAF: SAM MIZRAHI - DIRECTOR	July 12, 2020
Annual Return - 2019 PAF: SAM MIZRAHI - DIRECTOR	May 10, 2020
Annual Return - 2018 PAF: SAM MIZRAHI - OFFICER	April 28, 2019
Annual Return - 2017 PAF: SAM MIZRAHI - OFFICER	April 28, 2019
Annual Return - 2016 PAF: SAM MIZRAHI - DIRECTOR	April 28, 2019
Annual Return - 2015 PAF: SAM MIZRAHI - DIRECTOR	April 28, 2019
CIA - Initial Return PAF: MATI PAJO - OTHER	October 23, 2015
BCA - Articles of Incorporation	October 13, 2015

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This is Exhibit "C" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

GENERAL SECURITY AGREEMENT

THIS AGREEMENT made as of the 17th day of December, 2014.

B E T W E E N:

**Northern Citadel Capital Inc.
Mizrahi Soaring Developments Inc.
One8One Davenport Inc.**

(hereinafter collectively called the “Debtor”)

and

**Bridging Finance Inc., as agent for
Sprott Bridging Income Fund LP**

(hereinafter called the “Secured Party”)

In consideration of the sum of One Dollar (\$1.00) now paid to it by the Secured Party, receipt of which is hereby acknowledged, and to secure the due payment and performance of all Obligations, the Debtor hereby agrees with the Secured Party and provides as follows:

ARTICLE 1 SECURITY

1.1 Charge

Subject to the exceptions set forth in Section 1.2, the Debtor hereby:

- (a) grants, sells, assigns, conveys, transfers, mortgages, pledges and charges, as and by way of fixed and specific mortgage, pledge and charge to and in favour of the Secured Party, and grants to the Secured Party a security interest in, all personal property of every nature and kind whatsoever and wheresoever situate now or at any time and from time to time owned by the Debtor, beneficially or otherwise, or in which or in respect of which the Debtor has any interest or rights of any kind, including, without limiting the generality of the foregoing, the following:
 - (i) All inventory of whatsoever kind and wheresoever situate now owned or hereafter acquired by the Debtor including without limiting the generality of the foregoing, goods for sale or lease or that have been leased; goods furnished or to be furnished under a contract of service; goods which are raw materials, work in process or materials used or consumed in a business or profession of the Debtor; goods used or procured for packing; finished goods; industrial growing crops, oil, gas and other minerals to be extracted; timber to be cut; and the young of animals after conception (“**Inventory**”);
 - (ii) All book accounts and book debts and generally all accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter

become due, owing, accruing or growing due to or owned by the Debtor including but not limited to claims against the Crown and claims under insurance policies (“**Accounts**”);

- (iii) All machinery, equipment, tools, apparatus, plants, fixtures, furniture, vehicles, goods and other tangible personal property of whatsoever nature and kind, now owned or hereafter acquired by the Debtor other than Inventory (“**Equipment**”);
- (iv) All chattel paper now owned or hereafter acquired by the Debtor (“**Chattel Paper**”);
- (v) All warehouse receipts, bills of lading and other documents of title, whether negotiable or otherwise, now owned or hereafter acquired by the Debtor (“**Documents of Title**”);
- (vi) All present and future bills, notes and cheques (as such are defined pursuant to the *Bills of Exchange Act* (Canada)), and all other writings that evidence a right to the payment of money and that are of a type that in the ordinary course of business are transferred by delivery without any necessary endorsement or assignment (“**Instruments**”);
- (vii) All deeds, documents, writings, papers, books of accounts and other books evidencing or relating to Accounts, Chattel Paper, Instruments or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable; and all contracts, securities, instruments and other rights and benefits in respect thereof;
- (viii) All present and future securities held by the Debtor or shares, options, rights, warrants, joint venture interests, interests in limited partnerships, bonds, debentures and all other documents which constitute evidence of a share, participation or other interest of the Debtor in property or in an enterprise or which constitute evidence of an obligation of an issuer,
 - (A) that are represented by security certificates in bearer form or registered form, or the transfer of which may be registered on books maintained for that purpose by or on behalf of the issuer,
 - (B) that are one of a class or series, or by their terms are divisible into a class or series, of shares, participations, interests or obligations, and
 - (C) that,
 - (i) are, or are of a type, dealt in or traded on securities exchanges or securities markets, or
 - (ii) are a medium for investment and by their terms expressly provides that it is a security for the purposes of the *Securities Transfer Act* (Ontario), 2006,

and includes: (a) shares or similar equity interests issued by a corporation, business trust or similar entity; (b) general or limited partnership interests or

other equivalents (regardless of how designated) of or in a partnership or limited partnership; and (c) and all substitutions therefor and dividends and income derived therefrom and all rights in respect thereof (“**Securities**”);

- (ix) All present and after-acquired intangible property (save and except for Accounts) wherever situate and now or hereafter owned by the Debtor including, without limitation, all contractual rights, licenses, goodwill, patents, trademarks, tradenames, copyrights, other industrial designs and other industrial or intellectual property and undertaking of the Debtor and all other choses in action of the Debtor of every kind which now are, or which may at any time hereafter be, due or owing to or owned by the Debtor and all other intangible property of the Debtor which is not Accounts, Inventory, Chattel Paper, Documents of Title, Instruments, Money or Securities (“**Intangibles**”);
 - (x) All present and future money of the Debtor, whether authorized or adopted by the Parliament of Canada as part of its currency or any foreign government as part of its currency (“**Money**”);
 - (xi) All or any part of any present or future interest of the Debtor in present and after acquired investment property, including all Securities, Securities Accounts and Futures Accounts, all of the present and future security entitlements of the Debtor as an entitlement holder of such security entitlements, all of the present and future futures contracts of the Debtor as a futures customer in respect of such futures contracts, and all proceeds of any such property, where “**Futures Accounts**” means all of the present or future futures accounts maintained for the Debtor by a futures intermediary, including all futures contracts carried in such futures accounts and the agreements between the Borrower and the futures intermediary governing such futures accounts, and “**Securities Account**” means all of the present or future securities accounts maintained for the Debtor by a securities intermediary, including all of the financial assets credited to such securities accounts, all related securities entitlements and the agreements between the Debtor and the securities intermediary governing such securities accounts (“**Investment Property**”);
 - (xii) Any property in any form (including fixtures) derived directly or indirectly from any dealings with any property herein described (including all products and cash and non cash proceeds thereof); indemnification or compensation for any such property lost, destroyed, damaged or lawfully or unlawfully taken or injuriously affected; all increases, additions and accessions thereto and substitutions and replacements thereof;
 - (xiii) All proceeds derived from the property, assets and undertaking of the Debtor referred to in this Section 1.1(a) including, without limitation, insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto or the proceeds therefrom;
- (b) charges with payment to the Secured Party of all Obligations as and by way of a floating charge the whole of the undertaking of the Debtor and all of its property and assets, real and personal, movable and immovable, tangible and intangible, of every nature and kind whatsoever and wheresoever situate, both present and future (other than property and

assets from time to time effectively subjected to the fixed and specific mortgages and charges created hereby or by any instrument supplemental hereto).

1.2 Exceptions as to Leases

- (a) The last day of any term of years reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Debtor is excepted out of the Collateral, but the Debtor shall stand possessed of any such reversion upon trust to assign and dispose thereof as the Secured Party may direct. In addition, consumer goods now held or hereafter acquired by the Debtor and agreements that require the consent of a party other than the Debtor for the purposes of this Agreement are excepted out of the Collateral. Where the giving of a fixed and specific mortgage and charge on any real or personal property held by the Debtor under lease requires the consent of the lessor of such property, the giving of the fixed and specific mortgage and charge hereunder on such property shall not take effect until such consent is obtained or legally dispensed with but the suspension of the effect of the fixed and specific mortgage and charge on such property shall not affect the fixed and specific mortgage and charge on any other property of the Debtor.
- (b) Pursuant to this Agreement:
 - (i) To the extent that the creation of the security interest created hereby would constitute a breach of or default under, or permit the acceleration or termination of any agreement, right, licence or permit of the Debtor which constitutes Collateral (each, a "**Restricted Asset**"), the security interest created hereunder shall not attach to the Restricted Asset, but the Debtor shall, subject to paragraph (ii) below, hold its interest in the Restricted Asset in trust for the Secured Party, provided that, until the security interest created hereby has become enforceable, the Debtor shall be entitled to all proceeds arising under or in connection with the Restricted Asset.
 - (ii) To the extent that the creation of the trust in paragraph (i) above would constitute a breach or permit the acceleration or termination of any Restricted Asset, the security interest created hereunder shall not attach to the Restricted Asset, but the security interest created hereby will constitute a trust created in favour of the Secured Party pursuant to which the Debtor shall hold as trustee its interest in all proceeds arising under or in connection with the Restricted Asset in trust for the Secured Party, provided that until the security interest created hereby has become enforceable, the Debtor shall be entitled to receive all such proceeds.

1.3 Supplemental Indentures

The Debtor shall from time to time on demand by the Secured Party execute and deliver such further deeds or indentures supplemental hereto, which shall thereafter form part hereof, for the purpose of mortgaging to the Secured Party any property now owned or hereafter acquired by the Debtor and falling within the description of the Collateral, for correcting or amplifying the description of any property hereby mortgaged or intended so to be, or for any other purpose not inconsistent with the terms of this Agreement.

1.4 Continuing Security

This Agreement and any other security given with the Secured Party's consent in replacement thereof, substitution therefor or in addition thereto shall be held by the Secured Party as general and continuing security for due payment and performance of all Obligations, including without limitation all costs and amounts payable pursuant hereto and interest on the Obligations at the rate or rates applicable thereto in accordance with the prevailing agreement between the Secured Party and the Debtor. Any and all payments made at any time in respect of the Obligations and the proceeds realized from any Investment Property held therefor (including moneys realized from the enforcement of this Agreement) may be applied (and reapplied from time to time notwithstanding any previous application) to such part or parts of the Obligations as the Secured Party sees fit. The Secured Party may hold as additional security hereunder any increase or profits or other proceeds realized from the Collateral (including money) for such period of time as the Secured Party sees fit. The Debtor shall be accountable for any deficiency and the Secured Party shall be accountable for any surplus.

1.5 Notification

After an Event of Default has occurred and is continuing, the Secured Party may notify any debtor of the Debtor on an intangible, Chattel Paper, or Account, or any obligor on an instrument ("Account Debtor") to make all payments on Collateral to the Secured Party and the Debtor acknowledges that the proceeds of all sales, or any payments on or other proceeds of the Collateral, including but not limited to payments on, or other proceeds of, the Collateral received by the Debtor from any Account Debtor, whether before or after notification to such Account Debtor after default under this Security Agreement will be received and held by the Debtor in trust for the Secured Party and will be turned over to the Secured Party upon request and the Debtor will not commingle any proceeds of or payments on the Collateral with any of the Debtor's funds or property, but will hold them separate and apart.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1 General Representations and Warranties

The Debtor represents, warrants and covenants to and with the Secured Party as follows:

(a) Leases

With respect to each Lease now existing:

- (i) the copy of the Lease provided to the Secured Party contains the entire agreement between the Debtor, the lessor and any guarantor, surety or indemnitor respecting the subject matter and there have been no modifications, amendments or extensions thereto or thereof; and
- (ii) the Lease is in full force and effect and in good standing.

(b) Fixtures

None of the goods comprised in the Collateral are fixtures except any fixtures that are affixed or attached to the Premises.

(c) Consumer Goods

None of the Collateral now owned or hereafter acquired is now or shall at any time be consumer goods of the Debtor.

(d) Location of Collateral

All of the Collateral is situated at the addresses set out in Schedule "A".

2.2 **Environmental Representations and Warranties**

The Debtor represents, warrants and covenants to and with the Secured Party that, except as previously disclosed to the Secured Party:

- (a) The Collateral now complies and will at all times in future comply in all material respects with all Environmental Laws and Environmental Orders.
- (b) After due and diligent inquiry, it has been found that there is no Hazardous Substance on or in any of the Collateral.
- (c) There is no judicial or administrative proceeding or investigation pending and no Environmental Order has been issued or, to the best of the Debtor's knowledge, threatened concerning the possible violation of any Environmental Laws or Environmental Orders in relation to the Collateral.
- (d) No Hazardous Substance shall be brought on to or used in any part of the Collateral without the prior written consent of the Secured Party and any Hazardous Substance shall be transported, used and stored only in accordance with all Environmental Laws, other lawful requirements, prudent industrial standards including, without limitation, any published environmental standards of any applicable industry association and any requirements of applicable insurance policies.
- (e) The Debtor has created, properly organized and maintained all documentation and records concerning environmental matters as required by any Environmental Laws or Environmental Orders and will maintain such documentation and records at all times in future as aforesaid.
- (f) The Debtor has provided to the Secured Party any Environmental Assessment and related documentation concerning any of the Collateral in its possession or control and shall promptly provide to the Secured Party any such material as the Debtor may obtain in future.
- (g) The Debtor shall promptly notify the Secured Party if it:
 - (i) receives notice from any Governmental Authority of any violation or potential violation of any Environmental Laws or Environmental Orders, including the Release of a Hazardous Substance, which may have occurred or been committed or is about to occur or be committed;
 - (ii) receives notice that any administrative or judicial complaint or Environmental Order has been issued or filed or is about to be issued or filed against any of the

Occupants or their representatives alleging violations of any Environmental Laws or Environmental Orders or requiring the taking of any action in connection with any Hazardous Substance;

- (iii) learns of the enactment of any Environmental Laws or the issuance of any Environmental Orders which may have a material adverse effect on the Debtor or the Collateral; or
 - (iv) knows of or suspects that any Hazardous Substance has been brought on to any part of the Collateral or that there is any actual, threatened or potential Release of any Hazardous Substance on, from, in or under any part of the Collateral.
- (h) The Debtor hereby grants to the Secured Party and its employees and agents an irrevocable and non exclusive licence, subject to the rights of tenants, to enter any of the Premises to conduct testing and monitoring with respect to Hazardous Substances and to remove and analyze any Hazardous Substance at the cost and expense of the Debtor (which cost and expense shall be secured hereby).
- (i) The Debtor shall indemnify the Secured Party and hold the Secured Party harmless against and from all loss, costs, damages and expenses which the Secured Party may sustain, incur or be or become liable for by reason of or arising from the presence, clean up, removal or disposal of any Hazardous Substance referred to in this section or compliance with Environmental Laws or Environmental Orders relating thereto, including any clean up, decommissioning, restoration or remediation of the Collateral and other property (and this indemnification shall survive the satisfaction, release or extinguishment of the indebtedness secured hereby).

2.3 Title

The Debtor covenants with the Secured Party that, subject only to Permitted Encumbrances, it lawfully owns and is lawfully possessed of the Collateral and all property and assets indicated by the financial statements which it has delivered to the Secured Party to be owned by it and has good right and authority to mortgage and charge the same as provided for herein, free and clear of all Encumbrances (other than Permitted Encumbrances), and it will warrant and defend the title thereto as well as to any other property, rights and interests hereafter acquired by the Debtor. No person has any agreement or right or option to acquire any of such property (except under unfilled purchase orders accepted in the ordinary course of business for the sale of Inventory).

ARTICLE 3 COVENANTS OF THE DEBTOR

3.1 General Covenants

So long as this Agreement remains outstanding, the Debtor covenants and agrees as follows:

(a) To Pay Certain Debts

The Debtor 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 Collateral (other than a Permitted Encumbrance) and provide to the Secured Party when required satisfactory

evidence of such payment and discharge, but the Debtor may, on giving the Secured Party such security (if any) as the Secured Party may require, refrain from paying or discharging any obligation so long as it contests in good faith its liability therefor.

(b) To Maintain Corporate Existence and Security

The Debtor shall:

- (i) diligently preserve all its rights, licences, powers, privileges, franchises and goodwill;
- (ii) observe and perform all of the Obligations and comply with all conditions under leases, licences and other agreements to which it is a party or upon or under which any of the Collateral is held;
- (iii) carry on and conduct its business in a proper and efficient and businesslike manner so as to preserve and protect the Collateral and income therefrom and in accordance with good business practices;
- (iv) keep proper books of account with correct entries of all transactions in relation to its business;
- (v) observe and conform to all valid requirements of law and of any Governmental Authority relative to the Collateral or the carrying on by the Debtor of its business;
- (vi) keep the Collateral in good condition and repair and if the Debtor 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 Secured Party to the Debtor then the Secured Party 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 Debtor shall reimburse the Secured Party for such costs forthwith upon demand;
- (vii) keep the Secured Party constantly informed in writing as to the location of the Collateral and the books of account and other records of the Debtor; and
- (viii) effect such registrations as may be required by the Secured Party from time to time to protect the security hereof.

(c) Leases

- (i) The Debtor shall at all times perform and discharge all of the lessee's covenants and obligations under any Lease.
- (ii) The Debtor will not without the written consent of the Secured Party terminate, surrender, amend, alter or vary the terms and conditions of the any Lease. Nor shall the Debtor, without the written consent of the Secured Party, waive performance by the landlord under any of the Leases or release any of the said landlords from any obligations under their respective Leases.

(d) To Furnish Proofs

The Debtor shall forthwith on the happening of any loss or damage furnish at its own expense all necessary proofs and do all necessary acts to enable the Secured Party to obtain payment of the insurance monies, which, in the sole discretion of the Secured Party, may be applied in reinstating the insured property or be paid to the Debtor or be applied in payment of the monies owing hereunder, whether due or not then due, or paid partly in one way and partly in another.

(e) Inspection by the Secured Party

Upon the occurrence of an Event of Default that is continuing, the Debtor shall allow any employees or authorized agents of the Secured Party at any reasonable time to enter the premises of the Debtor in order to inspect the Collateral and to inspect the books and records of the Debtor and make extracts therefrom, and shall permit the Secured Party prompt access to such other persons as the Secured Party may deem necessary or desirable for the purposes of inspecting or verifying any matters relating to any part of the Collateral or the books and records of the Debtor, provided that any information so obtained shall be kept confidential, save as required by the Secured Party in exercising its rights hereunder.

(f) Accounts

Subject to any Permitted Encumbrances thereon, Accounts shall be received by the Debtor in trust for the Secured Party; provided that as long as an Event of Default has not occurred the Debtor may collect and use the Accounts in the ordinary course of business.

(g) Delivery of Documents

Upon the occurrence of an Event of Default that is continuing, the Debtor shall deliver to the Secured Party promptly upon request:

- (i) Documents – any Chattel Paper, Instruments, certificated Securities and Documents of Title, and upon such delivery, where applicable, duly endorse the same for transfer in blank or as the Secured Party may direct; and
- (ii) Uncertificated Securities – any uncertificated Securities, including any registration and any further acts and things necessary for delivery of such uncertificated Securities to the Secured Party in accordance with the *Securities Transfer Act, 2006*.

(h) Transfer of Investment Property

Upon the occurrence of an Event of Default that is continuing, if the Collateral at any time includes an Investment Property, the Debtor will, if required by the Secured Party, transfer the Investment Property into the name of the Secured Party or the Secured Party's nominee and may appoint, or cause its nominee to appoint, the Debtor as proxy to vote concerning the Investment Property.

(i) Notice of Default

The Debtor will promptly give written notice to the Secured Party of the occurrence of any Event of Default or of any event which after notice or lapse of time would constitute an Event of Default.

(j) Not to Sell

The Debtor shall not, except as otherwise permitted hereunder, remove, destroy, lease, sell or otherwise dispose of any of the Collateral; provided that the Debtor may sell or otherwise dispose of Equipment which has become worn out or damaged or otherwise unsuitable for its purpose on condition that it shall substitute therefor, subject to the lien hereof and free from prior liens or charges, property of equal value so that the security hereby constituted shall not thereby be in any way reduced or impaired; and provided further that the Debtor may sell Inventory in the ordinary course of business and for the purpose of carrying on the same.

(k) Not to Make Certain Changes

The Debtor shall not without the prior written consent of the Secured Party remove any of the Collateral or any of the books of account or other records of the Debtor from the jurisdiction where presently located.

(l) Fixtures

The Debtor will not permit goods now or hereafter comprised in the Collateral to become fixtures unless they are, or are to be, affixed or attached to the Premises.

(m) Demolish Collateral

The Debtor will not demolish, remove or destroy any of the Collateral or any part or parts of it or cause or permit the demolition, or removal or destruction of it except in the ordinary course of business.

**ARTICLE 4
EVENTS OF DEFAULT AND REMEDIES**

4.1 Events of Default

The occurrence of any Event of Default under the Credit Agreement (as such term is defined in the Credit Agreement) shall constitute an Event of Default under this Agreement.

4.2 Consequences of an Event of Default

Upon the occurrence of an Event of Default, any obligation of the Secured Party to make further loans or advances or extend other credit to the Debtor shall immediately terminate and all Obligations and all monies secured hereby shall, at the option of the Secured Party, become forthwith due and payable whereupon the floating charge hereby created shall crystallize, all of the rights and remedies hereby conferred in respect of the Collateral shall become immediately enforceable and any and all additional and collateral securities for payment of this Agreement shall become immediately enforceable.

4.3 **Enforcement**

Upon the occurrence of any Event of Default, which is continuing, the Secured Party has the rights and remedies set out in the Credit Agreement, subject to the grace periods set out under Section 12.2 of the Credit Agreement.

4.4 **Disposition**

Without limiting the generality of the foregoing it shall be lawful for the Secured Party:

- (a) to make any sale, lease or other disposition of the Collateral either for cash or upon credit or partly for one and partly for the other upon such conditions as to terms of payment as it in its absolute discretion may deem proper;
- (b) to rescind or vary any contract for sale, lease or other disposition that the Secured Party may have entered into pursuant hereto and resell, release or redispense of the Collateral with or under any of the powers conferred herein; and
- (c) to stop, suspend or adjourn any sale, lease or other disposition from time to time and to hold the same as adjourned without further notice.

Upon any such sale, lease or other disposition the Secured Party shall be accountable only for money actually received by it. The Debtor shall be accountable for any deficiency and the Secured Party shall be accountable for any surplus. The Secured Party may deliver to the purchaser or purchasers of the Collateral or any part thereof good and sufficient conveyances or deeds for the same free and clear of any claim by the Debtor. The purchaser or lessee receiving any disposition of the Collateral or any part thereof need not inquire whether default under this Agreement has actually occurred but may as to this and all other matters rely upon a statutory declaration of an officer of the Secured Party, which declaration shall be conclusive evidence as between the Debtor and any such purchaser or lessee, and the purchaser or lessee need not look to the application of the purchase money, rent or other consideration given upon such sale, lease or other disposition, which shall not be affected by any irregularity of any nature or kind relating to the crystallizing or enforcing of the security hereof or the taking of possession of the Collateral or the sale, lease or other disposition thereof.

4.5 **Powers of Receiver**

Any Receiver appointed as aforesaid shall have the power without legal process:

- (a) to take possession of the Collateral or any part thereof wherever the same may be found;
- (b) to carry on the business of the Debtor or any part thereof in the name of the Debtor or of the Receiver; and
- (c) to exercise on behalf of the Secured Party all of the rights and remedies herein granted to the Secured Party,

and without in any way limiting the foregoing the Receiver shall have all the powers of a receiver appointed by a court of competent jurisdiction. Any Receiver shall, so far as concerns responsibility for his acts, be deemed the agent of the Debtor, and the Secured Party shall not be in any way responsible for any misconduct or negligence on the part of any Receiver or any loss resulting therefrom.

4.6 **Application of Moneys**

All moneys actually received by the Secured Party or by the Receiver in enforcing the security of this Agreement shall be applied, subject to the proper claims of any other person:

- (a) first, to pay or reimburse the Secured Party and any Receiver the costs, charges, expenses and advances payable by the Debtor in accordance herewith;
- (b) second, in or toward the payment to the Secured Party of all other moneys owing hereunder or secured hereby in such order as the Secured Party in its sole discretion may determine; and
- (c) third, any surplus shall be paid to the Debtor or its assigns.

4.7 **Powers of Directors and Officers**

Upon the Secured Party declaring as aforesaid that the security hereof has become enforceable and crystallized or the Debtor receiving notice from the Secured Party of the taking of possession of any of the Collateral or of the appointment of a Receiver, all the powers, functions, rights and privileges of the directors and officers of the Debtor with respect to the property, business and undertaking of the Debtor shall cease except to the extent specifically continued at any time by the Secured Party in writing.

4.8 **Limitations on Liability**

Neither the provisions of this Agreement nor anything done under or pursuant to the rights, remedies and powers conferred upon the Secured Party and the Receiver, whether hereunder or otherwise, will render the Secured Party a mortgagee in possession. Neither the Secured Party nor any Receiver will be bound to collect, dispose of, realize, enforce or sell any Investment Property, Instruments, Chattel Paper or Intangibles (including any Accounts) comprised in the Collateral or to allow any such Collateral to be sold or disposed of, nor will it be responsible for any loss occasioned by any such sale or other dealing or for any failure to sell or so act, nor will it be responsible for any failure to take necessary steps to preserve rights against others in respect of such Collateral, nor will it be responsible for any loss occasioned by the failure to exercise any rights in respect of Collateral within the time limited for the exercise thereof. Neither the Secured Party nor the Receiver will be obligated to keep Collateral separate or identifiable.

**ARTICLE 5
GENERAL**

5.1 **Definitions**

As used herein the following expressions shall have the following meanings:

“**Affiliate**” has the meaning ascribed to such term in the *Business Corporations Act* (Ontario);

“**Business Day**” means any day except Saturday, Sunday or a statutory holiday within the Province of Ontario;

“**Capital Expenditure**” means any expenditure which would be chargeable to capital or fixed asset accounts and includes the total of all instalments of rental expressed to be payable during the whole term of each lease of personal property which would be classified as a capital lease;

“**Collateral**” means all property and assets of the Debtor, including without limitation, those property and assets specifically charged under Section 1.1(a) and subjected to the floating charge under Section 1.1(b) (except as excluded pursuant to Section 1.2);

“**Credit Agreement**” means the loan agreement made as of even date herewith among the Secured Party, as lender, [Holdco], as borrower and Mizrahi Development Group (145 Davenport) Inc., Mizrahi Development Group (185 Davenport) Inc., Mizrahi Soaring Developments Inc., One8One Davenport Inc., as guarantors;

“**Encumbrance**” has the meaning given to it in the Credit Agreement;

“**Environmental Assessment**” means any inquiry, investigation or report of the environmental condition of the Premises;

“**Environmental Laws**” has the meaning given to it in the Credit Agreement;

“**Environmental Order**” has the meaning given to it in the Credit Agreement;

“**Event of Default**” means any one or more of the events set out or referred to in Section 4.1;

“**Governmental Authority**” has the meaning given to it in the Credit Agreement;

“**Hazardous Substance**” has the meaning given to it in the Credit Agreement;

“**Lease**” means any lease (whether now existing, presently arising or created in future) whereby the Premises or any part thereof are demised and leased to the Debtor;

“**Loan Documents**” has the meaning given to it in the Credit Agreement;

“**Obligations**” has the meaning given to it in the Credit Agreement;

“**Occupants**” means the Debtor, its tenants and other occupants of any Premises;

“**Permitted Encumbrances**” has the meaning given to it in the Credit Agreement;

“**Premises**” means all lands and premises owned, leased or otherwise occupied by the Debtor from time to time, including, without limitation, those set out in Schedule “A”;

“**Receiver**” shall include one or more of a receiver, receiver manager or receiver and manager of all or a portion of the undertaking, property and assets of the Debtor appointed by the Secured Party pursuant to this Agreement or by or under any judgment or order of a court;

“**Subsidiary**” has the meaning given to it in the Credit Agreement.

5.2 Interpretation

- (a) “**This Agreement**”, “**hereto**”, “**hereby**”, “**hereunder**”, “**herein**”, and similar expressions refer to the whole of this Agreement and not to any particular Article, Section, subsection, paragraph, clause, subdivision or other portion hereof.
- (b) The expression “**not dealing at arm’s length**” has the meaning ascribed to it by the *Income Tax Act* (Canada).

- (c) Except as expressly provided herein, terms which are defined in the *Personal Property Security Act* (Ontario) shall have the same meaning where used herein.
- (d) Words importing the singular number only include the plural and vice versa and words importing gender shall include all genders and words importing persons include individuals, partnerships, corporations, trusts, unincorporated associations, joint ventures, Governmental Authorities and other entities.
- (e) All financial or accounting determinations, reports and statements provided for in this Agreement shall be made or prepared in accordance with generally accepted accounting principles applied in a consistent manner and shall be made and prepared on a consolidated basis.
- (f) The headings of the Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

5.3 **Governing Law**

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province Of Ontario (without regard to rules or principles relating to conflicts of laws) and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such Province and all courts competent to hear appeals therefrom.

Notwithstanding the foregoing: (1) the Secured Party shall have the right to bring any action or proceeding against the Debtor or the Collateral in the courts of any other jurisdiction the Secured Party deems necessary or appropriate in order to realize on the Collateral or other Security for the Obligations; and (2) each of the parties hereto acknowledges that any appeals from the courts described in the immediately preceding sentence may have to be heard by a court located outside those jurisdictions.

5.4 **Conflict**

In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of the Credit Agreement, the provisions of the Credit Agreement shall govern, it being understood that the purpose of this Agreement and all of the other Loan Documents is to add to, and not detract from, the rights granted to the Secured Party under the Loan Documents.

5.5 **Waiver**

No act or omission by the Secured Party in any manner whatever shall extend to or be taken to affect any provision hereof save only express waiver in writing. A waiver of default shall not extend to, or be taken in any manner whatsoever to affect the rights of the Secured Party with respect to, any subsequent default, whether similar or not. The Debtor waives every defence based upon any or all indulgences that may be granted by the Secured Party.

5.6 **Other Securities**

The rights of the Secured Party hereunder shall not be prejudiced nor shall the liabilities of the Debtor or of any other person be reduced in any way by the taking of any other security of any nature or kind whatsoever either at the time of execution of this Agreement or at any time hereafter.

5.7 No Merger or Novation

Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liability of the Debtor to pay the moneys hereby secured nor shall the same operate as a merger of any covenant herein contained or of any other Obligation, nor shall the acceptance of any payment or other security constitute or create any novation.

5.8 Amalgamation

The Debtor acknowledges that if it amalgamates with any other corporation or corporations (a) the Collateral and the lien created hereby shall extend to and include all the property and assets of each of the amalgamating corporations and the amalgamated corporation and to any property or assets of the amalgamated corporation thereafter owned or acquired, (b) the term, "Debtor", where used herein shall extend to and include each of the amalgamating corporations and the amalgamated corporation, and (c) the term, "Obligations", where used herein shall extend to and include the Obligations of each of the amalgamating corporations and the amalgamated corporation.

5.9 Power of Attorney

(i) Upon the occurrence of an Event of Default that is continuing, the Debtor hereby irrevocably constitutes and appoints the Secured Party and each of its officers holding office from time to time as the true and lawful attorneys of the Debtor with full power of substitution in the name of the Debtor, to do any and all such acts and things or execute and deliver all such agreements, documents and instruments as the Secured Party reasonably considers necessary or desirable to carry out the provisions and purposes of this Agreement or to exercise any of its rights and remedies hereunder and to enforce the Security Interest created hereunder, and to do all acts or things necessary to realize or collect the Proceeds, and the Debtor hereby ratifies and agrees to ratify all acts of any such attorneys taken or done in accordance with this Section. Without in any way limiting the generality of the foregoing, upon the occurrence of an Event of Default that is continuing, the Secured Party shall have the right to execute, for and in the name of the Debtor, all financing statements, financing change statements, conveyances, transfers, assignments, consents and other instruments as may be required for such purposes. This power of attorney shall not be revoked or terminated by any act or thing other than the termination of this Agreement pursuant to the terms hereunder.

(ii) The power of attorney granted hereby shall be coupled with an interest.

(iii) For greater certainty, the rights of the Secured Party under Section 5.9(i) may only be exercised by the Secured Party after the occurrence and during the continuance of an Event of Default.

5.10 The Secured Party May Remedy Default

If the Debtor fails to do anything hereby required to be done by it, the Secured Party may, but shall not be obliged to, do such thing and all sums thereby expended by the Secured Party shall be payable forthwith by the Debtor, shall be secured hereby and shall have the benefit of the lien hereby created, but no such performance by the Secured Party shall be deemed to relieve the Debtor from any default hereunder.

5.11 Collections

The Secured Party is entitled at any time whether or not an Event of Default has occurred hereunder to notify any account debtor or any obligor on an Instrument to make payment to the Secured

Party whether or not the Debtor was theretofore making collections on the Collateral and to take control of any proceeds to which the Secured Party is entitled.

5.12 **Purchase Money Security Interest**

The Debtor acknowledges that the security interest in any item of Collateral and its proceeds shall constitute a purchase money security interest to the extent it secures Obligations incurred by the Debtor to enable the Debtor to acquire rights in such Collateral. The Secured Party hereby reserves title to any item of Collateral which may be sold by the Secured Party to the Debtor until satisfaction of the Obligations as aforesaid.

5.13 **Taxes and Reserve Requirements**

In case the Secured Party is or becomes subject to any tax with respect to payments of principal, interest or other amounts by the Debtor hereunder or in respect of any of the Obligations (except for taxes on the overall net income of the Secured Party) or to any reserve or similar requirement against assets held by, or deposits in or for the account of, or loans by, an office of the Secured Party, or to any other condition with respect to this Agreement, and the result of any of the foregoing is to increase the cost to the Secured Party of making or maintaining any Obligation or to reduce the income receivable by the Secured Party in respect of any Obligation, then the Debtor shall pay to the Secured Party on demand that amount which shall compensate the Secured Party for such additional cost or reduction in income. A certificate of the Secured Party setting forth the amount of such additional compensation and the basis therefor shall be submitted by the Secured Party to the Debtor and shall be conclusive evidence, in the absence of manifest error, of such amount.

5.14 **Notices**

Any notice or other communication to be given by any party hereunder to another party shall be given or made pursuant to and in accordance with the terms and conditions of the Credit Agreement.

5.15 **Receipt**

The Debtor hereby acknowledges receipt of a true copy of this Agreement and a copy of the financing statement registered under the *Personal Property Security Act* (Ontario) in respect of the security created hereby.

5.16 **Successors and Assigns, etc.**

This Agreement and all its provisions shall enure to the benefit of the Secured Party, its successors and assigns, and shall be binding upon the Debtor, its successors and assigns, and every reference herein to a party hereto shall include such party's successors and assigns as if specifically named. Time shall be in all respects of the essence hereof.

IN WITNESS WHEREOF the Debtor has executed this Security Agreement on the 17th day of December, 2014.

NORTHERN CITADEL CAPITAL INC.

Per: 

Name: Sam Mizrahi

Title: President

I have the authority to bind the corporation

MIZRAHI SOARING DEVELOPMENTS INC.

Per: 

Name: Sam Mizrahi

Title: President

I have the authority to bind the corporation

ONE8ONE DAVENPORT INC.

Per: 

Name: Sam Mizrahi

Title: President

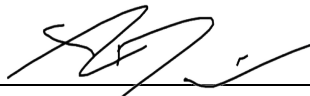
I have the authority to bind the corporation

SCHEDULE "A"

PREMISES

1. 145 Davenport Road Toronto, Ontario
2. 185 Davenport Road, Toronto, Ontario

This is Exhibit "D" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(5792)

166
F2460

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

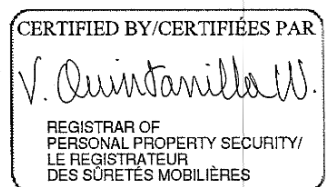
BUSINESS DEBTOR

NORTHERN CITADEL CAPITAL INC.

02AUG 2022

NUMBER 20220803193038.47 CONTAINS 3 PAGE(S), 1 FAMILY(IES).

RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.



PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 2
 (5793)

167
 F2461

BUSINESS DEBTOR
 NORTHERN CITADEL CAPITAL INC.
 02AUG 2022

REGISTRATION STATEMENT / CLAIM FOR LIEN

PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
001	1		20220512 1557 1590 2178	P PPSA	5

BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME

BUSINESS NAME NORTHERN CITADEL CAPITAL INC.

ONTARIO CORPORATION NO.
 ON M5P 2N3

ADDRESS 189 FOREST HILL ROAD TORONTO

BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME

ONTARIO CORPORATION NO.

ADDRESS BRIDGING FINANCE INC., AS AGENT

77 KING STREET WEST, SUITE 2925 TORONTO ON M5K 1K7

DESCRIPTION	MOTOR VEHICLE	AMOUNT	DATE OF MATURITY OR	NO FIXED MATURITY DATE
INVENTORY EQUIPMENT ACCOUNTS OTHER <td>INCLUDED <td></td> <td></td> <td></td> </td>	INCLUDED <td></td> <td></td> <td></td>			
X	X	X	X	X

MAKE	MODEL	V.I.N.

THORNTON GROUT FINNIGAN LLP (GBM/AD)

ADDRESS 3200-100 WELLINGTON STREET WEST TORONTO ON M5K 1K7

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
 REGISTRAR OF PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 3
(5794)

168
F2462

BUSINESS DEBTOR
NORTHERN CITADEL CAPITAL INC.
02AUG 2022

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
12 1557 1590 2178			

ARE REPORTED IN THIS ENQUIRY RESPONSE.

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

This is Exhibit "E" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

GUARANTEE

THIS GUARANTEE is made as of the 17th day of December, 2014.

WHEREAS pursuant to the terms and conditions of a loan agreement between Northern Citadel Capital Inc., as borrower (the "**Borrower**"), Mizrahi Soaring Developments Inc. and One8One Davenport Inc., as guarantors (the "Guarantors") and Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP, as lender dated as of the date herein, as amended, modified, extended or renewed from time to time (the "**Loan Agreement**"), the Lender has agreed to make a loan in the sum of \$11,267,123.29 to the Borrower;

AND WHEREAS the Guarantors have agreed to provide the Lender with a joint and several guarantee of the obligations of the Borrower;

NOW THEREFORE THIS GUARANTEE WITNESSETH that in consideration of the premises and the covenants and agreements herein contained, the sum of \$2.00 now paid by the Lender to the Guarantors and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Guarantors covenant with the Lender as follows:

ARTICLE 1 GUARANTEE

1.1 Guarantee

The Guarantors, jointly and severally, hereby unconditionally and irrevocably guarantee payment of all the debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Lender or remaining unpaid by the Borrower to the Lender (hereinafter collectively referred to as the "**Obligations**"), together with interest thereon as provided in the Loan Agreement. The Guarantors acknowledge having received and reviewed a copy of the Loan Agreement and each of the other Security Documents (as defined in the Loan Agreement).

1.2 Indemnity

If any or all of the Obligations are not duly performed by the Borrower and are not performed under Section 1.1 for any reason whatsoever, the Guarantors will, as a separate and distinct obligation, jointly and severally indemnify and save harmless the Lender from and against all losses resulting from the failure of the Borrower to perform such Obligations.

1.3 Primary Obligation

If any or all of the Obligations are not duly performed by the Borrower and are not performed under Section 1.1 or the Lender is not indemnified under Section 1.2, in each case, for any reason whatsoever, such Obligations will, as a separate and distinct obligation, be performed by the Guarantors jointly and severally as primary obligors.

1.4 **Guarantee Absolute**

The liability of the Guarantors hereunder shall be absolute and unconditional and shall not be affected by:

- (a) any lack of validity or enforceability of any agreements between the Lender and any Borrower Entity (as hereinafter defined), including any of the Security Documents; any change in the time, manner or place of payment of or in any other term of such agreements or the failure on the part of any Borrower Entity to carry out any of its obligations under such agreements;
- (b) any impossibility, impracticability, frustration of purpose, illegality, force majeure or act of government;
- (c) the bankruptcy, winding-up, liquidation, dissolution or insolvency of any Borrower Entity or any party to any agreement to which the Lender is a party;
- (d) any lack or limitation of power, incapacity or disability on the part of any Borrower Entity or the Lender or of the directors, partners or agents thereof or any other irregularity, defect or informality on the part of any Borrower Entity in its obligations to the Lender, including any change in the name, constitution or legal form of any Borrower Entity or the Borrower's amalgamation with another corporation (in which case this Guarantee shall apply to the liabilities of the resulting legal entity, and the term "Borrower" shall include such resulting legal entity); or
- (e) any other law, regulation, order or other circumstance which might otherwise constitute a defence available to, or a discharge of, any Borrower Entity in respect of any or all of the Obligations, save due performance by the Borrower or the Guarantors.

(For the purpose of this Guarantee, "**Borrower Entity**" means the Borrower, each shareholder of the Borrower, each indemnifier (if any) and any other guarantor of all or part of the Indebtedness.)

ARTICLE 2
DEALINGS WITH BORROWER AND OTHERS

2.1 **No Release**

The liability of the Guarantors hereunder shall not be released, discharged, limited or in any way affected by anything done, suffered or permitted by the Lender in connection with any duties or liabilities of the Borrower to the Lender or any security therefor, including any loss of or in respect of any security received by the Lender from the Borrower or other Borrower Entity, whether or not such loss to the security resulted from any action or inaction, wilful, negligent or otherwise, on the part of the Lender. Without limiting the generality of the foregoing and without releasing, discharging, limiting or otherwise affecting in whole or in part the Guarantors' liability hereunder (whether as guarantor, indemnitor or primary obligor), without obtaining the consent of or giving notice to the Guarantors or any other Borrower Entity, the Lender may discontinue, reduce, increase or otherwise vary the credit of the Borrower and/or any other Borrower Entity in any manner whatsoever and may:

- (a) make any change in the time, manner or place of payment under, or in any other term of, any agreement between the Borrower and/or any other Borrower Entity and the Lender, or waive the failure on the part of the Borrower and/or any other Borrower Entity to carry out any of its obligations under any such agreement;

- (b) grant time, renewals, extensions, indulgences, releases and discharges to the Borrower and/or other Borrower Entity;
- (c) take or abstain from taking or enforcing securities or collateral from the Borrower and/or any other Borrower Entity or from perfecting securities or collateral of the Borrower and/or any other Borrower Entity;
- (d) accept compromises from the Borrower and/or any other Borrower Entity;
- (e) apply all money at any time received from the Borrower and/or any other Borrower Entity or from securities upon such part of the Obligations as the Lender may see fit or change any such application in whole or in part from time to time as the Lender may see fit; and
- (f) otherwise deal with the Borrower and/or any other Borrower Entity and all other persons and securities as the Lender may see fit.

2.2 **No Exhaustion of Remedies**

The Lender shall not be bound or obligated to exhaust its recourse against the Borrower, any other Borrower Entity or other persons or any securities or collateral it may hold or take any other action before being entitled to demand payment from the Guarantors hereunder.

2.3 **Prima Facie Evidence**

Any account settled or stated in writing by or between the Lender and the Borrower shall be *prima facie* evidence that the balance or amount thereof appearing due to the Lender is so due.

2.4 **No Set-off**

In any claim by the Lender against the Guarantors, the Guarantors may not assert any set-off or counterclaim that either the Guarantors or the Borrower may have against the Lender.

ARTICLE 3
CONTINUING GUARANTEE

3.1 **Continuing Guarantee**

This Guarantee shall be a continuing guarantee of the Obligations and shall apply to and secure any ultimate balance due or remaining due to the Lender and shall not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to the Lender. This Guarantee shall continue to be effective or be reinstated even if at any time any payment of any of the Obligations is rendered unenforceable or is rescinded or must otherwise be returned by the Lender upon the occurrence of any action or event including the insolvency, bankruptcy or reorganization of the Borrower or otherwise, all as though such payment had not been made.

ARTICLE 4
DEMAND

4.1 **Demand**

The Lender shall be entitled to make demand upon the Guarantors at any time upon the occurrence of any Events of Default (as defined in the Loan Agreement) and upon such Event of Default

the Lender may treat all Obligations as due and payable and may forthwith collect from the Guarantors the total amount guaranteed hereunder whether or not such Obligations are yet due and payable at the time of demand for payment hereunder. The Guarantors shall make payment to the Lender of the total amount guaranteed hereunder forthwith after demand therefor is made to the Guarantors. The Guarantors shall pay all reasonable costs and expenses incurred by the Lender in enforcing this Guarantee.

4.2 **Interest**

In addition to the Obligations, the Guarantors shall pay interest to the Lender at the interest rate (established pursuant to the Loan Agreement) on the unpaid portion of all amounts payable by the Guarantors under this Guarantee, such interest to accrue from and including the date of demand by the Lender on the Guarantors.

ARTICLE 5 **ASSIGNMENT, POSTPONEMENT AND SUBROGATION**

5.1 **Assignment and Postponement**

All debts and liabilities, present and future, of the Borrower to any party comprising the Guarantors are hereby assigned to the Lender and postponed to the Obligations, and all money received by any party comprising the Guarantors in respect thereof shall be held in trust for the Lender and forthwith upon receipt shall be paid over to the Lender, the whole without in any way lessening or limiting the liability of the Guarantors hereunder, and this assignment and postponement is independent of the Guarantee and shall remain in full force and effect until, in the case of the assignment, the liability of the Guarantors under this Guarantee has been discharged or terminated and, in the case of the postponement, until all Obligations are performed and paid in full.

5.2 **Subrogation**

The Guarantors will not be entitled to an interest in the Obligations by way of subrogation until the Obligations have been performed and paid in full.

ARTICLE 6 **GENERAL**

6.1 **Benefit of the Guarantee**

This Guarantee will enure to the benefit of the Lender and its respective successors and assigns and shall be binding upon the Guarantors and their personal representatives, executors, administrators, heirs, successors and permitted assigns, provided that the Guarantors may not assign their obligations hereunder without the prior written consent of the Lender, which consent may be arbitrarily withheld.

6.2 **Entire Agreement**

This Guarantee constitutes the entire agreement between the Guarantors and the Lender with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between such parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties except as expressly set forth herein. The Lender shall not be bound by any representations or promises made by the Borrower to the Guarantors, and possession of this Guarantee by the Lender shall be conclusive evidence against the Guarantors that the Guarantee was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with.

6.3 Amendments and Waivers

No amendment to this Guarantee will be valid or binding unless set forth in writing and duly executed by the Guarantors and the Lender. No waiver of any breach of any provision of this Guarantee will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in the written waiver, will be limited to the specific breach waived.

6.4 Severability

If any provision of this Guarantee is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof, and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

6.5 Notices

Any notice, demand, request, consent, agreement or approval (a "Notice") which may or is required to be given pursuant to this Guarantee shall be in writing and shall be sufficiently given or made if delivered personally upon the party for whom it is intended, or transmitted by email, or (except in the case of an actual or pending disruption of postal service) mailed by registered mail, and in the case of:

Each of the Guarantors, addressed as follows:

Mizrahi Soaring Developments Inc. and
One8One Davenport Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Attention: Sam Mizrahi, President
Email: sam@mizrahicorp.com

The Lender, addressed as follows:

Bridging Finance Inc.
77 King Street West
Suite 2925
Toronto, ON M5K 1K7

Attention: Natasha Sharpe, CEO & Chief Investment Officer
Email: nsharpe@bridgingfinance.ca

Any such Notice, if delivered personally or by email, shall be deemed to be delivered on the date of delivery thereof, or if mailed the fourth (4th) Business Day following the date of mailing. For the purposes hereof, personal delivery, including delivery by way of a courier service, shall be made by delivery to an officer, director or responsible employee of the entity for whom it is intended at its address set out above. If on the date of mailing or on or before such fourth (4th) Business Day thereafter there is a general interruption in the operation of postal service in Canada, Notices shall be delivered personally or by facsimile transmission. Each entity listed above may, from time to time, change its address or stipulate an address different from the address set out above by giving Notice thereof to each other entity listed above in the manner provided in this Section 6.5. For purposes hereof, "**Business Day**" means a day, excluding Saturday and Sunday, on which banks are open for commercial business in Toronto, Ontario.

6.6 **Discharge**

The Guarantors will not be discharged or released from any of their obligations hereunder except upon payment in full of the total amount guaranteed hereunder, together with any interest thereon as provided in Section 4.2.

6.7 **Additional Security**

This Guarantee is in addition to, and without prejudice to nor in substitution for, any security of any kind (including without limitation other guarantees) now or hereafter held by the Lender and any other rights or remedies that the Lender might have.

6.8 **Governing Law**

This Guarantee will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

6.9 **Executed Copy**

Each of the Guarantors acknowledges receipt of a fully executed copy of this Guarantee.

IN WITNESS WHEREOF the Guarantors have executed this Guarantee as of the date first written above.

MIZRAHI SOARING DEVELOPMENTS INC.

Per: 
Name: Sam Mizrahi
Title: President

I have authority to bind the Corporation

ONE8ONE DAVENPORT INC.

Per: 
Name: Sam Mizrahi
Title: President

I have authority to bind the Corporation

This is Exhibit "F" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

GENERAL SECURITY AGREEMENT

THIS AGREEMENT made as of the 17th day of December, 2014.

B E T W E E N:

**Northern Citadel Capital Inc.
Mizrahi Soaring Developments Inc.
One8One Davenport Inc.**

(hereinafter collectively called the “Debtor”)

and

**Bridging Finance Inc., as agent for
Sprott Bridging Income Fund LP**

(hereinafter called the “Secured Party”)

In consideration of the sum of One Dollar (\$1.00) now paid to it by the Secured Party, receipt of which is hereby acknowledged, and to secure the due payment and performance of all Obligations, the Debtor hereby agrees with the Secured Party and provides as follows:

ARTICLE 1 SECURITY

1.1 Charge

Subject to the exceptions set forth in Section 1.2, the Debtor hereby:

- (a) grants, sells, assigns, conveys, transfers, mortgages, pledges and charges, as and by way of fixed and specific mortgage, pledge and charge to and in favour of the Secured Party, and grants to the Secured Party a security interest in, all personal property of every nature and kind whatsoever and wheresoever situate now or at any time and from time to time owned by the Debtor, beneficially or otherwise, or in which or in respect of which the Debtor has any interest or rights of any kind, including, without limiting the generality of the foregoing, the following:
 - (i) All inventory of whatsoever kind and wheresoever situate now owned or hereafter acquired by the Debtor including without limiting the generality of the foregoing, goods for sale or lease or that have been leased; goods furnished or to be furnished under a contract of service; goods which are raw materials, work in process or materials used or consumed in a business or profession of the Debtor; goods used or procured for packing; finished goods; industrial growing crops, oil, gas and other minerals to be extracted; timber to be cut; and the young of animals after conception (“**Inventory**”);
 - (ii) All book accounts and book debts and generally all accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter

become due, owing, accruing or growing due to or owned by the Debtor including but not limited to claims against the Crown and claims under insurance policies (“**Accounts**”);

- (iii) All machinery, equipment, tools, apparatus, plants, fixtures, furniture, vehicles, goods and other tangible personal property of whatsoever nature and kind, now owned or hereafter acquired by the Debtor other than Inventory (“**Equipment**”);
- (iv) All chattel paper now owned or hereafter acquired by the Debtor (“**Chattel Paper**”);
- (v) All warehouse receipts, bills of lading and other documents of title, whether negotiable or otherwise, now owned or hereafter acquired by the Debtor (“**Documents of Title**”);
- (vi) All present and future bills, notes and cheques (as such are defined pursuant to the *Bills of Exchange Act* (Canada)), and all other writings that evidence a right to the payment of money and that are of a type that in the ordinary course of business are transferred by delivery without any necessary endorsement or assignment (“**Instruments**”);
- (vii) All deeds, documents, writings, papers, books of accounts and other books evidencing or relating to Accounts, Chattel Paper, Instruments or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable; and all contracts, securities, instruments and other rights and benefits in respect thereof;
- (viii) All present and future securities held by the Debtor or shares, options, rights, warrants, joint venture interests, interests in limited partnerships, bonds, debentures and all other documents which constitute evidence of a share, participation or other interest of the Debtor in property or in an enterprise or which constitute evidence of an obligation of an issuer,
 - (A) that are represented by security certificates in bearer form or registered form, or the transfer of which may be registered on books maintained for that purpose by or on behalf of the issuer,
 - (B) that are one of a class or series, or by their terms are divisible into a class or series, of shares, participations, interests or obligations, and
 - (C) that,
 - (i) are, or are of a type, dealt in or traded on securities exchanges or securities markets, or
 - (ii) are a medium for investment and by their terms expressly provides that it is a security for the purposes of the *Securities Transfer Act* (Ontario), 2006,

and includes: (a) shares or similar equity interests issued by a corporation, business trust or similar entity; (b) general or limited partnership interests or

other equivalents (regardless of how designated) of or in a partnership or limited partnership; and (c) and all substitutions therefor and dividends and income derived therefrom and all rights in respect thereof ("**Securities**");

- (ix) All present and after-acquired intangible property (save and except for Accounts) wherever situate and now or hereafter owned by the Debtor including, without limitation, all contractual rights, licenses, goodwill, patents, trademarks, tradenames, copyrights, other industrial designs and other industrial or intellectual property and undertaking of the Debtor and all other choses in action of the Debtor of every kind which now are, or which may at any time hereafter be, due or owing to or owned by the Debtor and all other intangible property of the Debtor which is not Accounts, Inventory, Chattel Paper, Documents of Title, Instruments, Money or Securities ("**Intangibles**");
 - (x) All present and future money of the Debtor, whether authorized or adopted by the Parliament of Canada as part of its currency or any foreign government as part of its currency ("**Money**");
 - (xi) All or any part of any present or future interest of the Debtor in present and after acquired investment property, including all Securities, Securities Accounts and Futures Accounts, all of the present and future security entitlements of the Debtor as an entitlement holder of such security entitlements, all of the present and future futures contracts of the Debtor as a futures customer in respect of such futures contracts, and all proceeds of any such property, where "**Futures Accounts**" means all of the present or future futures accounts maintained for the Debtor by a futures intermediary, including all futures contracts carried in such futures accounts and the agreements between the Borrower and the futures intermediary governing such futures accounts, and "**Securities Account**" means all of the present or future securities accounts maintained for the Debtor by a securities intermediary, including all of the financial assets credited to such securities accounts, all related securities entitlements and the agreements between the Debtor and the securities intermediary governing such securities accounts ("**Investment Property**");
 - (xii) Any property in any form (including fixtures) derived directly or indirectly from any dealings with any property herein described (including all products and cash and non cash proceeds thereof); indemnification or compensation for any such property lost, destroyed, damaged or lawfully or unlawfully taken or injuriously affected; all increases, additions and accessions thereto and substitutions and replacements thereof;
 - (xiii) All proceeds derived from the property, assets and undertaking of the Debtor referred to in this Section 1.1(a) including, without limitation, insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto or the proceeds therefrom;
- (b) charges with payment to the Secured Party of all Obligations as and by way of a floating charge the whole of the undertaking of the Debtor and all of its property and assets, real and personal, movable and immovable, tangible and intangible, of every nature and kind whatsoever and wheresoever situate, both present and future (other than property and

assets from time to time effectively subjected to the fixed and specific mortgages and charges created hereby or by any instrument supplemental hereto).

1.2 Exceptions as to Leases

- (a) The last day of any term of years reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Debtor is excepted out of the Collateral, but the Debtor shall stand possessed of any such reversion upon trust to assign and dispose thereof as the Secured Party may direct. In addition, consumer goods now held or hereafter acquired by the Debtor and agreements that require the consent of a party other than the Debtor for the purposes of this Agreement are excepted out of the Collateral. Where the giving of a fixed and specific mortgage and charge on any real or personal property held by the Debtor under lease requires the consent of the lessor of such property, the giving of the fixed and specific mortgage and charge hereunder on such property shall not take effect until such consent is obtained or legally dispensed with but the suspension of the effect of the fixed and specific mortgage and charge on such property shall not affect the fixed and specific mortgage and charge on any other property of the Debtor.
- (b) Pursuant to this Agreement:
 - (i) To the extent that the creation of the security interest created hereby would constitute a breach of or default under, or permit the acceleration or termination of any agreement, right, licence or permit of the Debtor which constitutes Collateral (each, a "**Restricted Asset**"), the security interest created hereunder shall not attach to the Restricted Asset, but the Debtor shall, subject to paragraph (ii) below, hold its interest in the Restricted Asset in trust for the Secured Party, provided that, until the security interest created hereby has become enforceable, the Debtor shall be entitled to all proceeds arising under or in connection with the Restricted Asset.
 - (ii) To the extent that the creation of the trust in paragraph (i) above would constitute a breach or permit the acceleration or termination of any Restricted Asset, the security interest created hereunder shall not attach to the Restricted Asset, but the security interest created hereby will constitute a trust created in favour of the Secured Party pursuant to which the Debtor shall hold as trustee its interest in all proceeds arising under or in connection with the Restricted Asset in trust for the Secured Party, provided that until the security interest created hereby has become enforceable, the Debtor shall be entitled to receive all such proceeds.

1.3 Supplemental Indentures

The Debtor shall from time to time on demand by the Secured Party execute and deliver such further deeds or indentures supplemental hereto, which shall thereafter form part hereof, for the purpose of mortgaging to the Secured Party any property now owned or hereafter acquired by the Debtor and falling within the description of the Collateral, for correcting or amplifying the description of any property hereby mortgaged or intended so to be, or for any other purpose not inconsistent with the terms of this Agreement.

1.4 Continuing Security

This Agreement and any other security given with the Secured Party's consent in replacement thereof, substitution therefor or in addition thereto shall be held by the Secured Party as general and continuing security for due payment and performance of all Obligations, including without limitation all costs and amounts payable pursuant hereto and interest on the Obligations at the rate or rates applicable thereto in accordance with the prevailing agreement between the Secured Party and the Debtor. Any and all payments made at any time in respect of the Obligations and the proceeds realized from any Investment Property held therefor (including moneys realized from the enforcement of this Agreement) may be applied (and reapplied from time to time notwithstanding any previous application) to such part or parts of the Obligations as the Secured Party sees fit. The Secured Party may hold as additional security hereunder any increase or profits or other proceeds realized from the Collateral (including money) for such period of time as the Secured Party sees fit. The Debtor shall be accountable for any deficiency and the Secured Party shall be accountable for any surplus.

1.5 Notification

After an Event of Default has occurred and is continuing, the Secured Party may notify any debtor of the Debtor on an intangible, Chattel Paper, or Account, or any obligor on an instrument ("Account Debtor") to make all payments on Collateral to the Secured Party and the Debtor acknowledges that the proceeds of all sales, or any payments on or other proceeds of the Collateral, including but not limited to payments on, or other proceeds of, the Collateral received by the Debtor from any Account Debtor, whether before or after notification to such Account Debtor after default under this Security Agreement will be received and held by the Debtor in trust for the Secured Party and will be turned over to the Secured Party upon request and the Debtor will not commingle any proceeds of or payments on the Collateral with any of the Debtor's funds or property, but will hold them separate and apart.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1 General Representations and Warranties

The Debtor represents, warrants and covenants to and with the Secured Party as follows:

(a) Leases

With respect to each Lease now existing:

- (i) the copy of the Lease provided to the Secured Party contains the entire agreement between the Debtor, the lessor and any guarantor, surety or indemnitor respecting the subject matter and there have been no modifications, amendments or extensions thereto or thereof; and
- (ii) the Lease is in full force and effect and in good standing.

(b) Fixtures

None of the goods comprised in the Collateral are fixtures except any fixtures that are affixed or attached to the Premises.

(c) Consumer Goods

None of the Collateral now owned or hereafter acquired is now or shall at any time be consumer goods of the Debtor.

(d) Location of Collateral

All of the Collateral is situated at the addresses set out in Schedule "A".

2.2 **Environmental Representations and Warranties**

The Debtor represents, warrants and covenants to and with the Secured Party that, except as previously disclosed to the Secured Party:

- (a) The Collateral now complies and will at all times in future comply in all material respects with all Environmental Laws and Environmental Orders.
- (b) After due and diligent inquiry, it has been found that there is no Hazardous Substance on or in any of the Collateral.
- (c) There is no judicial or administrative proceeding or investigation pending and no Environmental Order has been issued or, to the best of the Debtor's knowledge, threatened concerning the possible violation of any Environmental Laws or Environmental Orders in relation to the Collateral.
- (d) No Hazardous Substance shall be brought on to or used in any part of the Collateral without the prior written consent of the Secured Party and any Hazardous Substance shall be transported, used and stored only in accordance with all Environmental Laws, other lawful requirements, prudent industrial standards including, without limitation, any published environmental standards of any applicable industry association and any requirements of applicable insurance policies.
- (e) The Debtor has created, properly organized and maintained all documentation and records concerning environmental matters as required by any Environmental Laws or Environmental Orders and will maintain such documentation and records at all times in future as aforesaid.
- (f) The Debtor has provided to the Secured Party any Environmental Assessment and related documentation concerning any of the Collateral in its possession or control and shall promptly provide to the Secured Party any such material as the Debtor may obtain in future.
- (g) The Debtor shall promptly notify the Secured Party if it:
 - (i) receives notice from any Governmental Authority of any violation or potential violation of any Environmental Laws or Environmental Orders, including the Release of a Hazardous Substance, which may have occurred or been committed or is about to occur or be committed;
 - (ii) receives notice that any administrative or judicial complaint or Environmental Order has been issued or filed or is about to be issued or filed against any of the

Occupants or their representatives alleging violations of any Environmental Laws or Environmental Orders or requiring the taking of any action in connection with any Hazardous Substance;

- (iii) learns of the enactment of any Environmental Laws or the issuance of any Environmental Orders which may have a material adverse effect on the Debtor or the Collateral; or
 - (iv) knows of or suspects that any Hazardous Substance has been brought on to any part of the Collateral or that there is any actual, threatened or potential Release of any Hazardous Substance on, from, in or under any part of the Collateral.
- (h) The Debtor hereby grants to the Secured Party and its employees and agents an irrevocable and non exclusive licence, subject to the rights of tenants, to enter any of the Premises to conduct testing and monitoring with respect to Hazardous Substances and to remove and analyze any Hazardous Substance at the cost and expense of the Debtor (which cost and expense shall be secured hereby).
- (i) The Debtor shall indemnify the Secured Party and hold the Secured Party harmless against and from all loss, costs, damages and expenses which the Secured Party may sustain, incur or be or become liable for by reason of or arising from the presence, clean up, removal or disposal of any Hazardous Substance referred to in this section or compliance with Environmental Laws or Environmental Orders relating thereto, including any clean up, decommissioning, restoration or remediation of the Collateral and other property (and this indemnification shall survive the satisfaction, release or extinguishment of the indebtedness secured hereby).

2.3 Title

The Debtor covenants with the Secured Party that, subject only to Permitted Encumbrances, it lawfully owns and is lawfully possessed of the Collateral and all property and assets indicated by the financial statements which it has delivered to the Secured Party to be owned by it and has good right and authority to mortgage and charge the same as provided for herein, free and clear of all Encumbrances (other than Permitted Encumbrances), and it will warrant and defend the title thereto as well as to any other property, rights and interests hereafter acquired by the Debtor. No person has any agreement or right or option to acquire any of such property (except under unfilled purchase orders accepted in the ordinary course of business for the sale of Inventory).

ARTICLE 3 COVENANTS OF THE DEBTOR

3.1 General Covenants

So long as this Agreement remains outstanding, the Debtor covenants and agrees as follows:

(a) To Pay Certain Debts

The Debtor 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 Collateral (other than a Permitted Encumbrance) and provide to the Secured Party when required satisfactory

evidence of such payment and discharge, but the Debtor may, on giving the Secured Party such security (if any) as the Secured Party may require, refrain from paying or discharging any obligation so long as it contests in good faith its liability therefor.

(b) To Maintain Corporate Existence and Security

The Debtor shall:

- (i) diligently preserve all its rights, licences, powers, privileges, franchises and goodwill;
- (ii) observe and perform all of the Obligations and comply with all conditions under leases, licences and other agreements to which it is a party or upon or under which any of the Collateral is held;
- (iii) carry on and conduct its business in a proper and efficient and businesslike manner so as to preserve and protect the Collateral and income therefrom and in accordance with good business practices;
- (iv) keep proper books of account with correct entries of all transactions in relation to its business;
- (v) observe and conform to all valid requirements of law and of any Governmental Authority relative to the Collateral or the carrying on by the Debtor of its business;
- (vi) keep the Collateral in good condition and repair and if the Debtor 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 Secured Party to the Debtor then the Secured Party 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 Debtor shall reimburse the Secured Party for such costs forthwith upon demand;
- (vii) keep the Secured Party constantly informed in writing as to the location of the Collateral and the books of account and other records of the Debtor; and
- (viii) effect such registrations as may be required by the Secured Party from time to time to protect the security hereof.

(c) Leases

- (i) The Debtor shall at all times perform and discharge all of the lessee's covenants and obligations under any Lease.
- (ii) The Debtor will not without the written consent of the Secured Party terminate, surrender, amend, alter or vary the terms and conditions of the any Lease. Nor shall the Debtor, without the written consent of the Secured Party, waive performance by the landlord under any of the Leases or release any of the said landlords from any obligations under their respective Leases.

(d) To Furnish Proofs

The Debtor shall forthwith on the happening of any loss or damage furnish at its own expense all necessary proofs and do all necessary acts to enable the Secured Party to obtain payment of the insurance monies, which, in the sole discretion of the Secured Party, may be applied in reinstating the insured property or be paid to the Debtor or be applied in payment of the monies owing hereunder, whether due or not then due, or paid partly in one way and partly in another.

(e) Inspection by the Secured Party

Upon the occurrence of an Event of Default that is continuing, the Debtor shall allow any employees or authorized agents of the Secured Party at any reasonable time to enter the premises of the Debtor in order to inspect the Collateral and to inspect the books and records of the Debtor and make extracts therefrom, and shall permit the Secured Party prompt access to such other persons as the Secured Party may deem necessary or desirable for the purposes of inspecting or verifying any matters relating to any part of the Collateral or the books and records of the Debtor, provided that any information so obtained shall be kept confidential, save as required by the Secured Party in exercising its rights hereunder.

(f) Accounts

Subject to any Permitted Encumbrances thereon, Accounts shall be received by the Debtor in trust for the Secured Party; provided that as long as an Event of Default has not occurred the Debtor may collect and use the Accounts in the ordinary course of business.

(g) Delivery of Documents

Upon the occurrence of an Event of Default that is continuing, the Debtor shall deliver to the Secured Party promptly upon request:

- (i) Documents – any Chattel Paper, Instruments, certificated Securities and Documents of Title, and upon such delivery, where applicable, duly endorse the same for transfer in blank or as the Secured Party may direct; and
- (ii) Uncertificated Securities – any uncertificated Securities, including any registration and any further acts and things necessary for delivery of such uncertificated Securities to the Secured Party in accordance with the *Securities Transfer Act, 2006*.

(h) Transfer of Investment Property

Upon the occurrence of an Event of Default that is continuing, if the Collateral at any time includes an Investment Property, the Debtor will, if required by the Secured Party, transfer the Investment Property into the name of the Secured Party or the Secured Party's nominee and may appoint, or cause its nominee to appoint, the Debtor as proxy to vote concerning the Investment Property.

(i) Notice of Default

The Debtor will promptly give written notice to the Secured Party of the occurrence of any Event of Default or of any event which after notice or lapse of time would constitute an Event of Default.

(j) Not to Sell

The Debtor shall not, except as otherwise permitted hereunder, remove, destroy, lease, sell or otherwise dispose of any of the Collateral; provided that the Debtor may sell or otherwise dispose of Equipment which has become worn out or damaged or otherwise unsuitable for its purpose on condition that it shall substitute therefor, subject to the lien hereof and free from prior liens or charges, property of equal value so that the security hereby constituted shall not thereby be in any way reduced or impaired; and provided further that the Debtor may sell Inventory in the ordinary course of business and for the purpose of carrying on the same.

(k) Not to Make Certain Changes

The Debtor shall not without the prior written consent of the Secured Party remove any of the Collateral or any of the books of account or other records of the Debtor from the jurisdiction where presently located.

(l) Fixtures

The Debtor will not permit goods now or hereafter comprised in the Collateral to become fixtures unless they are, or are to be, affixed or attached to the Premises.

(m) Demolish Collateral

The Debtor will not demolish, remove or destroy any of the Collateral or any part or parts of it or cause or permit the demolition, or removal or destruction of it except in the ordinary course of business.

ARTICLE 4
EVENTS OF DEFAULT AND REMEDIES

4.1 Events of Default

The occurrence of any Event of Default under the Credit Agreement (as such term is defined in the Credit Agreement) shall constitute an Event of Default under this Agreement.

4.2 Consequences of an Event of Default

Upon the occurrence of an Event of Default, any obligation of the Secured Party to make further loans or advances or extend other credit to the Debtor shall immediately terminate and all Obligations and all monies secured hereby shall, at the option of the Secured Party, become forthwith due and payable whereupon the floating charge hereby created shall crystallize, all of the rights and remedies hereby conferred in respect of the Collateral shall become immediately enforceable and any and all additional and collateral securities for payment of this Agreement shall become immediately enforceable.

4.3 **Enforcement**

Upon the occurrence of any Event of Default, which is continuing, the Secured Party has the rights and remedies set out in the Credit Agreement, subject to the grace periods set out under Section 12.2 of the Credit Agreement.

4.4 **Disposition**

Without limiting the generality of the foregoing it shall be lawful for the Secured Party:

- (a) to make any sale, lease or other disposition of the Collateral either for cash or upon credit or partly for one and partly for the other upon such conditions as to terms of payment as it in its absolute discretion may deem proper;
- (b) to rescind or vary any contract for sale, lease or other disposition that the Secured Party may have entered into pursuant hereto and resell, release or redispense of the Collateral with or under any of the powers conferred herein; and
- (c) to stop, suspend or adjourn any sale, lease or other disposition from time to time and to hold the same as adjourned without further notice.

Upon any such sale, lease or other disposition the Secured Party shall be accountable only for money actually received by it. The Debtor shall be accountable for any deficiency and the Secured Party shall be accountable for any surplus. The Secured Party may deliver to the purchaser or purchasers of the Collateral or any part thereof good and sufficient conveyances or deeds for the same free and clear of any claim by the Debtor. The purchaser or lessee receiving any disposition of the Collateral or any part thereof need not inquire whether default under this Agreement has actually occurred but may as to this and all other matters rely upon a statutory declaration of an officer of the Secured Party, which declaration shall be conclusive evidence as between the Debtor and any such purchaser or lessee, and the purchaser or lessee need not look to the application of the purchase money, rent or other consideration given upon such sale, lease or other disposition, which shall not be affected by any irregularity of any nature or kind relating to the crystallizing or enforcing of the security hereof or the taking of possession of the Collateral or the sale, lease or other disposition thereof.

4.5 **Powers of Receiver**

Any Receiver appointed as aforesaid shall have the power without legal process:

- (a) to take possession of the Collateral or any part thereof wherever the same may be found;
- (b) to carry on the business of the Debtor or any part thereof in the name of the Debtor or of the Receiver; and
- (c) to exercise on behalf of the Secured Party all of the rights and remedies herein granted to the Secured Party,

and without in any way limiting the foregoing the Receiver shall have all the powers of a receiver appointed by a court of competent jurisdiction. Any Receiver shall, so far as concerns responsibility for his acts, be deemed the agent of the Debtor, and the Secured Party shall not be in any way responsible for any misconduct or negligence on the part of any Receiver or any loss resulting therefrom.

4.6 **Application of Moneys**

All moneys actually received by the Secured Party or by the Receiver in enforcing the security of this Agreement shall be applied, subject to the proper claims of any other person:

- (a) first, to pay or reimburse the Secured Party and any Receiver the costs, charges, expenses and advances payable by the Debtor in accordance herewith;
- (b) second, in or toward the payment to the Secured Party of all other moneys owing hereunder or secured hereby in such order as the Secured Party in its sole discretion may determine; and
- (c) third, any surplus shall be paid to the Debtor or its assigns.

4.7 **Powers of Directors and Officers**

Upon the Secured Party declaring as aforesaid that the security hereof has become enforceable and crystallized or the Debtor receiving notice from the Secured Party of the taking of possession of any of the Collateral or of the appointment of a Receiver, all the powers, functions, rights and privileges of the directors and officers of the Debtor with respect to the property, business and undertaking of the Debtor shall cease except to the extent specifically continued at any time by the Secured Party in writing.

4.8 **Limitations on Liability**

Neither the provisions of this Agreement nor anything done under or pursuant to the rights, remedies and powers conferred upon the Secured Party and the Receiver, whether hereunder or otherwise, will render the Secured Party a mortgagee in possession. Neither the Secured Party nor any Receiver will be bound to collect, dispose of, realize, enforce or sell any Investment Property, Instruments, Chattel Paper or Intangibles (including any Accounts) comprised in the Collateral or to allow any such Collateral to be sold or disposed of, nor will it be responsible for any loss occasioned by any such sale or other dealing or for any failure to sell or so act, nor will it be responsible for any failure to take necessary steps to preserve rights against others in respect of such Collateral, nor will it be responsible for any loss occasioned by the failure to exercise any rights in respect of Collateral within the time limited for the exercise thereof. Neither the Secured Party nor the Receiver will be obligated to keep Collateral separate or identifiable.

**ARTICLE 5
GENERAL**

5.1 **Definitions**

As used herein the following expressions shall have the following meanings:

“**Affiliate**” has the meaning ascribed to such term in the *Business Corporations Act* (Ontario);

“**Business Day**” means any day except Saturday, Sunday or a statutory holiday within the Province of Ontario;

“**Capital Expenditure**” means any expenditure which would be chargeable to capital or fixed asset accounts and includes the total of all instalments of rental expressed to be payable during the whole term of each lease of personal property which would be classified as a capital lease;

“**Collateral**” means all property and assets of the Debtor, including without limitation, those property and assets specifically charged under Section 1.1(a) and subjected to the floating charge under Section 1.1(b) (except as excluded pursuant to Section 1.2);

“**Credit Agreement**” means the loan agreement made as of even date herewith among the Secured Party, as lender, [Holdco], as borrower and Mizrahi Development Group (145 Davenport) Inc., Mizrahi Development Group (185 Davenport) Inc., Mizrahi Soaring Developments Inc., One8One Davenport Inc., as guarantors;

“**Encumbrance**” has the meaning given to it in the Credit Agreement;

“**Environmental Assessment**” means any inquiry, investigation or report of the environmental condition of the Premises;

“**Environmental Laws**” has the meaning given to it in the Credit Agreement;

“**Environmental Order**” has the meaning given to it in the Credit Agreement;

“**Event of Default**” means any one or more of the events set out or referred to in Section 4.1;

“**Governmental Authority**” has the meaning given to it in the Credit Agreement;

“**Hazardous Substance**” has the meaning given to it in the Credit Agreement;

“**Lease**” means any lease (whether now existing, presently arising or created in future) whereby the Premises or any part thereof are demised and leased to the Debtor;

“**Loan Documents**” has the meaning given to it in the Credit Agreement;

“**Obligations**” has the meaning given to it in the Credit Agreement;

“**Occupants**” means the Debtor, its tenants and other occupants of any Premises;

“**Permitted Encumbrances**” has the meaning given to it in the Credit Agreement;

“**Premises**” means all lands and premises owned, leased or otherwise occupied by the Debtor from time to time, including, without limitation, those set out in Schedule “A”;

“**Receiver**” shall include one or more of a receiver, receiver manager or receiver and manager of all or a portion of the undertaking, property and assets of the Debtor appointed by the Secured Party pursuant to this Agreement or by or under any judgment or order of a court;

“**Subsidiary**” has the meaning given to it in the Credit Agreement.

5.2 Interpretation

- (a) “**This Agreement**”, “**hereto**”, “**hereby**”, “**hereunder**”, “**herein**”, and similar expressions refer to the whole of this Agreement and not to any particular Article, Section, subsection, paragraph, clause, subdivision or other portion hereof.
- (b) The expression “**not dealing at arm’s length**” has the meaning ascribed to it by the *Income Tax Act* (Canada).

- (c) Except as expressly provided herein, terms which are defined in the *Personal Property Security Act* (Ontario) shall have the same meaning where used herein.
- (d) Words importing the singular number only include the plural and vice versa and words importing gender shall include all genders and words importing persons include individuals, partnerships, corporations, trusts, unincorporated associations, joint ventures, Governmental Authorities and other entities.
- (e) All financial or accounting determinations, reports and statements provided for in this Agreement shall be made or prepared in accordance with generally accepted accounting principles applied in a consistent manner and shall be made and prepared on a consolidated basis.
- (f) The headings of the Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

5.3 **Governing Law**

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province Of Ontario (without regard to rules or principles relating to conflicts of laws) and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such Province and all courts competent to hear appeals therefrom.

Notwithstanding the foregoing: (1) the Secured Party shall have the right to bring any action or proceeding against the Debtor or the Collateral in the courts of any other jurisdiction the Secured Party deems necessary or appropriate in order to realize on the Collateral or other Security for the Obligations; and (2) each of the parties hereto acknowledges that any appeals from the courts described in the immediately preceding sentence may have to be heard by a court located outside those jurisdictions.

5.4 **Conflict**

In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of the Credit Agreement, the provisions of the Credit Agreement shall govern, it being understood that the purpose of this Agreement and all of the other Loan Documents is to add to, and not detract from, the rights granted to the Secured Party under the Loan Documents.

5.5 **Waiver**

No act or omission by the Secured Party in any manner whatever shall extend to or be taken to affect any provision hereof save only express waiver in writing. A waiver of default shall not extend to, or be taken in any manner whatsoever to affect the rights of the Secured Party with respect to, any subsequent default, whether similar or not. The Debtor waives every defence based upon any or all indulgences that may be granted by the Secured Party.

5.6 **Other Securities**

The rights of the Secured Party hereunder shall not be prejudiced nor shall the liabilities of the Debtor or of any other person be reduced in any way by the taking of any other security of any nature or kind whatsoever either at the time of execution of this Agreement or at any time hereafter.

5.7 No Merger or Novation

Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liability of the Debtor to pay the moneys hereby secured nor shall the same operate as a merger of any covenant herein contained or of any other Obligation, nor shall the acceptance of any payment or other security constitute or create any novation.

5.8 Amalgamation

The Debtor acknowledges that if it amalgamates with any other corporation or corporations (a) the Collateral and the lien created hereby shall extend to and include all the property and assets of each of the amalgamating corporations and the amalgamated corporation and to any property or assets of the amalgamated corporation thereafter owned or acquired, (b) the term, "Debtor", where used herein shall extend to and include each of the amalgamating corporations and the amalgamated corporation, and (c) the term, "Obligations", where used herein shall extend to and include the Obligations of each of the amalgamating corporations and the amalgamated corporation.

5.9 Power of Attorney

(i) Upon the occurrence of an Event of Default that is continuing, the Debtor hereby irrevocably constitutes and appoints the Secured Party and each of its officers holding office from time to time as the true and lawful attorneys of the Debtor with full power of substitution in the name of the Debtor, to do any and all such acts and things or execute and deliver all such agreements, documents and instruments as the Secured Party reasonably considers necessary or desirable to carry out the provisions and purposes of this Agreement or to exercise any of its rights and remedies hereunder and to enforce the Security Interest created hereunder, and to do all acts or things necessary to realize or collect the Proceeds, and the Debtor hereby ratifies and agrees to ratify all acts of any such attorneys taken or done in accordance with this Section. Without in any way limiting the generality of the foregoing, upon the occurrence of an Event of Default that is continuing, the Secured Party shall have the right to execute, for and in the name of the Debtor, all financing statements, financing change statements, conveyances, transfers, assignments, consents and other instruments as may be required for such purposes. This power of attorney shall not be revoked or terminated by any act or thing other than the termination of this Agreement pursuant to the terms hereunder.

(ii) The power of attorney granted hereby shall be coupled with an interest.

(iii) For greater certainty, the rights of the Secured Party under Section 5.9(i) may only be exercised by the Secured Party after the occurrence and during the continuance of an Event of Default.

5.10 The Secured Party May Remedy Default

If the Debtor fails to do anything hereby required to be done by it, the Secured Party may, but shall not be obliged to, do such thing and all sums thereby expended by the Secured Party shall be payable forthwith by the Debtor, shall be secured hereby and shall have the benefit of the lien hereby created, but no such performance by the Secured Party shall be deemed to relieve the Debtor from any default hereunder.

5.11 Collections

The Secured Party is entitled at any time whether or not an Event of Default has occurred hereunder to notify any account debtor or any obligor on an Instrument to make payment to the Secured

Party whether or not the Debtor was theretofore making collections on the Collateral and to take control of any proceeds to which the Secured Party is entitled.

5.12 **Purchase Money Security Interest**

The Debtor acknowledges that the security interest in any item of Collateral and its proceeds shall constitute a purchase money security interest to the extent it secures Obligations incurred by the Debtor to enable the Debtor to acquire rights in such Collateral. The Secured Party hereby reserves title to any item of Collateral which may be sold by the Secured Party to the Debtor until satisfaction of the Obligations as aforesaid.

5.13 **Taxes and Reserve Requirements**

In case the Secured Party is or becomes subject to any tax with respect to payments of principal, interest or other amounts by the Debtor hereunder or in respect of any of the Obligations (except for taxes on the overall net income of the Secured Party) or to any reserve or similar requirement against assets held by, or deposits in or for the account of, or loans by, an office of the Secured Party, or to any other condition with respect to this Agreement, and the result of any of the foregoing is to increase the cost to the Secured Party of making or maintaining any Obligation or to reduce the income receivable by the Secured Party in respect of any Obligation, then the Debtor shall pay to the Secured Party on demand that amount which shall compensate the Secured Party for such additional cost or reduction in income. A certificate of the Secured Party setting forth the amount of such additional compensation and the basis therefor shall be submitted by the Secured Party to the Debtor and shall be conclusive evidence, in the absence of manifest error, of such amount.

5.14 **Notices**

Any notice or other communication to be given by any party hereunder to another party shall be given or made pursuant to and in accordance with the terms and conditions of the Credit Agreement.

5.15 **Receipt**

The Debtor hereby acknowledges receipt of a true copy of this Agreement and a copy of the financing statement registered under the *Personal Property Security Act* (Ontario) in respect of the security created hereby.

5.16 **Successors and Assigns, etc.**

This Agreement and all its provisions shall enure to the benefit of the Secured Party, its successors and assigns, and shall be binding upon the Debtor, its successors and assigns, and every reference herein to a party hereto shall include such party's successors and assigns as if specifically named. Time shall be in all respects of the essence hereof.

IN WITNESS WHEREOF the Debtor has executed this Security Agreement on the 17th day of December, 2014.

NORTHERN CITADEL CAPITAL INC.

Per: 

Name: Sam Mizrahi

Title: President

I have the authority to bind the corporation

MIZRAHI SOARING DEVELOPMENTS INC.

Per: 

Name: Sam Mizrahi

Title: President

I have the authority to bind the corporation

ONE8ONE DAVENPORT INC.

Per: 

Name: Sam Mizrahi

Title: President

I have the authority to bind the corporation

SCHEDULE "A"

PREMISES

1. 145 Davenport Road Toronto, Ontario
2. 185 Davenport Road, Toronto, Ontario

This is Exhibit "G" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(5795)

196
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THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

BUSINESS DEBTOR

ONE80NE DAVENPORT INC.

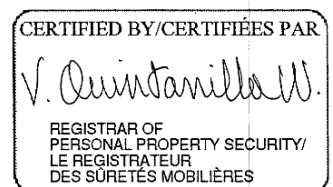
02AUG 2022

NUMBER 20220803193103.74 CONTAINS 3 PAGE(S), 1 FAMILY(IES).

RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

HORNTON GROUT FINNIGAN LLP - ROXANA MANEA

100 WELLINGTON STREET WEST
TORONTO ON M5K 1K7



PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 2
 (5796)

197
 F2491

BUSINESS DEBTOR
 ONE8ONE DAVENPORT INC.
 02AUG 2022

REGISTRATION STATEMENT / CLAIM FOR LIEN

PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
001	1		20220512 1555 1590 2177	P PPSA	5

BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME

BUSINESS NAME ONE8ONE DAVENPORT INC.

ONTARIO CORPORATION NO.
 ON M5R 2E4

ADDRESS 125 HAZELTON AVENUE TORONTO

BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME

BUSINESS NAME
 ONTARIO CORPORATION NO.

ADDRESS
 BRIDGING FINANCE INC., AS AGENT
 ADDRESS 77 KING STREET WEST, SUITE 2925 TORONTO ON M5K 1K7

DESCRIPTION	MOTOR VEHICLE	AMOUNT	DATE OF MATURITY	NO. FIXED
INVENTORY EQUIPMENT ACCOUNTS OTHER	INCLUDED		OR	MATURITY DATE
X	X	X	X	X

MAKE	MODEL	V.I.N.

THORNTON GROUT FINNIGAN LLP (GBM/AD)

ADDRESS 3200-100 WELLINGTON STREET WEST TORONTO ON M5K 1K7

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 3
(5797)

198
F2492

BUSINESS DEBTOR
ONE8ONE DAVENPORT INC.
02AUG 2022

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
512	1555	1590	2177

S) ARE REPORTED IN THIS ENQUIRY RESPONSE.

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

This is Exhibit "H" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

GENERAL SECURITY AGREEMENT

THIS AGREEMENT made as of the 2nd day of MAY, 2018.

BETWEEN:

181 Davenport Retail Inc.

(hereinafter called the "Debtor")

and

**Bridging Finance Inc., as agent for
Sprott Bridging Income Fund LP**

(hereinafter called the "Secured Party")

In consideration of the sum of One Dollar (\$1.00) now paid to it by the Secured Party, receipt of which is hereby acknowledged, and to secure the due payment and performance of all Obligations, the Debtor hereby agrees with the Secured Party and provides as follows:

**ARTICLE 1
SECURITY**

1.1 **Charge**

Subject to the exceptions set forth in Section 1.2, the Debtor hereby:

- (a) grants, sells, assigns, conveys, transfers, mortgages, pledges and charges, as and by way of fixed and specific mortgage, pledge and charge to and in favour of the Secured Party, and grants to the Secured Party a security interest in, all personal property of every nature and kind whatsoever and wheresoever situate now or at any time and from time to time owned by the Debtor, beneficially or otherwise, or in which or in respect of which the Debtor has any interest or rights of any kind, including, without limiting the generality of the foregoing, the following:
 - (i) All inventory of whatsoever kind and wheresoever situate now owned or hereafter acquired by the Debtor including without limiting the generality of the foregoing, goods for sale or lease or that have been leased; goods furnished or to be furnished under a contract of service; goods which are raw materials, work in process or materials used or consumed in a business or profession of the Debtor; goods used or procured for packing; finished goods; industrial growing crops, oil, gas and other minerals to be extracted; timber to be cut; and the young of animals after conception ("**Inventory**");
 - (ii) All book accounts and book debts and generally all accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing, accruing or growing due to or owned by the Debtor

- including but not limited to claims against the Crown and claims under insurance policies (“**Accounts**”);
- (iii) All machinery, equipment, tools, apparatus, plants, fixtures, furniture, vehicles, goods and other tangible personal property of whatsoever nature and kind, now owned or hereafter acquired by the Debtor other than Inventory (“**Equipment**”);
 - (iv) All chattel paper now owned or hereafter acquired by the Debtor (“**Chattel Paper**”);
 - (v) All warehouse receipts, bills of lading and other documents of title, whether negotiable or otherwise, now owned or hereafter acquired by the Debtor (“**Documents of Title**”);
 - (vi) All present and future bills, notes and cheques (as such are defined pursuant to the *Bills of Exchange Act* (Canada)), and all other writings that evidence a right to the payment of money and that are of a type that in the ordinary course of business are transferred by delivery without any necessary endorsement or assignment (“**Instruments**”);
 - (vii) All deeds, documents, writings, papers, books of accounts and other books evidencing or relating to Accounts, Chattel Paper, Instruments or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable; and all contracts, securities, instruments and other rights and benefits in respect thereof;
 - (viii) All present and future securities held by the Debtor or shares, options, rights, warrants, joint venture interests, interests in limited partnerships, bonds, debentures and all other documents which constitute evidence of a share, participation or other interest of the Debtor in property or in an enterprise or which constitute evidence of an obligation of an issuer,
 - (A) that are represented by security certificates in bearer form or registered form, or the transfer of which may be registered on books maintained for that purpose by or on behalf of the issuer,
 - (B) that are one of a class or series, or by their terms are divisible into a class or series, of shares, participations, interests or obligations, and
 - (C) that,
 - (i) are, or are of a type, dealt in or traded on securities exchanges or securities markets, or
 - (ii) are a medium for investment and by their terms expressly provides that it is a security for the purposes of the *Securities Transfer Act* (Ontario), 2006,

and includes: (a) shares or similar equity interests issued by a corporation, business trust or similar entity; (b) general or limited partnership interests or other equivalents (regardless of how designated) of or in a partnership or limited

partnership; and (c) and all substitutions therefor and dividends and income derived therefrom and all rights in respect thereof ("**Securities**");

- (ix) All present and after-acquired intangible property (save and except for Accounts) wherever situate and now or hereafter owned by the Debtor including, without limitation, all contractual rights, licenses, goodwill, patents, trademarks, tradenames, copyrights, other industrial designs and other industrial or intellectual property and undertaking of the Debtor and all other choses in action of the Debtor of every kind which now are, or which may at any time hereafter be, due or owing to or owned by the Debtor and all other intangible property of the Debtor which is not Accounts, Inventory, Chattel Paper, Documents of Title, Instruments, Money or Securities ("**Intangibles**");
 - (x) All present and future money of the Debtor, whether authorized or adopted by the Parliament of Canada as part of its currency or any foreign government as part of its currency ("**Money**");
 - (xi) All or any part of any present or future interest of the Debtor in present and after acquired investment property, including all Securities, Securities Accounts and Futures Accounts, all of the present and future security entitlements of the Debtor as an entitlement holder of such security entitlements, all of the present and future futures contracts of the Debtor as a futures customer in respect of such futures contracts, and all proceeds of any such property, where "**Futures Accounts**" means all of the present or future futures accounts maintained for the Debtor by a futures intermediary, including all futures contracts carried in such futures accounts and the agreements between the Borrower and the futures intermediary governing such futures accounts, and "**Securities Account**" means all of the present or future securities accounts maintained for the Debtor by a securities intermediary, including all of the financial assets credited to such securities accounts, all related securities entitlements and the agreements between the Debtor and the securities intermediary governing such securities accounts ("**Investment Property**");
 - (xii) Any property in any form (including fixtures) derived directly or indirectly from any dealings with any property herein described (including all products and cash and non cash proceeds thereof); indemnification or compensation for any such property lost, destroyed, damaged or lawfully or unlawfully taken or injuriously affected; all increases, additions and accessions thereto and substitutions and replacements thereof;
 - (xiii) All proceeds derived from the property, assets and undertaking of the Debtor referred to in this Section 1.1(a) including, without limitation, insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto or the proceeds therefrom;
- (b) charges with payment to the Secured Party of all Obligations as and by way of a floating charge the whole of the undertaking of the Debtor and all of its property and assets, real and personal, movable and immovable, tangible and intangible, of every nature and kind whatsoever and wheresoever situate, both present and future (other than property and assets from time to time effectively subjected to the fixed and specific mortgages and charges created hereby or by any instrument supplemental hereto).

1.2 Exceptions as to Leases

- (a) The last day of any term of years reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Debtor is excepted out of the Collateral, but the Debtor shall stand possessed of any such reversion upon trust to assign and dispose thereof as the Secured Party may direct. In addition, consumer goods now held or hereafter acquired by the Debtor and agreements that require the consent of a party other than the Debtor for the purposes of this Agreement are excepted out of the Collateral. Where the giving of a fixed and specific mortgage and charge on any real or personal property held by the Debtor under lease requires the consent of the lessor of such property, the giving of the fixed and specific mortgage and charge hereunder on such property shall not take effect until such consent is obtained or legally dispensed with but the suspension of the effect of the fixed and specific mortgage and charge on such property shall not affect the fixed and specific mortgage and charge on any other property of the Debtor.
- (b) Pursuant to this Agreement:
- (i) To the extent that the creation of the security interest created hereby would constitute a breach of or default under, or permit the acceleration or termination of any agreement, right, licence or permit of the Debtor which constitutes Collateral (each, a "**Restricted Asset**"), the security interest created hereunder shall not attach to the Restricted Asset, but the Debtor shall, subject to paragraph (ii) below, hold its interest in the Restricted Asset in trust for the Secured Party, provided that, until the security interest created hereby has become enforceable, the Debtor shall be entitled to all proceeds arising under or in connection with the Restricted Asset.
- (ii) To the extent that the creation of the trust in paragraph (i) above would constitute a breach or permit the acceleration or termination of any Restricted Asset, the security interest created hereunder shall not attach to the Restricted Asset, but the security interest created hereby will constitute a trust created in favour of the Secured Party pursuant to which the Debtor shall hold as trustee its interest in all proceeds arising under or in connection with the Restricted Asset in trust for the Secured Party, provided that until the security interest created hereby has become enforceable, the Debtor shall be entitled to receive all such proceeds.

1.3 Supplemental Indentures

The Debtor shall from time to time on demand by the Secured Party execute and deliver such further deeds or indentures supplemental hereto, which shall thereafter form part hereof, for the purpose of mortgaging to the Secured Party any property now owned or hereafter acquired by the Debtor and falling within the description of the Collateral, for correcting or amplifying the description of any property hereby mortgaged or intended so to be, or for any other purpose not inconsistent with the terms of this Agreement.

1.4 Continuing Security

This Agreement and any other security given with the Secured Party's consent in replacement thereof, substitution therefor or in addition thereto shall be held by the Secured Party as general and continuing security for due payment and performance of all Obligations, including without limitation all

costs and amounts payable pursuant hereto and interest on the Obligations at the rate or rates applicable thereto in accordance with the prevailing agreement between the Secured Party and the Debtor. Any and all payments made at any time in respect of the Obligations and the proceeds realized from any Investment Property held therefor (including moneys realized from the enforcement of this Agreement) may be applied (and reapplied from time to time notwithstanding any previous application) to such part or parts of the Obligations as the Secured Party sees fit. The Secured Party may hold as additional security hereunder any increase or profits or other proceeds realized from the Collateral (including money) for such period of time as the Secured Party sees fit. The Debtor shall be accountable for any deficiency and the Secured Party shall be accountable for any surplus.

1.5 Notification

After an Event of Default has occurred and is continuing, the Secured Party may notify any debtor of the Debtor on an intangible, Chattel Paper, or Account, or any obligor on an instrument (“**Account Debtor**”) to make all payments on Collateral to the Secured Party and the Debtor acknowledges that the proceeds of all sales, or any payments on or other proceeds of the Collateral, including but not limited to payments on, or other proceeds of, the Collateral received by the Debtor from any Account Debtor, whether before or after notification to such Account Debtor after default under this Security Agreement will be received and held by the Debtor in trust for the Secured Party and will be turned over to the Secured Party upon request and the Debtor will not commingle any proceeds of or payments on the Collateral with any of the Debtor’s funds or property, but will hold them separate and apart.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1 General Representations and Warranties

The Debtor represents, warrants and covenants to and with the Secured Party as follows:

(a) Leases

With respect to each Lease now existing:

- (i) the copy of the Lease provided to the Secured Party contains the entire agreement between the Debtor, the lessor and any guarantor, surety or indemnitor respecting the subject matter and there have been no modifications, amendments or extensions thereto or thereof; and
- (ii) the Lease is in full force and effect and in good standing.

(b) Fixtures

None of the goods comprised in the Collateral are fixtures except any fixtures that are affixed or attached to the Premises.

(c) Consumer Goods

None of the Collateral now owned or hereafter acquired is now or shall at any time be consumer goods of the Debtor.

(d) Location of Collateral

All of the Collateral is situated at the addresses set out in Schedule "A".

2.2 **Environmental Representations and Warranties**

The Debtor represents, warrants and covenants to and with the Secured Party that, except as previously disclosed to the Secured Party:

- (a) The Collateral now complies and will at all times in future comply in all material respects with all Environmental Laws and Environmental Orders.
- (b) After due and diligent inquiry, it has been found that there is no Hazardous Substance on or in any of the Collateral.
- (c) There is no judicial or administrative proceeding or investigation pending and no Environmental Order has been issued or, to the best of the Debtor's knowledge, threatened concerning the possible violation of any Environmental Laws or Environmental Orders in relation to the Collateral.
- (d) No Hazardous Substance shall be brought on to or used in any part of the Collateral without the prior written consent of the Secured Party and any Hazardous Substance shall be transported, used and stored only in accordance with all Environmental Laws, other lawful requirements, prudent industrial standards including, without limitation, any published environmental standards of any applicable industry association and any requirements of applicable insurance policies.
- (e) The Debtor has created, properly organized and maintained all documentation and records concerning environmental matters as required by any Environmental Laws or Environmental Orders and will maintain such documentation and records at all times in future as aforesaid.
- (f) The Debtor has provided to the Secured Party any Environmental Assessment and related documentation concerning any of the Collateral in its possession or control and shall promptly provide to the Secured Party any such material as the Debtor may obtain in future.
- (g) The Debtor shall promptly notify the Secured Party if it:
 - (i) receives notice from any Governmental Authority of any violation or potential violation of any Environmental Laws or Environmental Orders, including the Release of a Hazardous Substance, which may have occurred or been committed or is about to occur or be committed;
 - (ii) receives notice that any administrative or judicial complaint or Environmental Order has been issued or filed or is about to be issued or filed against any of the Occupants or their representatives alleging violations of any Environmental Laws or Environmental Orders or requiring the taking of any action in connection with any Hazardous Substance;

- (iii) learns of the enactment of any Environmental Laws or the issuance of any Environmental Orders which may have a material adverse effect on the Debtor or the Collateral; or
 - (iv) knows of or suspects that any Hazardous Substance has been brought on to any part of the Collateral or that there is any actual, threatened or potential Release of any Hazardous Substance on, from, in or under any part of the Collateral.
- (h) The Debtor hereby grants to the Secured Party and its employees and agents an irrevocable and non exclusive licence, subject to the rights of tenants, to enter any of the Premises to conduct testing and monitoring with respect to Hazardous Substances and to remove and analyze any Hazardous Substance at the cost and expense of the Debtor (which cost and expense shall be secured hereby).
- (i) The Debtor shall indemnify the Secured Party and hold the Secured Party harmless against and from all loss, costs, damages and expenses which the Secured Party may sustain, incur or be or become liable for by reason of or arising from the presence, clean up, removal or disposal of any Hazardous Substance referred to in this section or compliance with Environmental Laws or Environmental Orders relating thereto, including any clean up, decommissioning, restoration or remediation of the Collateral and other property (and this indemnification shall survive the satisfaction, release or extinguishment of the indebtedness secured hereby).

2.3 Title

The Debtor covenants with the Secured Party that, subject only to Permitted Encumbrances, it lawfully owns and is lawfully possessed of the Collateral and all property and assets indicated by the financial statements which it has delivered to the Secured Party to be owned by it and has good right and authority to mortgage and charge the same as provided for herein, free and clear of all Encumbrances (other than Permitted Encumbrances), and it will warrant and defend the title thereto as well as to any other property, rights and interests hereafter acquired by the Debtor. No person has any agreement or right or option to acquire any of such property (except under unfilled purchase orders accepted in the ordinary course of business for the sale of Inventory).

ARTICLE 3 COVENANTS OF THE DEBTOR

3.1 General Covenants

So long as this Agreement remains outstanding, the Debtor covenants and agrees as follows:

(a) To Pay Certain Debts

The Debtor 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 Collateral (other than a Permitted Encumbrance) and provide to the Secured Party when required satisfactory evidence of such payment and discharge, but the Debtor may, on giving the Secured Party such security (if any) as the Secured Party may require, refrain from paying or discharging any obligation so long as it contests in good faith its liability therefor.

(b) To Maintain Corporate Existence and Security

The Debtor shall:

- (i) diligently preserve all its rights, licences, powers, privileges, franchises and goodwill;
- (ii) observe and perform all of the Obligations and comply with all conditions under leases, licences and other agreements to which it is a party or upon or under which any of the Collateral is held;
- (iii) carry on and conduct its business in a proper and efficient and businesslike manner so as to preserve and protect the Collateral and income therefrom and in accordance with good business practices;
- (iv) keep proper books of account with correct entries of all transactions in relation to its business;
- (v) observe and conform to all valid requirements of law and of any Governmental Authority relative to the Collateral or the carrying on by the Debtor of its business;
- (vi) keep the Collateral in good condition and repair and if the Debtor 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 Secured Party to the Debtor then the Secured Party 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 Debtor shall reimburse the Secured Party for such costs forthwith upon demand;
- (vii) keep the Secured Party constantly informed in writing as to the location of the Collateral and the books of account and other records of the Debtor; and
- (viii) effect such registrations as may be required by the Secured Party from time to time to protect the security hereof.

(c) Leases

- (i) The Debtor shall at all times perform and discharge all of the lessee's covenants and obligations under any Lease.
- (ii) The Debtor will not without the written consent of the Secured Party terminate, surrender, amend, alter or vary the terms and conditions of the any Lease. Nor shall the Debtor, without the written consent of the Secured Party, waive performance by the landlord under any of the Leases or release any of the said landlords from any obligations under their respective Leases.

(d) To Furnish Proofs

The Debtor shall forthwith on the happening of any loss or damage furnish at its own expense all necessary proofs and do all necessary acts to enable the Secured Party to obtain payment of the insurance monies, which, in the sole discretion of the Secured Party, may be applied in reinstating the insured property or be paid to the Debtor or be applied in payment of the monies owing hereunder, whether due or not then due, or paid partly in one way and partly in another.

(e) Inspection by the Secured Party

Upon the occurrence of an Event of Default that is continuing, the Debtor shall allow any employees or authorized agents of the Secured Party at any reasonable time to enter the premises of the Debtor in order to inspect the Collateral and to inspect the books and records of the Debtor and make extracts therefrom, and shall permit the Secured Party prompt access to such other persons as the Secured Party may deem necessary or desirable for the purposes of inspecting or verifying any matters relating to any part of the Collateral or the books and records of the Debtor, provided that any information so obtained shall be kept confidential, save as required by the Secured Party in exercising its rights hereunder.

(f) Accounts

Subject to any Permitted Encumbrances thereon, Accounts shall be received by the Debtor in trust for the Secured Party; provided that as long as an Event of Default has not occurred the Debtor may collect and use the Accounts in the ordinary course of business.

(g) Delivery of Documents

Upon the occurrence of an Event of Default that is continuing, the Debtor shall deliver to the Secured Party promptly upon request:

- (i) Documents – any Chattel Paper, Instruments, certificated Securities and Documents of Title, and upon such delivery, where applicable, duly endorse the same for transfer in blank or as the Secured Party may direct; and
- (ii) Uncertificated Securities – any uncertificated Securities, including any registration and any further acts and things necessary for delivery of such uncertificated Securities to the Secured Party in accordance with the *Securities Transfer Act*, 2006.

(h) Transfer of Investment Property

Upon the occurrence of an Event of Default that is continuing, if the Collateral at any time includes an Investment Property, the Debtor will, if required by the Secured Party, transfer the Investment Property into the name of the Secured Party or the Secured Party's nominee and may appoint, or cause its nominee to appoint, the Debtor as proxy to vote concerning the Investment Property.

(i) Notice of Default

The Debtor will promptly give written notice to the Secured Party of the occurrence of any Event of Default or of any event which after notice or lapse of time would constitute an Event of Default.

(j) Not to Sell

The Debtor shall not, except as otherwise permitted hereunder, remove, destroy, lease, sell or otherwise dispose of any of the Collateral; provided that the Debtor may sell or otherwise dispose of Equipment which has become worn out or damaged or otherwise unsuitable for its purpose on condition that it shall substitute therefor, subject to the lien hereof and free from prior liens or charges, property of equal value so that the security hereby constituted shall not thereby be in any way reduced or impaired; and provided further that the Debtor may sell Inventory in the ordinary course of business and for the purpose of carrying on the same.

(k) Not to Make Certain Changes

The Debtor shall not without the prior written consent of the Secured Party remove any of the Collateral or any of the books of account or other records of the Debtor from the jurisdiction where presently located.

(l) Fixtures

The Debtor will not permit goods now or hereafter comprised in the Collateral to become fixtures unless they are, or are to be, affixed or attached to the Premises.

(m) Demolish Collateral

The Debtor will not demolish, remove or destroy any of the Collateral or any part or parts of it or cause or permit the demolition, or removal or destruction of it except in the ordinary course of business.

ARTICLE 4 EVENTS OF DEFAULT AND REMEDIES

4.1 Events of Default

The occurrence of any Event of Default under the Credit Agreement (as such term is defined in the Credit Agreement) shall constitute an Event of Default under this Agreement.

4.2 Consequences of an Event of Default

Upon the occurrence of an Event of Default, any obligation of the Secured Party to make further loans or advances or extend other credit to the Debtor shall immediately terminate and all Obligations and all monies secured hereby shall, at the option of the Secured Party, become forthwith due and payable whereupon the floating charge hereby created shall crystallize, all of the rights and remedies hereby conferred in respect of the Collateral shall become immediately enforceable and any and all additional and collateral securities for payment of this Agreement shall become immediately enforceable.

4.3 **Enforcement**

Upon the occurrence of any Event of Default, which is continuing, the Secured Party has the rights and remedies set out in the Credit Agreement, subject to the grace periods set out under Section 12.2 of the Credit Agreement.

4.4 **Disposition**

Without limiting the generality of the foregoing it shall be lawful for the Secured Party:

- (a) to make any sale, lease or other disposition of the Collateral either for cash or upon credit or partly for one and partly for the other upon such conditions as to terms of payment as it in its absolute discretion may deem proper;
- (b) to rescind or vary any contract for sale, lease or other disposition that the Secured Party may have entered into pursuant hereto and resell, release or redispense of the Collateral with or under any of the powers conferred herein; and
- (c) to stop, suspend or adjourn any sale, lease or other disposition from time to time and to hold the same as adjourned without further notice.

Upon any such sale, lease or other disposition the Secured Party shall be accountable only for money actually received by it. The Debtor shall be accountable for any deficiency and the Secured Party shall be accountable for any surplus. The Secured Party may deliver to the purchaser or purchasers of the Collateral or any part thereof good and sufficient conveyances or deeds for the same free and clear of any claim by the Debtor. The purchaser or lessee receiving any disposition of the Collateral or any part thereof need not inquire whether default under this Agreement has actually occurred but may as to this and all other matters rely upon a statutory declaration of an officer of the Secured Party, which declaration shall be conclusive evidence as between the Debtor and any such purchaser or lessee, and the purchaser or lessee need not look to the application of the purchase money, rent or other consideration given upon such sale, lease or other disposition, which shall not be affected by any irregularity of any nature or kind relating to the crystallizing or enforcing of the security hereof or the taking of possession of the Collateral or the sale, lease or other disposition thereof.

4.5 **Powers of Receiver**

Any Receiver appointed as aforesaid shall have the power without legal process:

- (a) to take possession of the Collateral or any part thereof wherever the same may be found;
- (b) to carry on the business of the Debtor or any part thereof in the name of the Debtor or of the Receiver; and
- (c) to exercise on behalf of the Secured Party all of the rights and remedies herein granted to the Secured Party,

and without in any way limiting the foregoing the Receiver shall have all the powers of a receiver appointed by a court of competent jurisdiction. Any Receiver shall, so far as concerns responsibility for his acts, be deemed the agent of the Debtor, and the Secured Party shall not be in any way responsible for any misconduct or negligence on the part of any Receiver or any loss resulting therefrom.

4.6 Application of Moneys

All moneys actually received by the Secured Party or by the Receiver in enforcing the security of this Agreement shall be applied, subject to the proper claims of any other person:

- (a) first, to pay or reimburse the Secured Party and any Receiver the costs, charges, expenses and advances payable by the Debtor in accordance herewith;
- (b) second, in or toward the payment to the Secured Party of all other moneys owing hereunder or secured hereby in such order as the Secured Party in its sole discretion may determine; and
- (c) third, any surplus shall be paid to the Debtor or its assigns.

4.7 Powers of Directors and Officers

Upon the Secured Party declaring as aforesaid that the security hereof has become enforceable and crystallized or the Debtor receiving notice from the Secured Party of the taking of possession of any of the Collateral or of the appointment of a Receiver, all the powers, functions, rights and privileges of the directors and officers of the Debtor with respect to the property, business and undertaking of the Debtor shall cease except to the extent specifically continued at any time by the Secured Party in writing.

4.8 Limitations on Liability

Neither the provisions of this Agreement nor anything done under or pursuant to the rights, remedies and powers conferred upon the Secured Party and the Receiver, whether hereunder or otherwise, will render the Secured Party a mortgagee in possession. Neither the Secured Party nor any Receiver will be bound to collect, dispose of, realize, enforce or sell any Investment Property, Instruments, Chattel Paper or Intangibles (including any Accounts) comprised in the Collateral or to allow any such Collateral to be sold or disposed of, nor will it be responsible for any loss occasioned by any such sale or other dealing or for any failure to sell or so act, nor will it be responsible for any failure to take necessary steps to preserve rights against others in respect of such Collateral, nor will it be responsible for any loss occasioned by the failure to exercise any rights in respect of Collateral within the time limited for the exercise thereof. Neither the Secured Party nor the Receiver will be obligated to keep Collateral separate or identifiable.

ARTICLE 5 GENERAL

5.1 Definitions

As used herein the following expressions shall have the following meanings:

“**Affiliate**” has the meaning ascribed to such term in the *Business Corporations Act* (Ontario);

“**Business Day**” means any day except Saturday, Sunday or a statutory holiday within the Province of Ontario;

“**Capital Expenditure**” means any expenditure which would be chargeable to capital or fixed asset accounts and includes the total of all instalments of rental expressed to be payable during the whole term of each lease of personal property which would be classified as a capital lease;

“**Collateral**” means all property and assets of the Debtor, including without limitation, those property and assets specifically charged under Section 1.1(a) and subjected to the floating charge under Section 1.1(b) (except as excluded pursuant to Section 1.2);

“**Credit Agreement**” means the loan agreement made as of even date herewith among the Secured Party, as lender, Northern Citadel Capital Inc., as borrower and Mizrahi Development Group (145 Davenport) Inc., Mizrahi Development Group (185 Davenport) Inc., Mizrahi Soaring Developments Inc., One8One Davenport Inc., as guarantors;

“**Encumbrance**” has the meaning given to it in the Credit Agreement;

“**Environmental Assessment**” means any inquiry, investigation or report of the environmental condition of the Premises;

“**Environmental Laws**” has the meaning given to it in the Credit Agreement;

“**Environmental Order**” has the meaning given to it in the Credit Agreement;

“**Event of Default**” means any one or more of the events set out or referred to in Section 4.1;

“**Governmental Authority**” has the meaning given to it in the Credit Agreement;

“**Hazardous Substance**” has the meaning given to it in the Credit Agreement;

“**Lease**” means any lease (whether now existing, presently arising or created in future) whereby the Premises or any part thereof are demised and leased to the Debtor;

“**Loan Documents**” has the meaning given to it in the Credit Agreement;

“**Obligations**” has the meaning given to it in the Credit Agreement;

“**Occupants**” means the Debtor, its tenants and other occupants of any Premises;

“**Permitted Encumbrances**” has the meaning given to it in the Credit Agreement;

“**Premises**” means all lands and premises owned, leased or otherwise occupied by the Debtor from time to time, including, without limitation, those set out in Schedule “A”;

“**Receiver**” shall include one or more of a receiver, receiver manager or receiver and manager of all or a portion of the undertaking, property and assets of the Debtor appointed by the Secured Party pursuant to this Agreement or by or under any judgment or order of a court;

“**Subsidiary**” has the meaning given to it in the Credit Agreement.

5.2 Interpretation

- (a) “**This Agreement**”, “**hereto**”, “**hereby**”, “**hereunder**”, “**herein**”, and similar expressions refer to the whole of this Agreement and not to any particular Article, Section, subsection, paragraph, clause, subdivision or other portion hereof.
- (b) The expression “**not dealing at arm’s length**” has the meaning ascribed to it by the *Income Tax Act* (Canada).

- (c) Except as expressly provided herein, terms which are defined in the *Personal Property Security Act* (Ontario) shall have the same meaning where used herein.
- (d) Words importing the singular number only include the plural and vice versa and words importing gender shall include all genders and words importing persons include individuals, partnerships, corporations, trusts, unincorporated associations, joint ventures, Governmental Authorities and other entities.
- (e) All financial or accounting determinations, reports and statements provided for in this Agreement shall be made or prepared in accordance with generally accepted accounting principles applied in a consistent manner and shall be made and prepared on a consolidated basis.
- (f) The headings of the Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

5.3 **Governing Law**

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province Of Ontario (without regard to rules or principles relating to conflicts of laws) and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such Province and all courts competent to hear appeals therefrom.

Notwithstanding the foregoing: (1) the Secured Party shall have the right to bring any action or proceeding against the Debtor or the Collateral in the courts of any other jurisdiction the Secured Party deems necessary or appropriate in order to realize on the Collateral or other Security for the Obligations; and (2) each of the parties hereto acknowledges that any appeals from the courts described in the immediately preceding sentence may have to be heard by a court located outside those jurisdictions.

5.4 **Conflict**

In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of the Credit Agreement, the provisions of the Credit Agreement shall govern, it being understood that the purpose of this Agreement and all of the other Loan Documents is to add to, and not detract from, the rights granted to the Secured Party under the Loan Documents.

5.5 **Waiver**

No act or omission by the Secured Party in any manner whatever shall extend to or be taken to affect any provision hereof save only express waiver in writing. A waiver of default shall not extend to, or be taken in any manner whatsoever to affect the rights of the Secured Party with respect to, any subsequent default, whether similar or not. The Debtor waives every defence based upon any or all indulgences that may be granted by the Secured Party.

5.6 **Other Securities**

The rights of the Secured Party hereunder shall not be prejudiced nor shall the liabilities of the Debtor or of any other person be reduced in any way by the taking of any other security of any nature or kind whatsoever either at the time of execution of this Agreement or at any time hereafter.

5.7 No Merger or Novation

Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liability of the Debtor to pay the moneys hereby secured nor shall the same operate as a merger of any covenant herein contained or of any other Obligation, nor shall the acceptance of any payment or other security constitute or create any novation.

5.8 Amalgamation

The Debtor acknowledges that if it amalgamates with any other corporation or corporations (a) the Collateral and the lien created hereby shall extend to and include all the property and assets of each of the amalgamating corporations and the amalgamated corporation and to any property or assets of the amalgamated corporation thereafter owned or acquired, (b) the term, "Debtor", where used herein shall extend to and include each of the amalgamating corporations and the amalgamated corporation, and (c) the term, "Obligations", where used herein shall extend to and include the Obligations of each of the amalgamating corporations and the amalgamated corporation.

5.9 Power of Attorney

(i) Upon the occurrence of an Event of Default that is continuing, the Debtor hereby irrevocably constitutes and appoints the Secured Party and each of its officers holding office from time to time as the true and lawful attorneys of the Debtor with full power of substitution in the name of the Debtor, to do any and all such acts and things or execute and deliver all such agreements, documents and instruments as the Secured Party reasonably considers necessary or desirable to carry out the provisions and purposes of this Agreement or to exercise any of its rights and remedies hereunder and to enforce the Security Interest created hereunder, and to do all acts or things necessary to realize or collect the Proceeds, and the Debtor hereby ratifies and agrees to ratify all acts of any such attorneys taken or done in accordance with this Section. Without in any way limiting the generality of the foregoing, upon the occurrence of an Event of Default that is continuing, the Secured Party shall have the right to execute, for and in the name of the Debtor, all financing statements, financing change statements, conveyances, transfers, assignments, consents and other instruments as may be required for such purposes. This power of attorney shall not be revoked or terminated by any act or thing other than the termination of this Agreement pursuant to the terms hereunder.

(ii) The power of attorney granted hereby shall be coupled with an interest.

(iii) For greater certainty, the rights of the Secured Party under Section 5.9(i) may only be exercised by the Secured Party after the occurrence and during the continuance of an Event of Default.

5.10 The Secured Party May Remedy Default

If the Debtor fails to do anything hereby required to be done by it, the Secured Party may, but shall not be obliged to, do such thing and all sums thereby expended by the Secured Party shall be payable forthwith by the Debtor, shall be secured hereby and shall have the benefit of the lien hereby created, but no such performance by the Secured Party shall be deemed to relieve the Debtor from any default hereunder.

5.11 Collections

The Secured Party is entitled at any time whether or not an Event of Default has occurred hereunder to notify any account debtor or any obligor on an Instrument to make payment to the Secured

Party whether or not the Debtor was theretofore making collections on the Collateral and to take control of any proceeds to which the Secured Party is entitled.

5.12 **Purchase Money Security Interest**

The Debtor acknowledges that the security interest in any item of Collateral and its proceeds shall constitute a purchase money security interest to the extent it secures Obligations incurred by the Debtor to enable the Debtor to acquire rights in such Collateral. The Secured Party hereby reserves title to any item of Collateral which may be sold by the Secured Party to the Debtor until satisfaction of the Obligations as aforesaid.

5.13 **Taxes and Reserve Requirements**

In case the Secured Party is or becomes subject to any tax with respect to payments of principal, interest or other amounts by the Debtor hereunder or in respect of any of the Obligations (except for taxes on the overall net income of the Secured Party) or to any reserve or similar requirement against assets held by, or deposits in or for the account of, or loans by, an office of the Secured Party, or to any other condition with respect to this Agreement, and the result of any of the foregoing is to increase the cost to the Secured Party of making or maintaining any Obligation or to reduce the income receivable by the Secured Party in respect of any Obligation, then the Debtor shall pay to the Secured Party on demand that amount which shall compensate the Secured Party for such additional cost or reduction in income. A certificate of the Secured Party setting forth the amount of such additional compensation and the basis therefor shall be submitted by the Secured Party to the Debtor and shall be conclusive evidence, in the absence of manifest error, of such amount.

5.14 **Notices**

Any notice or other communication to be given by any party hereunder to another party shall be given or made pursuant to and in accordance with the terms and conditions of the Credit Agreement.

5.15 **Receipt**

The Debtor hereby acknowledges receipt of a true copy of this Agreement and a copy of the financing statement registered under the *Personal Property Security Act* (Ontario) in respect of the security created hereby.

5.16 **Successors and Assigns, etc.**

This Agreement and all its provisions shall enure to the benefit of the Secured Party, its successors and assigns, and shall be binding upon the Debtor, its successors and assigns, and every reference herein to a party hereto shall include such party's successors and assigns as if specifically named. Time shall be in all respects of the essence hereof.

IN WITNESS WHEREOF the Debtor has executed this Security Agreement on the May day of 2018.

181 DAVENPORT RETAIL INC.

Per:



Name: Sam Mizrahi

Title: President

I have authority to bind the corporation.

SCHEDULE "A"
PREMISES

1. 185 Davenport Road, Unit 100, Toronto, Ontario.

This is Exhibit "I" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(5798)

219
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THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

BUSINESS DEBTOR

181 DAVENPORT RETAIL INC.

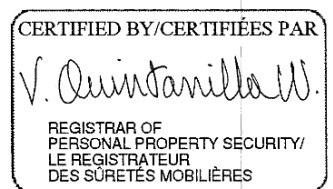
02AUG 2022

NUMBER 20220803193124.26 CONTAINS 4 PAGE(S), 2 FAMILY(IES).

RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

THORNTON GROUT FINNIGAN LLP - ROXANA MANEA

100 WELLINGTON STREET WEST
TORONTO ON M5K 1K7



PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 2
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220
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BUSINESS DEBTOR
 181 DAVENPORT RETAIL INC.
 02AUG 2022

ING STATEMENT / CLAIM FOR LIEN

PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
001	1		20180502 1010 1590 9149	P PFSA	10

BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME

BUSINESS NAME 181 DAVENPORT RETAIL INC.

ONTARIO CORPORATION NO.
 ON M5P 2N3

ADDRESS 189 FOREST HILL ROAD TORONTO

BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME

ONTARIO CORPORATION NO.

BUSINESS NAME
 ADDRESS
 KEB HANA BANK CANADA

ADDRESS 627 BLOOR STREET WEST TORONTO ON M6G 1K8

INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY OR	NO FIXED MATURITY DATE
X	X	X	X				X

MAKE	MODEL	V.I.N.

GENERAL SECURITY AGREEMENT AND NOTICE OF ASSIGNMENT OF LEASES AND
 INTERESTS - 185 DAVENPORT ROAD, UNIT 100, TORONTO, ONTARIO M5R 0C4

BALDWIN SENNECKE HALMAN LLP

ADDRESS 1320-25 ADELAIDE ST. E. VICTORIA BUILDING TORONTO ON M5C 3A1

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTREUR
 DES SÛRETÉS MOBILIÈRES

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 3
 (5800)

221
 F2515

BUSINESS DEBTOR
 181 DAVENPORT RETAIL INC.
 02AUG 2022

ING STATEMENT / CLAIM FOR LIEN

PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
001	1		20180502 1050 1590 9164	P PPSA	5

BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
	181 DAVENPORT RETAIL INC.		

ADDRESS	189 FOREST HILL ROAD	TORONTO	ONTARIO CORPORATION NO.	ON	M5P 2N3
---------	----------------------	---------	-------------------------	----	---------

BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME

ADDRESS			ONTARIO CORPORATION NO.		
---------	--	--	-------------------------	--	--

ADDRESS	BRIDGING FINANCE INC., AS AGENT				
ADDRESS	77 KING ST. WEST, SUITE 2925	TORONTO	ON	M5K 1K7	

INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY	OR	NO FIXED MATURITY DATE
X	X	X	X	X				

MAKE	MODEL	V.I.N.

CHAITONS LLP (DB/56680)

ADDRESS	5000 YONGE STREET, 10TH FLOOR	TORONTO	ON	M2N 7E9
---------	-------------------------------	---------	----	---------

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 4

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 4
(5801)

222
F2516

BUSINESS DEBTOR
181 DAVENPORT RETAIL INC.
02AUG 2022

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
02 1010 1590 9149			
02 1050 1590 9164			

ARE REPORTED IN THIS ENQUIRY RESPONSE.

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

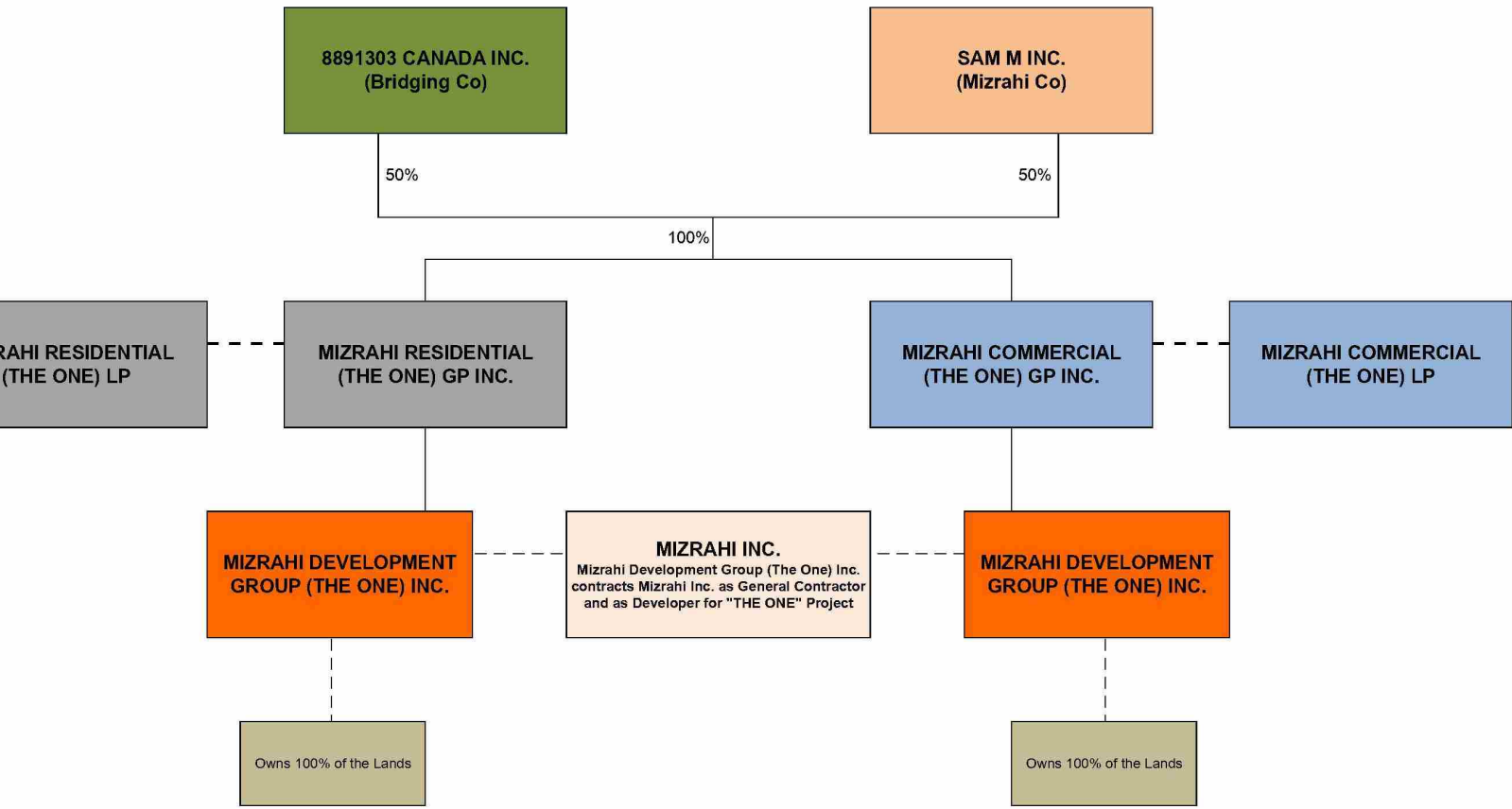
This is Exhibit "J" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

THE ONE - STRUCTURE



This is Exhibit "K" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

226

Transaction Number: APP-17-000000221
Report Generated on August 08, 2022, 16:50

F2520

Ministry of Government and
Consumer Services



Profile Report

MIZRAHI INC. as of August 08, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	MIZRAHI INC.
Ontario Corporation Number (OCN)	1713728
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	October 16, 2006
Registered or Head Office Address	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F252

Page 1 of 8

227

Transaction Number: APP-APP-221
Report Generated on August 08, 2022, 16:50

F2521

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name	Sam MIZRAHI
Address for Service	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Resident Canadian	Yes
Date Began	October 16, 2006

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F253

Active Officer(s)

Name	Sam MIZRAHI
Position	President
Address for Service	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Date Began	October 16, 2006

Name	Sam MIZRAHI
Position	Secretary
Address for Service	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Date Began	October 16, 2006

Name	Sam MIZRAHI
Position	Treasurer
Address for Service	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Date Began	October 16, 2006

Name	Sam MIZRAHI
Position	Vice-President
Address for Service	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Date Began	October 18, 2007

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

229

Transaction Number: APP-1-0-0-0-221
Report Generated on August 08, 2022, 16:50

F2523

Corporate Name History

Name

Effective Date

MIZRAHI INC.

October 16, 2006

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F255

Page 4 of 8

230

Transaction Number: APP-APP-20221
Report Generated on August 08, 2022, 16:50

F2524

Active Business Names

Name	THE ONE
Business Identification Number (BIN)	291125573
Registration Date	October 21, 2019
Expiry Date	October 20, 2024

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F256

Expired or Cancelled Business Names

Name MIZRAHICORP
Business Identification Number (BIN) 220179741
Status Inactive - Expired
Registration Date February 16, 2012
Expired Date February 15, 2017

Name MIZRAHI DEVELOPMENTS
Business Identification Number (BIN) 260117254
Status Inactive - Expired
Registration Date February 02, 2016
Expired Date February 01, 2021

Name MIZRAHI METAL
Business Identification Number (BIN) 180612061
Status Inactive - Expired
Registration Date June 04, 2008
Expired Date June 03, 2013

Name MIZRAHI DESIGN/BUILD
Business Identification Number (BIN) 170073191
Status Inactive - Expired
Registration Date January 18, 2007
Expired Date January 16, 2017

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

Document List

Filing Name	Effective Date
Archive Document Package	December 24, 2021
Annual Return - 2020 PAF: SAM MIZRAHI - DIRECTOR	May 16, 2021
Annual Return - 2019 PAF: SAM MIZRAHI - DIRECTOR	June 14, 2020
Annual Return - 2018 PAF: SAM MIZRAHI - DIRECTOR	May 26, 2019
Annual Return - 2017 PAF: SAM MIZRAHI - DIRECTOR	May 20, 2018
Annual Return - 2016 PAF: SAM MIZRAHI - DIRECTOR	May 21, 2017
CIA - Notice of Change PAF: SAM MIZRAHI - DIRECTOR	December 09, 2016
Annual Return - 2015 PAF: SAM MIZRAHI - DIRECTOR	May 22, 2016
Annual Return - 2014 PAF: SAM MIZRAHI - DIRECTOR	April 18, 2015
Annual Return - 2013 PAF: SAM MIZRAHI - DIRECTOR	May 03, 2014
Annual Return - 2012 PAF: SAM MIZRAHI - DIRECTOR	April 27, 2013
Annual Return - 2011 PAF: SAM MIZRAHI - DIRECTOR	May 02, 2012
Annual Return - 2010 PAF: SAM MIZRAHI - DIRECTOR	April 30, 2011

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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Annual Return - 2009 PAF: SAM MIZRAHI - DIRECTOR	May 08, 2010
Annual Return - 2008 PAF: SAM MIZRAHI - DIRECTOR	July 11, 2009
Annual Return - 2006 PAF: SAM MIZRAHI - DIRECTOR	March 16, 2008
Annual Return - 2007 PAF: SAM MIZRAHI - DIRECTOR	March 16, 2008
CIA - Notice of Change PAF: JEFFREY A. HALMAN - OTHER	November 21, 2007
CIA - Initial Return PAF: JEFFREY A. HALMAN - OTHER	December 09, 2006
BCA - Articles of Incorporation	October 16, 2006

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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234

F2528

F260

235

Transaction Number: APP-APP-2022-0514
Report Generated on August 08, 2022, 16:39

F2529

Ministry of Government and
Consumer Services



Profile Report

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. as of August 08, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.
Ontario Corporation Number (OCN)	2425627
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	July 08, 2014
Registered or Head Office Address	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F261

Page 1 of 7

236

Transaction Number: APP-APP-10514
Report Generated on August 08, 2022, 16:39

F2530

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name Virginia Jenny COCO
Address for Service 362 Russell Hill Road, Toronto, Ontario, Canada, M4V 2T9
Resident Canadian Yes
Date Began December 17, 2014

Name Sam MIZRAHI
Address for Service 189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Resident Canadian Yes
Date Began July 08, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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F262

Active Officer(s)

Name	Virginia Jenny COCO
Position	Vice-President
Address for Service	362 Russell Hill Road, Toronto, Ontario, Canada, M4V 2T9
Date Began	December 17, 2014

Name	Sam MIZRAHI
Position	President
Address for Service	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Date Began	July 25, 2014

Name	Sam MIZRAHI
Position	Secretary
Address for Service	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Date Began	July 25, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

238

Transaction Number: APP-APP-2014-0514
Report Generated on August 08, 2022, 16:39

F2532

Corporate Name History

Name

Effective Date

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.

July 08, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F264

Page 4 of 7

Active Business Names

Name	THE ONE
Business Identification Number (BIN)	241210848
Registration Date	December 22, 2014
Expiry Date	December 20, 2024

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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Expired or Cancelled Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: SAM MIZRAHI - DIRECTOR	January 29, 2015
CIA - Notice of Change PAF: CHRIS TURNEY - OTHER	October 22, 2014
CIA - Initial Return PAF: CHRIS TURNEY - OTHER	October 17, 2014
BCA - Articles of Incorporation	July 08, 2014

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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242
F2536

F268

243

Transaction Number: APP-~~F2537~~790
Report Generated on August 08, 2022, 15:52

Ministry of Government and
Consumer Services



Profile Report

MIZRAHI RESIDENTIAL (THE ONE) LP as of August 08, 2022

Act	Limited Partnerships Act
Type	Extra-Provincial Limited Partnership
Firm Name	MIZRAHI RESIDENTIAL (THE ONE) LP
Governing Jurisdiction	Canada - Manitoba
Business Identification Number (BIN)	240857730
Declaration Status	Inactive - Withdrawal of EPLP
Declaration Date	September 03, 2014
Expiry Date	September 02, 2019
Inactive Date	September 20, 2017
Principal Place of Business	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Activity (NAICS Code)	[Not Provided] - [Not Provided]

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F269

General Partners

Number of General Partners 1

Partners

Partner 1

Name	MIZRAHI RESIDENTIAL (THE ONE) GP INC.
Ontario Corporation Number (OCN)	2425880
Entity Type	Ontario Business Corporation
Registered or Head Office Address	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

245

Transaction Number: APP-150790
Report Generated on August 08, 2022, 15:52

F2539

Firm Name History

Name

Effective Date

MIZRAHI RESIDENTIAL (THE ONE) LP

September 03, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F271

Active Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

Expired or Cancelled Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

Document List**Filing Name**

LPA - Withdrawal - Other Jurisdiction

LPA - File a Declaration of an Extra-Provincial Limited Partnership

Effective Date

September 20, 2017

September 03, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

249

F2543

F275

250

Transaction Number: APP-APP-2022-01984
Report Generated on August 08, 2022, 15:52

F2544

Ministry of Government and
Consumer Services



Profile Report

MIZRAHI RESIDENTIAL (THE ONE) GP INC. as of August 08, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	MIZRAHI RESIDENTIAL (THE ONE) GP INC.
Ontario Corporation Number (OCN)	2425880
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	July 09, 2014
Registered or Head Office Address	125 Hazelton Avenue, Toronto, Ontario, Canada, M5R 2E4

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F276

Page 1 of 7

F2545

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name Rock Anthony COCO
Address for Service 10 Bellair Street, 1205, Toronto, Ontario, Canada, M5R 3T8
Resident Canadian Yes
Date Began July 25, 2014

Name Virginia Jenny COCO
Address for Service 362 Russell Hill Road, Toronto, Ontario, Canada, M4V 2T9
Resident Canadian Yes
Date Began July 25, 2014

Name Sam MIZRAHI
Address for Service 189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Resident Canadian Yes
Date Began July 09, 2014

Name Natasha SHARPE
Address for Service 182 Crescent Road, Toronto, Ontario, Canada, M4W 1V3
Resident Canadian Yes
Date Began July 25, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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F277

Active Officer(s)

Name Rock Anthony COCO
Position Vice-President
Address for Service 10 Bellair Street, 1205, Toronto, Ontario, Canada, M5R 3T8
Date Began July 25, 2014

Name Virginia Jenny COCO
Position Vice-President
Address for Service 362 Russell Hill Road, Toronto, Ontario, Canada, M4V 2T9
Date Began July 25, 2014

Name Sam MIZRAHI
Position President
Address for Service 189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Date Began July 25, 2014

Name Natasha SHARPE
Position Secretary
Address for Service 182 Crescent Road, Toronto, Ontario, Canada, M4W 1V3
Date Began July 25, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

253

Transaction Number: APP-15-05-17-984
Report Generated on August 08, 2022, 15:52

F2547

Corporate Name History

Name

Effective Date

MIZRAHI RESIDENTIAL (THE ONE) GP INC.

July 09, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F279

Active Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

Expired or Cancelled Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

Document List

Filing Name	Effective Date
Annual Return - 2020 PAF: SAM MIZRAHI - DIRECTOR	May 16, 2021
Annual Return - 2019 PAF: SAM MIZRAHI - DIRECTOR	May 16, 2021
CIA - Initial Return PAF: SAM MIZRAHI - DIRECTOR	October 17, 2014
BCA - Articles of Incorporation	July 09, 2014

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

257

F2551

F283

258

Transaction Number: APP-APP-102
Report Generated on August 08, 2022, 16:00

F2552

Ministry of Government and
Consumer Services



Profile Report

MIZRAHI COMMERCIAL (THE ONE) LP as of August 08, 2022

Act	Limited Partnerships Act
Type	Ontario Limited Partnership
Firm Name	MIZRAHI COMMERCIAL (THE ONE) LP
Business Identification Number (BIN)	241004332
Declaration Status	Active
Declaration Date	October 17, 2014
Expiry Date	October 15, 2024
Principal Place of Business	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Activity (NAICS Code)	[Not Provided] - [Not Provided]

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F284

Page 1 of 6

General Partners

Number of General Partners 1

Partners

Partner 1

Name	MIZRAHI COMMERCIAL (TEH ONE) GP INC.
Ontario Corporation Number (OCN)	2425879
Entity Type	Ontario Business Corporation
Registered or Head Office Address	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

260

Transaction Number: APP-102
Report Generated on August 08, 2022, 16:00

F2554

Firm Name History

Name

Effective Date

MIZRAHI COMMERCIAL (THE ONE) LP

October 17, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F286

Active Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

Expired or Cancelled Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

Document List

Filing Name	Effective Date
Renewal of an Ontario Limited Partnership Declaration	September 11, 2019
LPA - File a Declaration of an Ontario Limited Partnership	October 17, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

264

F2558

F290

265

Transaction Number: APP-1-0-0-0-087
Report Generated on August 08, 2022, 15:52

F2559

Ministry of Government and
Consumer Services



Profile Report

MIZRAHI COMMERCIAL (THE ONE) GP INC. as of August 08, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	MIZRAHI COMMERCIAL (THE ONE) GP INC.
Ontario Corporation Number (OCN)	2425879
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	July 09, 2014
Registered or Head Office Address	125 Hazelton Avenue, Toronto, Ontario, Canada, M5R 2E4

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

F291

Page 1 of 7

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name Virginia Jenny COCO
Address for Service 362 Russell Hill Road, Toronto, Ontario, Canada, M4V 2T9
Resident Canadian Yes
Date Began July 25, 2014

Name Sam MIZRAHI
Address for Service 189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Resident Canadian Yes
Date Began July 09, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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Active Officer(s)

Name	Rock Anthony COCO
Position	Vice-President
Address for Service	949 Wilson Avenue, Toronto, Ontario, Canada, M3K 1G2
Date Began	February 06, 2015
Name	Virginia Jenny COCO
Position	Vice-President
Address for Service	362 Russell Hill Road, Toronto, Ontario, Canada, M4V 2T9
Date Began	July 25, 2014
Name	Sam MIZRAHI
Position	President
Address for Service	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Date Began	July 25, 2014
Name	Natasha SHARPE
Position	Vice-President
Address for Service	182 Crescent Road, Toronto, Ontario, Canada, M4W 1V3
Date Began	December 17, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

Corporate Name History

Name

Effective Date

MIZRAHI COMMERCIAL (THE ONE) GP INC.

July 09, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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Active Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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Expired or Cancelled Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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Document List

Filing Name	Effective Date
Annual Return - 2020 PAF: SAM MIZRAHI - DIRECTOR	May 16, 2021
Annual Return - 2019 PAF: SAM MIZRAHI - DIRECTOR	May 16, 2021
CIA - Notice of Change PAF: CHRIS TURNEY - OTHER	February 10, 2015
CIA - Notice of Change PAF: CHRISTOPHER TURNEY - OTHER	January 29, 2015
CIA - Notice of Change PAF: SAM MIZRAHI - DIRECTOR	January 29, 2015
CIA - Notice of Change PAF: CHRIS TURNEY - OTHER	October 22, 2014
CIA - Initial Return PAF: SAM MIZRAHI - DIRECTOR	October 17, 2014
BCA - Articles of Incorporation	July 09, 2014

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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This is Exhibit "L" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

273

Transaction Number: APP-~~F2567~~210
Report Generated on August 08, 2022, 15:40



Ministry of Government and
Consumer Services

Profile Report

SAM M INC. as of August 08, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	SAM M INC.
Ontario Corporation Number (OCN)	2425689
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	July 08, 2014
Registered or Head Office Address	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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F299

Page 1 of 7

274

Transaction Number: APP-1-2014-000210
Report Generated on August 08, 2022, 15:40

F2568

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name	Sam MIZRAHI
Address for Service	189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
Resident Canadian	Yes
Date Began	July 08, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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F300

275

Transaction Number: APP-1-2022-000210
Report Generated on August 08, 2022, 15:40

F2569

Active Officer(s)

Name
Position
Address for Service
Date Began

Sam MIZRAHI
President
189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
July 08, 2014

Name
Position
Address for Service
Date Began

Sam MIZRAHI
Secretary
189 Forest Hill Road, Toronto, Ontario, Canada, M5P 2N3
July 08, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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F301

276

Transaction Number: APP-15-20210
Report Generated on August 08, 2022, 15:40

F2570

Corporate Name History

Name

Effective Date

SAM M INC.
July 08, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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F302

Active Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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

Expired or Cancelled Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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Document List

Filing Name	Effective Date
CIA - Initial Return PAF: SAM MIZRAHI - DIRECTOR	June 21, 2017
BCA - Articles of Incorporation	July 08, 2014

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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This is Exhibit "M" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*




A Commissioner for taking affidavits

ADAM DRIEDGER

**Government
of Canada****Gouvernement
du Canada**[Canada.ca](#) → [Innovation, Science and Economic Development Canada](#) → [Corporations Canada](#)→ [Search for a Federal Corporation](#)

Federal Corporation Information - 889130-3

 Beware of scams and other suspicious activities. See [Corporations Canada's alerts](#).

Note

This information is available to the public in accordance with legislation (see [Public disclosure of corporate information](#)).

[Order copies of corporate documents](#)

Corporation Number

889130-3

Business Number (BN)

812251171RC0001

Corporate Name

8891303 CANADA INC.

Status

Inactive - Amalgamated into [12823543 Canada Ltd.](#)
on 2021-03-13

Governing Legislation

Canada Business Corporations Act - 2014-05-18

[Order a Corporate Profile](#) [[View PDF Sample](#)] [[View HTML Sample](#)].

[PDF Readers](#)

Registered Office Address

282
F2576

949
Wilson Avenue
Toronto ON M3K 1G2
Canada

Note

Active CBCA corporations are required to update this information within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

Directors**Minimum** 1**Maximum** 10

Rock-Anthony Coco
10 Bellair Street
Suite 1205
Toronto ON M5R 3T8
Canada

Jenny Virginia Coco
120 Warren Road
Toronto ON M4V 2S1
Canada

Note

Active CBCA corporations are required to update director information (names, addresses, etc.) within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

Annual Filings**Anniversary Date (MM-DD)**

F308

283
F2577

05-18

Date of Last Annual Meeting

2020-05-21

Annual Filing Period (MM-DD)

05-18 to 07-17

Type of Corporation

Non-distributing corporation with 50 or fewer shareholders

Status of Annual Filings

2020 - Filed

2019 - Filed

2018 - Filed

Corporate History

Corporate Name History

2014-05-18 to Present

8891303 CANADA INC.

Certificates and Filings**Certificate of Incorporation**

2014-05-18

[Order copies of corporate documents](#)[Start New Search](#)[Return to Search Results](#)**Date Modified:**

2022-05-18

F309

284

F2578

F310



Corporate Profile / Profil corporatif

Date and time of Corporate Profile (YYYY-MM-DD)	2022-08-08 3:48 PM	(AAAA-MM-JJ) Date et heure du Profil corporatif
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CORPORATE INFORMATION		RENSEIGNEMENTS CORPORATIFS	
Corporate name			Dénomination
	12823543 Canada Ltd.		
Corporation number	1282354-3	Numéro de société ou d'organisation	
Business number	812251171RC0002	Numéro d'entreprise	
Governing legislation			Régime législatif
	Canada Business Corporations Act (CBCA) - 2021-03-13 Loi canadienne sur les sociétés par actions (LCSA) - 2021-03-13		
Status			Statut
	Active Active		

REGISTERED OFFICE ADDRESS	ADRESSE DU SIÈGE
	949 Wilson Avenue Toronto ON M3K 1G2 Canada

ANNUAL FILINGS		DÉPÔTS ANNUELS	
Anniversary date (MM-DD)	03-13	(MM-JJ) Date anniversaire	
Filing period (MM-DD)	03-13 to/au 05-12	(MM-JJ) Période de dépôt	
Status of annual filings			Statut des dépôts annuels
	Filed	2022	Déposé
Date of last annual meeting (YYYY-MM-DD)	2022-03-13	(AAAA-MM-JJ) Date de la dernière assemblée annuelle	
Type			Type
	Non-distributing corporation with 50 or fewer shareholders Société n'ayant pas fait appel au public et comptant 50 actionnaires ou moins		

F311

DIRECTORS		
Minimum number	1	Nombre minimal
Maximum number	4	Nombre maximal
Current number	3	Nombre actuel
Jenny Virginia Coco Coco	949 Wilson Avenue, Toronto ON M3K 1G2, Canada	
Nina Onoria Coco	949 Wilson Avenue, Toronto ON M3K 1G2, Canada	
Rock-Anthony Coco	949 Wilson Avenue, Toronto ON M3K 1G2, Canada	

CORPORATE HISTORY	HISTORIQUE CORPORATIF
Corporate name history (YYYY-MM-DD)	(AAAA-MM-JJ) Historique de la dénomination
2021-03-13 to present / à maintenant	12823543 Canada Ltd.
Certificates issued (YYYY-MM-DD)	(AAAA-MM-JJ) Certificats émis
Certificate of Amalgamation Corporations amalgamated	2021-03-13 Certificat de fusion Corporations amalgamated
	12787601 12787601 Canada Ltd. 8891303 8891303 CANADA INC.
Amendments details are only available for amendments effected after 2010-03-20. Some certificates issued prior to 2000 may not be listed.	Seuls les renseignements concernant les modifications effectuées après 2010-03-20 sont disponibles. Certains certificats émis avant 2000 pourraient ne pas être listés.
Documents filed (YYYY-MM-DD)	(AAAA-MM-JJ) Documents déposés

The Corporate Profile sets out the most recent information filed with and accepted by Corporations Canada as of the date and time set out on the Profile.

Le Profil corporatif fait état des renseignements fournis et acceptés par Corporations Canada à la date et à l'heure indiquées dans le profil.

This is Exhibit "N" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

**UNANIMOUS SHAREHOLDERS AGREEMENT
FOR
MIZRAHI COMMERCIAL (THE ONE) GP INC.**

July 25, 2014

TABLE OF CONTENTS

	Page
ARTICLE 1 INTERPRETATION.....	2
1.1 Definitions.....	2
1.2 Interpretation Not Affected by Headings.....	5
1.3 Currency.....	5
1.4 Governing Law.	5
1.5 Extended Meanings.....	5
1.6 Time of Essence.....	5
1.7 Calculations in Accordance with GAAP.	5
1.8 Severability.	6
1.9 Calculation of Time Periods.	6
1.10 Statutory Instruments.....	6
1.11 Incorporation of Schedules.	6
ARTICLE 2 IMPLEMENTATION OF AGREEMENT	6
2.1 Shareholder Covenants.	6
2.2 Covenant by the Corporation.....	6
2.3 Unanimous Shareholders Agreement To Prevail.....	6
ARTICLE 3 REPRESENTATIONS AND WARRANTIES.....	7
3.1 Representations and Warranties of the Shareholders.....	7
3.2 Representations and Warranties of the Corporation.	8
3.3 Survival.....	9
ARTICLE 4 MANAGEMENT OF THE CORPORATION.....	9
4.1 Board of Directors.....	9
4.2 Meetings of the Board of Directors.	10
4.3 Meetings of the Shareholders.....	11
4.4 Bridging Approvals.....	11
4.5 Bridging Authority.....	15
4.6 Officers.	15
4.7 Indemnity of Indemnitees.	16
4.8 Conduct of Parties to this Agreement.	16
4.9 Keeping of, and Access to, Records.	17
4.10 Records Confidential.	17
4.11 Exemption from Audit Requirement.	17
4.12 Fiscal Year.	17
4.13 Business and Purpose.....	18
4.14 Execution of Instruments.	18
ARTICLE 5 RESTRICTIONS ON TRANSFER.....	18

5.1	Transfer Restrictions.....	18
5.2	Permitted Transferees.....	18
5.3	Permitted Transferee to be bound by Agreement.....	19
5.4	Transfer in contravention of Agreement.....	19
ARTICLE 6 PURCHASE OF SHARES OF MIZRAHI CO.....		19
6.1	Purchase Notice.....	19
6.2	Effect of Purchase Notice.....	19
6.3	Certain Purchase and Sale Provisions.....	20
ARTICLE 7 SALE OF SHARES OF BRIDGING.....		20
7.1	Sale Notice.....	20
7.2	Effect of Sale Notice.....	20
7.3	Certain Purchase and Sale Provisions.....	20
ARTICLE 8 PROCEDURE FOR SALE OF SHARES.....		21
8.1	Application of Sale Provisions.....	21
8.2	Definitions.....	21
8.3	Obligations of Vendor.....	21
8.4	Release of Guarantees etc.....	22
8.5	Repayment of Debts.....	22
8.6	Payment of Purchase Price.....	22
8.7	Non-Compliance with Conditions.....	22
8.8	Non-Completion by Vendor.....	22
8.9	Consents.....	23
ARTICLE 9 MISCELLANEOUS.....		24
9.1	Term of Agreement.....	24
9.2	Arbitration Proceedings.....	24
9.3	Legend on Certificates.....	25
9.4	Notices.....	25
9.5	Further Assurances.....	27
9.6	Enurement and Assignment.....	27
9.7	Confidentiality.....	27
9.8	Waiver.....	27
9.9	Entire Agreement and Amendment.....	27
9.10	Joint Negotiation and Drafting.....	28
9.11	Counterparts.....	28
SCHEDULE "A" FORM OF COUNTERPART AND ACKNOWLEDGMENT.....		1

UNANIMOUS SHAREHOLDERS AGREEMENT

THIS UNANIMOUS SHAREHOLDERS AGREEMENT is dated as of the 25th day of July, 2014,

BETWEEN:

8891303 CANADA INC., a corporation existing under the Federal laws of Canada

("Bridging")

- and -

SAM M INC., a corporation existing under the laws of the Province of Ontario

("Mizrahi Co")

- and -

MIZRAHI COMMERCIAL (THE ONE) GP INC., a corporation existing under the laws of the Province of Ontario

(the "Corporation")

RECITALS:

- A. Bridging and Mizrahi Co are, as at the date hereof, the owners, beneficially and of record, of all of the issued and outstanding shares in the capital of the Corporation;
- B. Bridging and Mizrahi Co are limited partners of the Partnership (as defined below) of which the Corporation is the general partner; and
- C. The parties hereto are entering into this Agreement in order to make arrangements regarding the management and organization of the business and affairs of the Corporation and to grant to each other certain rights and obligations with respect to the ownership of the shares in the capital of the Corporation;

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions.

As used in this Agreement (including the Schedules attached hereto), the following words and phrases shall have the following meanings, respectively:

- (a) "**Accountant**" means the firm of Ernst & Young LLP or such others appointed from time to time under this Agreement as the accountants of the Corporation;
- (b) "**Act**" means the *Canada Business Corporations Act* (Ontario);
- (c) "**Affiliate**" means, with respect to any Person, any other Person, directly or indirectly, Controlling, Controlled by or under common Control with such Person;
- (d) "**Agreement**" means this unanimous shareholders agreement, including the schedules hereto, in each case as they may be amended, modified or supplemented from time to time;
- (e) "**Arbitration Notice**" has the meaning given to it in Section 9.2;
- (f) "**Arm's Length**" has the meaning given to it in the *Income Tax Act* (Canada);
- (g) "**Board of Directors**" means the board of directors of the Corporation from time to time;
- (h) "**Bond Issuer**" has the meaning given to it in the Partnership Agreement;
- (i) "**Business**" means the business of acting as the general partner of the Partnership currently and hereafter carried out by the Corporation;
- (j) "**Business Day**" means any day other than a Saturday, a Sunday or a statutory holiday in the Province of Ontario;
- (k) "**Class A1 Limited Partner**", "**Class A2 Limited Partner**" and "**Class B Limited Partner**" have the respective meanings given thereto in the Partnership Agreement;
- (l) "**Class A1 Units**" and "**Class B Units**" have the respective meanings given thereto in the Partnership Agreement;
- (m) "**Commercial Approved Budget**" has the meaning given to it in the Partnership Agreement;
- (n) "**Commercial Construction Management Agreement**" has the meaning given to it in the Partnership Agreement;

- (o) "**Commercial Development Management Agreement**" has the meaning given to it in the Partnership Agreement;
- (p) "**Commercial Development Manager**" has the meaning given to it in the Partnership Agreement;
- (q) "**Commercial Initial Budget**" has the meaning given to it in the Partnership Agreement;
- (r) "**Commercial Project**" has the meaning given to it in the Partnership Agreement;
- (s) "**Control**" as used with respect to any Person, means the possession, directly or indirectly, through one or more intermediaries or otherwise, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting or other securities, by contract or in any other manner whatsoever; and the terms "**Controlling**", "**Controlled by**" and "**under common Control with**" have corresponding meanings;
- (t) "**Construction Loan**" and "**Development Loan**" have the respective meanings given thereto in the Partnership Agreement;
- (u) "**Development Lender**" has the meaning given to it in the Partnership Agreement;
- (v) "**Director**" means a director of the Corporation;
- (w) "**Distributable Cash**" has the meaning given to it in the Partnership Agreement;
- (x) "**GAAP**" means generally accepted accounting principles in Canada in effect at the time being referred to;
- (y) "**Indemnitee**" means each and every individual who, at any time from and after the date hereof, is a Director or officer of the Corporation, together with their heirs, executors, administrators, estate trustees and other legal personal representatives of such individual;
- (z) "**Lien**" means any mortgage, charge, pledge, hypothecation, security interest, assignment, encumbrance, lien (statutory or otherwise), title retention agreement or arrangement, restrictive covenant or and any other encumbrances of any nature;
- (aa) "**Mizrahi**" means Sam Mizrahi, an individual resident in the Province of Ontario;
- (bb) "**Mizrahi Offer**" has the meaning given to it in the Partnership Agreement
- (cc) "**Net Income**" and "**Net Loss**" have the respective meanings given thereto in the Partnership Agreement;
- (dd) "**Office Component**" has the meaning given to it in the Partnership Agreement;

- (ee) "**Partnership**" means Mizrahi Commercial (The One) LP, a limited partnership established pursuant to the Partnership Agreement;
- (ff) "**Partnership Agreement**" means the limited partnership agreement dated as of the date hereof, between the Corporation, as general partner, Bridging, as Class A1 Limited Partner, the Class A2 Limited Partners party thereto and Mizrahi Enterprises Inc., as Class B Limited Partner, in respect of the business and affairs of the Partnership, as same may be amended, modified or supplemented from time to time;
- (gg) "**Permitted Transferee**" means:
 - (i) in relation to Bridging, any one or more of its Affiliates, and
 - (ii) in relation to Mizrahi Co, any one or more of (A) Mizrahi, (B) a trust Controlled by Mizrahi and whose the sole beneficiaries are any one or more of Mizrahi, Mizrahi's spouse, Mizrahi's children (natural or adopted), and any other direct lineal descendant of Mizrahi, and (C) a corporation Controlled by Mizrahi and whose sole shareholders are any one or more of Mizrahi, Mizrahi's spouse, Mizrahi's children (natural or adopted), and any other direct lineal descendant of Mizrahi;
- (hh) "**Person**" means an individual, corporation, body corporate, partnership, joint venture, association, trust or unincorporated organization or any trustee, executor, administrator or other legal representative;
- (ii) "**Properties**" has the meaning given to it in the Commercial Development Management Agreement;
- (jj) "**Purchase Agreements**" means the purchase and sale agreements in respect of the Properties entered into pursuant to the Purchase Nominee Agreement (as such term is defined in the Partnership Agreement);
- (kk) "**Retail Component**" has the meaning given to it in the Partnership Agreement;
- (ll) "**Shares**" means the common shares in the capital of the Corporation, as amended, reclassified, subdivided, consolidated or otherwise changed from time to time, and "**Share**" means any one of the Shares, individually;
- (mm) "**Shareholders**" means, collectively, Bridging and Mizrahi Co, and any Permitted Transferee thereof or other Person who acquires Shares in accordance with the provisions of this Agreement;
- (nn) "**Substantial Completion**" has the meaning given to it in the Partnership Agreement;
- (oo) "**Title Nominee**" has the meaning given to it in the Partnership Agreement; and

- (pp) "**Transfer**" includes any sale, exchange, assignment, transfer, gift, donation, bequest, disposition, granting of Lien or other arrangement of any nature or kind whatsoever howsoever effected (whether directly or indirectly) by which possession, legal title or beneficial ownership passes, actually or contingently, from one Person to another, or to the same Person in a different capacity, whether or not voluntary and whether or not for value, and the words "**Transferred**", "**Transferring**" and other words of similar import shall have corresponding meaning.

1.2 Interpretation Not Affected by Headings.

The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular section, subsection or other portion hereof. Unless otherwise expressly indicated in this Agreement, any reference which is made in this Agreement to an "Article", "Section" or "Subsection", means and refers to the Article, Section or Subsection of this Agreement so referenced.

1.3 Currency.

All dollar amounts expressed in this Agreement are expressed in Canadian dollars and all payments contemplated by this Agreement shall be made in Canadian funds.

1.4 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the Federal Laws of Canada applicable therein and this Agreement shall in all respects be treated as an Ontario contract. Subject to Section 9.2, the parties hereto irrevocably attorn to the jurisdiction of the courts of the Province of Ontario to resolve any dispute which may arise among them concerning this Agreement and the subject matters hereof.

1.5 Extended Meanings.

In this Agreement, unless the context otherwise requires, words importing the singular number include the plural and vice versa and words importing the masculine gender include the feminine and neuter genders and vice versa. The term "including" means "including without limitation".

1.6 Time of Essence.

Time shall be of the essence of every provision of this Agreement.

1.7 Calculations in Accordance with GAAP.

Every calculation and other determination for accounting purposes required to be made pursuant to this Agreement shall be made in accordance with GAAP for private entities in Canada, consistently applied.

1.8 Severability.

Any provision of this Agreement which is invalid, prohibited or unenforceable in any jurisdiction for any reason whatsoever shall, as to such jurisdiction only, be ineffective and severable from this Agreement to the extent of such invalidity, prohibition or unenforceability but such invalidity, prohibition or unenforceability shall not invalidate or otherwise affect the remaining provisions of this Agreement nor shall it affect the validity or enforceability of such provision in any other jurisdiction.

1.9 Calculation of Time Periods.

When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period in question shall end on the immediately following Business Day.

1.10 Statutory Instruments.

Any references in this Agreement to any statute, law, by-law, rule, regulation, order or act of any governmental or regulatory authority shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.

1.11 Incorporation of Schedules.

The following schedules are attached to and incorporated by reference into this Agreement:

Schedule "A" - Form of Counterpart and Acknowledgment

ARTICLE 2

IMPLEMENTATION OF AGREEMENT

2.1 Shareholder Covenants.

Each Shareholder covenants and agrees that it shall vote or cause to be voted the Shares owned by it to accomplish and give effect to the terms and conditions of this Agreement and that such Shareholder shall otherwise act in accordance with the provisions and intent of this Agreement.

2.2 Covenant by the Corporation.

The Corporation consents to the terms of this Agreement and hereby covenants with each of the other parties hereto that it will at all times during the term of this Agreement be governed by the terms and provisions hereof in carrying on its business and affairs.

2.3 Unanimous Shareholders Agreement To Prevail.

If any conflict shall appear between the provisions of this Agreement and the articles, by-laws or other organizational documents of the Corporation or any resolutions of the Directors or

shareholders of the Corporation, the provisions of this Agreement shall govern and prevail and the parties hereto shall cause such meetings to be held and shall exercise their vote and influence so as to cause such articles, by-laws or other organizational documents or resolutions to be amended or repealed to the extent necessary to resolve any such conflict in such manner so that the provisions of this Agreement shall at all times prevail.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Shareholders.

Each Shareholder, severally and not jointly, represents and warrants to each of the other parties to this Agreement that:

- (a) such Shareholder is the registered and beneficial owner of the Shares as is set forth opposite such Shareholder's name below:

Shareholder	Number of Shares
Bridging	50 Common Shares
Mizrahi Co	50 Common Shares

- (b) the Shares and other securities of the Corporation now, or which hereafter may be, owned by such Shareholder are held by such Shareholder free and clear of any and all Liens, except those Liens created pursuant to this Agreement;
- (c) except as provided for in this Agreement, no Person has any contract, agreement, option or other right (actual or inchoate) for the purchase of any Shares or other securities of the Corporation now, or which hereafter may be, owned by such Shareholder;
- (d) such Shareholder has executed and delivered this Agreement, and this Agreement is valid, binding and enforceable against such Shareholder in accordance with its terms;
- (e) the execution and delivery of this Agreement by such Shareholder and such Shareholder's performance of its obligations hereunder does not contravene any contract, agreement or indenture to which such Shareholder is a party or by which such Shareholder is bound;
- (f) if such Shareholder is a corporation, partnership, limited partnership or other entity, such Shareholder also represents and warrants that:
 - (i) it is validly existing under the laws of its jurisdiction of formation,
 - (ii) it has the power and authority to own its property and assets and to enter

- into and perform its obligations under this Agreement,
- (iii) the execution and delivery of this Agreement by it has been duly authorized by all requisite action, and
 - (iv) the execution and delivery of this Agreement by it and the performance of its obligations hereunder does not contravene its constituent documents; and
- (g) in the case of Mizrahi Co only, Mizrahi Co is Controlled by a Permitted Transferee of Mizrahi Co.

3.2 Representations and Warranties of the Corporation.

The Corporation represents and warrants to each of the other parties to this Agreement that:

- (a) the authorized capital of the Corporation consists of an unlimited number of common shares (defined herein as Shares), of which one hundred (100) Shares are issued and outstanding as at the date hereof and registered in the names of those Persons set out in Section 3.1(a);
- (b) the Shares listed in Section 3.1(a) are issued and outstanding as fully paid and non-assessable;
- (c) except as provided for in this Agreement, as at the date hereof, no Person has any contract, agreement, option or other right (actual or inchoate) with the Corporation providing for the purchase, subscription or issuance of any of the issued or unissued shares in the capital or other securities of the Corporation;
- (d) it has executed and delivered this Agreement, and this Agreement is valid, binding and enforceable against the Corporation in accordance with its terms;
- (e) the execution and delivery of this Agreement by the Corporation and the Corporation's performance of its obligations hereunder does not contravene any contract, agreement or undertaking to which the Corporation is a party or by which the Corporation is bound;
- (f) the Corporation is validly existing under the laws of the Province of Ontario;
- (g) the Corporation has the power and authority to own its property and assets and to enter into and perform its obligations under this Agreement;
- (h) the execution and delivery of this Agreement by the Corporation has been duly authorized by all requisite corporate action; and
- (i) the execution and delivery of this Agreement by the Corporation and the performance of the Corporation's obligations hereunder does not contravene its constituent documents.

3.3 Survival.

The representations and warranties of the parties contained in this Article 3 shall survive the execution and delivery of this Agreement and shall be deemed to be continuing with respect to each party until it ceases to be bound by the provisions of this Agreement.

ARTICLE 4 MANAGEMENT OF THE CORPORATION

4.1 Board of Directors.

The Shareholders agree to cause such meetings of the Corporation to be held, votes cast, resolutions passed, by-laws enacted, documents executed and all things and acts done to ensure the following continuing arrangements regarding the Board of Directors:

- (a) subject to Sections 4.4 and 4.5, the business and affairs of the Corporation shall be managed by a board of directors which shall, subject to as set forth herein, consist of four (4) individuals, of whom:
 - (i) three (3) shall be the nominees of Bridging and such nominees shall initially be Virginia Jenny Coco, Rock Anthony Coco and Natasha Sharpe, and
 - (ii) one (1) shall be the nominee of Mizrahi Co and such nominee shall be Mizrahi;
- (b) Bridging may remove any nominee Director of Bridging by notice to such Director, Mizrahi Co and to the Corporation. Any vacancy occurring on the Board of Directors by reason of the death, disqualification, inability to act, resignation or removal of any Director nominee of Bridging shall be filled promptly by a further nominee of Bridging so as to maintain a Board of Directors consisting of the number of nominees specified in Section 4.1(a)(i). The Directors will not transact any business or exercise any of their powers or functions until such vacancy is filled, except to elect or appoint the new Director and to carry on the business of the Corporation in the ordinary course. If a replacement Director is not elected or appointed within seven (7) Business Days because Bridging has failed to nominate a replacement, then, notwithstanding any other provision of this Agreement, the Directors then in office are entitled to transact business and exercise all of the powers and functions of the Directors;
- (c) prior to both: (i) Substantial Completion of the Commercial Project, and (ii) the occupancy of at least seventy-five percent (75%) of the leasable square footage of the Retail Component and the Office Component, Mizrahi shall be the only nominee Director of Mizrahi Co and if a vacancy occurs on the Board of Directors by reason of the death, disqualification, inability to act or resignation of Mizrahi, then Mizrahi Co shall cease to be entitled to a nominee on the Board of Directors and the number of individuals constituting the Board of Directors shall

be reduced accordingly; and

- (d) following both: (i) Substantial Completion of the Commercial Project, and (ii) the occupancy of at least seventy-five percent (75%) of the leasable square footage of the Retail Component and the Office Component, subject to the prior written approval of Bridging (such approval not to be unreasonably withheld or delayed); (iii) Mizrahi Co may remove Mizrahi as the nominee Director of Mizrahi Co by notice to such Director, Bridging and to the Corporation, and (iv) any vacancy occurring on the Board of Directors by reason of the death, disqualification, inability to act, resignation or removal of Mizrahi shall be filled promptly by a further nominee of Mizrahi Co so as to maintain a Board of Directors consisting of the number of nominees specified in Section 4.1(a)(ii). In any such case, the Directors will not transact any business or exercise any of their powers or functions until such vacancy is filled, except to elect or appoint the new Director and to carry on the business of the Corporation in the ordinary course. If a replacement Director is not elected or appointed within seven (7) Business Days because Mizrahi Co has failed to nominate a replacement, then, notwithstanding any other provision of this Agreement, the Directors then in office are entitled to transact business and exercise all of the powers and functions of the Directors.

4.2 Meetings of the Board of Directors.

- (a) A quorum for a meeting of the Board of Directors shall be all of the Directors then in office, namely, for greater certainty, as at the date hereof and subject to as set forth herein, the three nominees of Bridging and the nominee of Mizrahi Co. No meeting of the Directors shall continue with the transaction of business in the absence of a quorum; provided that, if at any meeting of Directors (in this Article 4, the "**Original Director Meeting**") a quorum shall not be present by reason only of the fact that one or more required nominee Director(s) of a Shareholder, as provided by this Section 4.2(a), are absent, then, notwithstanding anything herein contained, the Directors present at such meeting may call a supplementary meeting (in this Article 4, the "**Supplementary Director Meeting**") of the Board of Directors on not less than five (5) Business Days' notice to each Director, which notice shall be limited to the business set out in the notice of the Original Director Meeting. Subject to the Act, if the Director(s) who did not attend the Original Director Meeting do not attend the Supplementary Director Meeting, the Directors attending the Supplementary Director Meeting shall constitute a quorum for the transaction of the business referred to in the notice of the Original Director Meeting.
- (b) Unless notice thereof shall have been waived in writing by an individual entitled to such notice, notice of each meeting of the Board of Directors shall be in writing given to each Director at least five (5) Business Days in advance thereof and shall contain sufficient particulars of all items of business to be dealt with thereat.
- (c) Subject to Sections 4.2(a) and 4.4, all decisions of the Board of Directors shall be determined by the unanimous vote of the Directors present at a meeting of the

Board of Directors duly called and held. No Director shall be entitled to a second, extra or casting vote. In the case of a deadlock arising in respect of any matter to be decided, such matter shall be deemed to have been defeated and not approved.

- (d) Subject to the Act, a Director may participate in a meeting of Directors by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting. A Director so participating in a meeting is deemed for the purposes of the Act and this Agreement to be present at that meeting. A consent pursuant to this Section 4.4(d) may be given before or after the meeting to which it relates and may be a "blanket" consent, relating to all meetings of the Directors.

4.3 Meetings of the Shareholders.

- (a) A quorum for a meeting of Shareholders shall be all of the Shareholders of the Corporation, namely Bridging and Mizrahi Co. No meeting of the Shareholders shall continue with the transaction of business in the absence of a quorum; provided that, if at any meeting of Shareholders (in this Article 4, the "**Original Shareholder Meeting**") a quorum shall not be present by reason only of the fact that one or more required Shareholders, as provided by this Section 4.3(a), are absent, then, notwithstanding anything herein contained, the Shareholders present at such meeting may call a supplementary meeting (in this Article 4, the "**Supplementary Shareholder Meeting**") of the Shareholders on not less than fifteen (15) Business Days' notice to each Shareholder, which notice shall be limited to the business set out in the notice of the Original Shareholder Meeting. Subject to the Act, if the Shareholders who did not attend the Original Shareholder Meeting do not attend the Supplementary Shareholder Meeting, the Shareholders attending the Supplementary Shareholder Meeting shall constitute a quorum for the transaction of the business referred to in the notice of the Original Shareholder Meeting.
- (b) Decisions of the Shareholders shall be effective only if approved (i) unanimously by all Shareholder at a meeting of Shareholders duly called for such purpose, or (ii) by written resolution signed by all of the Shareholders. In the case of a deadlock arising in respect of any matter to be decided, such matter shall be deemed to have been defeated and not approved.

4.4 Bridging Approvals.

Without the prior written approval of Bridging, none of the following matters shall be authorized, approved or implemented in respect of the Corporation:

Fundamental Changes:

- (a) any amendment or change to the articles or by-laws of the Corporation;

- (b) the taking or institution of any proceedings for the winding up, reorganization or dissolution of the Corporation;
- (c) the making of an assignment for the benefit of any creditors of the Corporation;
- (d) the amalgamation, consolidation, merger of, or the entering into of any agreement to amalgamate, consolidate or merge with respect to, the Corporation, or the continuance of the Corporation, or a corporate reorganization of the Corporation of any kind;
- (e) the sale, exchange or other disposition of all or substantially all of the assets of the Corporation;
- (f) any material change in the Business or the taking of any action which may lead to or result in such material change;
- (g) any change to the fiscal year of the Corporation;

Share Capital:

- (h) the purchase or redemption by the Corporation of any Shares;
- (i) the declaration, payment or setting aside for payment of any dividend or other distribution on or in respect of any Shares or any other securities of the Corporation;
- (j) any change in the number of issued and outstanding Shares or any increase or reduction in the capitalization of the Corporation, including, without limitation, by way of any split, conversion or exchange of Shares;
- (k) the issuance or allotment of Shares or other securities of the Corporation or the granting of any right, option or privilege to acquire any Shares or other securities of the Corporation;
- (l) any Transfer of Shares or other securities of the Corporation, except as provided in Section 5.2;

Financial Matters:

- (m) the incurring of any voluntary indebtedness for borrowed money by the Corporation, other than (i) as provided for in the Partnership Agreement, and (ii) in the ordinary course of business of the Corporation and the Partnership;
- (n) the guarantee or indemnification by the Corporation for the debts or obligations of any Person, other than in respect of the Partnership and the Title Nominee;
- (o) the granting of any Lien on the assets of the Corporation, other than (i) in favour of the lender under the Construction Loan, (ii) in favour of the Development

Lender pursuant to the Development Loan, (iii) in favour of Tarion Warranty Corporation, (iv) in favour of the Bond Issuer, and (v) in the ordinary course of the business of the Corporation and the Partnership;

- (p) any change in the Accountant;

Non-Arm's Length Matters:

- (q) except as provided in this Agreement and in the Partnership Agreement, entering into by the Corporation of any contract, agreement or arrangement (including the payment of any fee) with or to: (i) any Shareholder, director or officer of the Corporation, (ii) any Affiliate of any Shareholder, director or officer of the Corporation, or (iii) any Person who does not deal at Arm's Length with any Shareholder, director or officer of the Corporation or who any Shareholder, director or officer of the Corporation has an interest in;

Material Agreements and Actions:

- (r) subject to Section 4.5, any matter or decision requiring the approval of the "Owner" under the Commercial Development Management Agreement;
- (s) approval of the Commercial Initial Budget;
- (t) approval of the Commercial Approved Budget;
- (u) any action or inaction that would result in any additional or increased liability, indebtedness or obligation for costs or expenses on the part of the General Partner or the Partnership in excess of the amount(s) provided therefor in the Commercial Approved Budget, except for costs associated with the acquisition of the Properties;
- (v) the material terms of the leases of all retail units of the Commercial Project;
- (w) any increase or change in the Commercial Approved Budget;
- (x) the general terms and conditions of the Purchase Agreements;
- (y) subject to Section 4.5, any matter or decision requiring the approval of the "Owner" under the Commercial Construction Management Agreement;
- (z) (i) any amendment, supplement, other modification to any of the Purchase Agreements, the Commercial Construction Management Agreement, the Commercial Development Management Agreement or the Partnership Agreement, (ii) any waiver of any provision of any such agreement (including, without limitation, any waiver of any condition to closing in any of the Purchase Agreements), and (iii) any action to terminate or surrender or note any party in default with respect to any such agreement, save and except to the extent expressly delegated to the applicable service provider under the Commercial

Development Management Agreement and the Commercial Construction Management Agreement;

- (aa) the determination regarding if the Commercial Development Manager has taken steps to remedy any breach on its part under the Commercial Development Management Agreement and the decision if the Commercial Development Manager is working diligently to complete such remedial steps;
- (bb) entering into, amending or modifying in any material respect or terminating any lease or use and occupancy agreement with respect to portions of the Commercial Project;
- (cc) entering into, amending or modifying in any material respect or terminating any contract for the servicing, operation, maintenance and repair of the Properties other than any contract which is terminable upon not less than thirty (30) days prior written notice from the Corporation, without penalty;
- (dd) any material matter or decision out of the ordinary course relating to the Corporation as "general partner" under the Partnership Agreement, including, without limitation:
 - (i) the subdivision of the Class A Units into additional Class A1 Units and Class A2 Units,
 - (ii) the acceptance of (i) additional capital contributions from the Class A1 Limited Partner from time to time, including the timing and amount thereof, and (ii) Class A2 Limited Partners from time to time, including the dollar amount of the capital contribution to be made by each such additional Class A2 Limited Partner,
 - (iii) the determination of Net Income and Net Loss,
 - (iv) the determination of Distributable Cash and the timing for distributions thereof,
 - (v) confirming satisfaction of all conditions to the transfer by a limited partner of its units under the Partnership Agreement or refusing a transfer by a limited partner of its units under the Partnership Agreement,
 - (vi) obtaining the Construction Loan and all matters related to obtaining the Construction Loan,
 - (vii) obtaining the Development Loan and all matters related to obtaining the Development Loan,
 - (viii) delivering the Mizrahi Offer,
 - (ix) exercising the general power of attorney granted to the Corporation, as

general partner, and

- (x) all matters and decisions referred to in Sections 9.2(e), 9.2(m), 9.2(n), 9.2(r) and 9.2(s) of the Partnership Agreement; and

Decisions Relating to the Partnership and the Title Nominee:

- (ee) the taking of any action described in 4.4(r) to 4.4(dd) above for and on behalf of the Partnership and/or the Title Nominee.

No party to this Agreement shall take or fail to take any action which would cause or otherwise result in the Corporation breaching any of the provisions of this Section 4.4.

Notwithstanding anything to the contrary in this Section 4.4, the prior written approval of Bridging under this Section 4.4 in respect of any matter described in this Section 4.4 shall be deemed to have been given and made if and to the extent that such matter has been approved by the Board of Directors at a meeting of Directors duly called and held and at which at least two Bridging nominee Directors were present and approved such matter.

4.5 Bridging Authority.

The powers of the Directors to manage any action or make any decision on behalf of the Corporation regarding the termination of the Commercial Development Management Agreement by the "Owner" pursuant to Section 7.1 thereof, or the termination of the Commercial Construction Agreement by the "Owner" pursuant to Part 7 thereof, including, without limitation, the power to pass resolutions in connection with the foregoing, are hereby terminated, and Bridging alone shall have the sole power and authority to take any action or decision on behalf of the Corporation regarding the termination of the Commercial Development Management Agreement by the "Owner" pursuant to Section 7.1 thereof or the termination of the Commercial Construction Agreement by the "Owner" pursuant to Part 7 thereof.

4.6 Officers.

The officers of the Corporation are as follows and shall hold the following offices:

Name	Office
Mizrahi	President
Natasha Sharpe	Secretary
Virginia Jenny Coco	Vice President
Rock-Anthony Coco	Vice President

and the Board of Directors, at any time and from time to time, may remove any officer as it sees fit and appoint such additional and other officers as it sees fit.

4.7 Indemnity of Indemnitees.

- (a) Subject to Section 4.7(c), to the fullest extent permitted by all then applicable Laws, the Corporation shall indemnify and save harmless each Indemnitee from and against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by an Indemnitee in respect of any civil, criminal, administrative, investigative or other proceeding in which an Indemnitee is involved as a result of her or him having acted as a Director or an officer of the Corporation.
- (b) Subject to Section 4.7(c), to the fullest extent permitted by all then applicable Laws, the Corporation shall, subject to the receipt of the approval of a court of competent jurisdiction, indemnify and save harmless each Indemnitee from and against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by an Indemnitee in respect of an action by or on behalf of the Corporation or other Person to procure a judgment in favour of the Corporation in which an Indemnitee is involved as a result of her or him having acted as a Director or an officer of the Corporation.
- (c) The Corporation shall not indemnify an Indemnitee unless: (i) the Indemnitee acted honestly and in good faith with a view to the best interests of the Corporation; and (ii) if the matter is a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Indemnitee had reasonable grounds for believing that his conduct was lawful.
- (d) The Corporation may, by decision of the Board of Directors, advance moneys to an Indemnitee for the costs, charges and expenses of a proceeding referred to in Sections 4.7(a) and 4.7(b); provided that, the Indemnitee shall repay the moneys so advanced if the conditions set out in Section 4.7(c) have not been satisfied.
- (e) Any Person who is within the definition of "Indemnitee" at the time of any action or inaction in connection with the Corporation shall be entitled to the benefits of this Section 4.7 as an "Indemnitee" with respect thereto, regardless of whether such Person continues to be within the definition of "Indemnitee" at the time of such Indemnitee's claim for indemnification or exculpation hereunder or any amendment of the terms hereof.

4.8 Conduct of Parties to this Agreement.

The parties hereto covenant and agree that they shall from time to time do all such acts and things as they are respectively capable of doing (including exercising their votes and influence), and refrain from doing such acts and things, as may be necessary or desirable, so that:

- (a) the Directors and the officers of the Corporation act in the best interests of the Corporation so as to develop and maintain, to the best of their respective abilities, the business, assets and undertaking of the Corporation as an ongoing and viable business;

- (b) with respect to all matters requiring authorization by the Shareholders or the Directors, the Shareholders and the Directors, as applicable, take all reasonable action to reach a decision with respect to any such matter in a responsible manner and as expeditiously as is reasonably possible under the circumstances and otherwise in accordance with the terms of this Agreement; and
- (c) the Shareholders, Directors and the officers of the Corporation shall do all such acts and things as are contemplated and provided for in this Agreement and as are necessary to affect the same.

4.9 Keeping of, and Access to, Records.

- (a) There shall be kept for the Corporation proper books of account and records and entries shall be made therein of all financial transactions and other matters and things pertaining to its assets, liabilities, obligations, business and operations which are entered into books of account and business records in accordance with good business practices and GAAP.
- (b) Each Shareholder and its duly authorized agents and representatives shall be entitled to have access to, and to inspect, all such books of accounts and records of the Corporation during normal business hours and they shall also be entitled, at their own expense, to obtain copies of such books of account and records to the extent reasonably required for their own tax and accounting purposes.

4.10 Records Confidential.

Each Shareholder acknowledges that all records, material and information pertaining to the Corporation and/or the Partnership obtained by it are and shall remain the exclusive property of the Corporation or the Partnership, as the case may be. Each Shareholder, during the term of this Agreement and thereafter, shall keep in the strictest confidence, not disclose and not use, without the consent of the Corporation or the other Shareholder, all non-public information pertaining to or concerning the Corporation and/or the Partnership including all budgets, forecasts, analyses, financial results, costs, margins, wages and salaries, bids and other business activities, all supplier and customer lists, all non-public intellectual property and know-how, documentation including standard terms and agreements and all other information not generally known outside the Corporation or the Partnership, as the case may be.

4.11 Exemption from Audit Requirement.

The Shareholders agree that the Corporation shall dispense with the requirement under the Act to appoint an auditor, unless required by a lender to the Corporation or the Partnership, as the case may be.

4.12 Fiscal Year.

The fiscal year of the Partnership shall end on December 31 in each year, until changed by a resolution of the Board of Directors and subject to Section 4.4(g).

4.13 Business and Purpose.

The business and purpose of the Corporation shall be the Business.

4.14 Execution of Instruments.

- (a) Deeds, transfers, assignments, contracts and any other documents of the Corporation, may be signed as follows: by a Vice-President (i.e., Jenny Coco or Rock Antony Coco), together with another Vice-President (i.e., Jenny Coco or Rock Antony Coco) or the Secretary (i.e., Natasha Sharpe). Notwithstanding the foregoing, the Board of Directors may by unanimous decision of all of the Directors at any time or times direct the manner in which and the person or persons by whom any particular deed, transfer, assignment, contract or other document, or any class of deeds, transfers, assignments, contracts or other documents, shall be signed.
- (b) Upon the approval of the Commercial Approved Budget by both the Board of Directors and Bridging pursuant to Section 4.4(t) and unless any one or more of the events described in Section 6.10(a) of the Partnership Agreement have occurred, Mizrahi, in his capacity as a director and officer of the Corporation, shall be permitted to act as the sole signatory of the Corporation in connection with the execution of all deeds, transfers, assignments, contracts, leases and other documents entered into by the Corporation (on its own behalf or in its capacity as the general partner of the Partnership) in the ordinary course of business, including, without limitation, in respect of the pre-development, development, marketing, construction (including demolition of existing buildings), completion, sale of units and lease of the Commercial Project or any portion thereof, and the payment of any expenses previously approved by the Cost Consultant and provided for in the Commercial Approved Budget. In addition, the foregoing authorization shall include signing authority under any banking arrangements, accounts or facilities for the Corporation or the Partnership so long any payments being made are in accordance with the Commercial Approved Budget and approved by the Cost Consultant.

ARTICLE 5
RESTRICTIONS ON TRANSFER

5.1 Transfer Restrictions.

No Shares or other securities of the Corporation shall, directly or indirectly, be Transferred: (a) except in accordance with, and as permitted by, this Agreement, or (b) without the prior approval of the Board of Directors and the prior written approval of Bridging.

5.2 Permitted Transferees.

Notwithstanding the provisions of Section 5.1, each Shareholder shall be permitted and entitled to Transfer, without consent and upon written notice to the Board of Directors, some or all of its

Shares or other securities to a Permitted Transferee of such Shareholder (for greater certainty, without being subject to the provisions of Article 6 or Article 7, as applicable).

5.3 Permitted Transferee to be bound by Agreement.

No permitted Transfer of Shares or other securities of the Corporation to a Permitted Transferee pursuant to Section 5.2 shall be effective unless and until such Permitted Transferee executes and delivers a counterpart and acknowledgment to this Agreement, substantially in the form attached hereto as Schedule "A", and agreeing therein to remain a Permitted Transferee for so long as such Permitted Transferee shall have any registered or beneficial interest in any Shares or other securities of the Corporation. In the event of any such Transfer to a Permitted Transferee: (a) the transferring Shareholder shall remain a party to this Agreement; (b) the transferring Shareholder hereby covenants to take such actions as may be necessary to cause the Permitted Transferee to at all times fully and faithfully perform and discharge its obligations under this Agreement and to comply with the terms and conditions of this Agreement; and (c) the transferring Shareholder shall at all times after such Transfer be jointly and severally liable with the Permitted Transferee for the performance and discharge the Permitted Transferee's obligations under this Agreement and compliance by the Permitted Transferee with the terms and conditions of this Agreement.

5.4 Transfer in contravention of Agreement.

Any Transfer of Shares or other securities of the Corporation contrary to the provisions of this Agreement shall be deemed to be null and void and of no force and effect and the Corporation shall not be required: (a) to Transfer on its books any Shares, nor (b) to treat as the owner of the Shares, or otherwise to accord voting or dividend rights to, any purported transferee to whom the Shares have been Transferred in contravention of this Agreement.

ARTICLE 6

PURCHASE OF SHARES OF MIZRAHI CO

6.1 Purchase Notice.

If the Class B Limited Partner commits a default under the Partnership Agreement and, pursuant to the terms of the Partnership Agreement, as a result the General Partner causes all (but not less than all) of the Class B Units owned by the Class B Limited Partner to be redeemed (in this Article 6, the "**Class B Redemption**"), then Bridging shall, contemporaneously with the delivery of the Redemption Notice (as such term is defined in the Partnership Agreement) or shortly thereafter, also send a notice in writing to Mizrahi Co (in this Article 6, the "**Purchase Notice**") advising Mizrahi Co that Bridging shall purchase all (but not less than all) of the Shares owned by Mizrahi Co pursuant to this Article 6.

6.2 Effect of Purchase Notice.

The delivery of the Purchase Notice shall require Mizrahi Co to sell to Bridging, and Bridging shall purchase from Mizrahi Co, all (but not less than all) of the Shares owned by Mizrahi Co for

the price and in accordance with the provisions of this Article 6 and Article 8.

6.3 Certain Purchase and Sale Provisions.

For any purchase and sale of the Shares of Mizrahi Co made pursuant to this Article 6:

- (a) the purchase price for the Shares of Mizrahi Co shall be equal to One Dollar (\$1) per Share, it being acknowledged and agreed that in such purchase and sale event, consideration for the direct or indirect economic interest of Mizrahi Co (a.k.a. the Class B Limited Partner) in the equity of the Commercial Project shall be realized on the redemption of the Class B Units of the Class B Limited Partner;
- (b) the closing of such purchase and sale transaction shall take place at the offices of legal counsel for the Partnership on the date of the closing of the Class B Redemption as prescribed under the Partnership Agreement; and
- (c) the closing of the transaction of such purchase and sale shall be effected in accordance with the general sale provisions of Article 8.

ARTICLE 7 **SALE OF SHARES OF BRIDGING**

7.1 Sale Notice.

If, pursuant to the terms of the Partnership Agreement, the Class A1 Limited Partner is set to complete the sale of all (but not less than all) of the Class A1 Units owned by the Class A1 Limited Partner (in this Article 7, the "**Class A1 Sale**"), then Bridging shall send a notice in writing to Mizrahi Co (in this Article 7, the "**Sale Notice**") advising Mizrahi Co that Bridging shall sell all (but not less than all) of the Shares owned by Bridging to Mizrahi Co pursuant to this Article 7.

7.2 Effect of Sale Notice.

The delivery of the Sale Notice shall require Mizrahi Co to purchase from Bridging, and Bridging to sell to Mizrahi Co, all (but not less than all) of the Shares owned by Bridging for the price and in accordance with the provisions of this Article 7 and Article 8.

7.3 Certain Purchase and Sale Provisions.

For any purchase and sale of the Shares of Bridging made pursuant to this Article 8:

- (a) the purchase price for the Shares of Bridging shall be equal to One Dollar (\$1) per Share, it being acknowledged and agreed that in such purchase and sale event, consideration for the direct or indirect economic interest of Bridging (a.k.a. the Class A Limited Partner) in the equity of the Commercial Project shall be realized on the sale of the Class A1 Units of the Class A1 Limited Partner;

- (b) the closing of such purchase and sale transaction shall take place at the offices of legal counsel for the Partnership on the date of the closing of the Class A1 Sale, as may be prescribed under the Partnership Agreement; and
- (c) the closing of the transaction of such purchase and sale shall be effected in accordance with the general sale provisions of Article 8.

ARTICLE 8
PROCEDURE FOR SALE OF SHARES

8.1 Application of Sale Provisions.

The provisions of this Article 8 shall apply to any sale of Shares pursuant to Article 6 and Article 7, as applicable.

8.2 Definitions.

For the purpose of this Article 8, the following terms shall have the following definitions:

- (a) **"Date of Closing"** means the date of closing of the purchase and sale of the Shares provided for in Article 6 and Article 7, as applicable;
- (b) **"Purchase Price"** means the purchase price to be paid for the Purchased Shares;
- (c) **"Purchased Shares"** means the Shares to be purchased and sold;
- (d) **"Purchaser"** means the party purchasing Shares;
- (e) **"Time of Closing"** means 10:00 o'clock a.m. (Eastern Standard Time) or such other time on the Date of Closing as may be agreed to by the parties in the subject transaction; and
- (f) **"Vendor"** means the party selling Shares.

8.3 Obligations of Vendor.

At or prior to the Time of Closing, the Vendor shall:

- (a) assign and transfer to the Purchaser the Purchased Shares and deliver the certificate(s) representing the Purchased Shares duly endorsed for transfer to the Purchaser or as directed by it;
- (b) do all things required in order to deliver good and marketable title to the Purchased Shares to the Purchaser free and clear of any Liens whatsoever;
- (c) deliver to the Corporation signed resignations of the Vendor and its nominees, if any, as Directors, officers and employees of the Corporation, as the case may be; and

- (d) either provide the Purchaser with evidence reasonably satisfactory to the Purchaser that the Vendor is not then a non-resident of Canada within the meaning of the *Income Tax Act* (Canada) or provide the Purchaser with a certificate pursuant to subsection 116(2) of the *Income Tax Act* (Canada) with a certificate limit in an amount not less than the Purchase Price for the Purchased Shares.

8.4 Release of Guarantees etc.

If, at the Time of Closing, the Vendor or any other Person for and on behalf of the Vendor, shall have any guarantees, indemnities, security, covenants or pledges lodged with or granted in favour of any Person to secure any indebtedness, liability or obligation of the Corporation, then the Corporation shall use its reasonable commercial efforts to deliver up or cause to be delivered up to the Vendor or cancel or cause to be cancelled all of such guarantees, indemnities, security, covenants or pledges at the Time of Closing or deliver an indemnity in writing in respect thereof, in form reasonably satisfactory to counsel for the Vendor, acting reasonably.

8.5 Repayment of Debts.

If, at the Time of Closing, the Corporation is indebted to the Vendor in an amount recorded on the books of the Corporation and verified by the Accountant, the Corporation shall repay such amount to the Vendor at the Time of Closing. If, at the Time of Closing, the Vendor is indebted to the Corporation in an amount recorded on the books of the Corporation and verified by the Accountant, the Vendor shall repay such amount to the Corporation at the Time of Closing.

8.6 Payment of Purchase Price.

Unless otherwise agreed by the Vendor and the Purchaser or permitted by this Agreement, the Purchase Price shall be paid by the Purchaser in full by cash or bank draft at the Time of Closing.

8.7 Non-Compliance with Conditions.

If at the Time of Closing (a) the Purchased Shares are not free and clear of all Liens, or (b) evidence or a certificate referred to in Section 8.3(d) is not provided, the Purchaser may, without prejudice to any other rights which it may have, purchase the Purchased Shares subject to such Liens or in the absence of such evidence or certificate, and, in that event, the Purchaser shall, at the Time of Closing, (c) assume all obligations and liabilities with respect to such Liens, or (d) make the payment of tax required under Section 116 of the *Income Tax Act* (Canada), if any; and in each such case the amount so assumed or paid, as the case may be, shall be satisfied by deducting such amount from the Purchase Price payable at the Time of Closing, and, if the Purchase Price is insufficient to cover such amount, such amount shall be paid by the Vendor to the Purchaser on demand.

8.8 Non-Completion by Vendor.

- (a) If, at the Time of Closing, the Vendor fails to complete the purchase and sale of the Purchased Shares hereunder, the Purchaser shall have the right, without

prejudice to any other rights which it may have, to make payment of the Purchase Price payable to the Vendor at the Time of Closing by depositing such amount to the credit of the Vendor in the main branch of the Corporation's bankers in the City of Toronto. Such deposit shall constitute valid and effective payment of such amount to the Vendor irrespective of any action the Vendor may have taken to transfer or grant a Lien on the Purchased Shares. If the Purchase Price has been so paid, then from and after the date of deposit, the purchase and sale of the Purchased Shares hereunder shall be deemed to have been fully completed and all right, title, benefit and interest, both at law and in equity in and to the Purchased Shares shall conclusively be deemed to have been transferred to and become vested in the Purchaser and all right, title, benefit and interest, both at law and in equity, in and to the Purchased Shares of the Vendor or of any transferee or assignee of the Vendor shall cease. The Purchaser shall also have the right to execute and deliver, on behalf of and in the name of the Vendor, such deeds, transfers, unit certificates, resignations and other documents that may be necessary to complete the purchase and sale of the Purchased Shares hereunder and the Vendor irrevocably appoints the Purchaser or its designee as its attorney in that behalf in accordance with the *Powers of Attorney Act* (Ontario), with no restriction or limitation in that regard and declaring that this power of attorney may be exercised during any subsequent legal incapacity on its part. Such appointment and power of attorney, being coupled with an interest, shall not be revoked by the insolvency, bankruptcy, death, incapacity, dissolution, liquidation or other termination of the existence of the Vendor, and the Vendor hereby ratifies and confirms and agrees to ratify and confirm all that the Purchaser may lawfully do or cause to be done by virtue of such appointment and power. The power of attorney granted in this Section 8.8(a) is not intended to be a continuing power of attorney within the meaning of, and governed by, the *Substitute Decisions Act* (Ontario), or any similar power of attorney under equivalent legislation in any of the provinces or territories of Canada (in this Article 8, a "CPOA"). The execution of this Agreement shall not terminate any such CPOA granted by the Vendor previously and shall not be terminated by the execution of a CPOA by the Vendor in the future, and the Vendor hereby agrees not to take any action which would result in the termination of the power of attorney hereby granted.

- (b) The Vendor shall be entitled to receive the amount deposited with the Corporation's bankers pursuant to Section 8.8(a) together with the releases and indemnities to which it may be entitled pursuant to this Agreement on delivery to the Purchaser of the documents referred to in Section 8.3 and in compliance with all other provisions of this Agreement.

8.9 Consents.

The Parties acknowledge that the completion of the purchase and sale of the Purchased Shares hereunder shall be subject, in any event, to the receipt of all necessary governmental and regulatory consents and approvals to the transfer of Shares contemplated thereby.

ARTICLE 9
MISCELLANEOUS

9.1 Term of Agreement.

This Agreement shall take effect on the date hereof and shall terminate on the earlier of:

- (a) the date on which one Person becomes the registered and beneficial owner of all the Shares;
- (b) the date this Agreement is terminated by written agreement of all of the parties hereto; or
- (c) the date upon which the Corporation is wound up, liquidated or dissolved, whether voluntarily or involuntarily.

Notwithstanding the termination of this Agreement, the following provisions of this Agreement shall survive the termination of this Agreement and continue to be binding on the parties hereto: Sections 4.7 and 4.10 and the general provisions of this Article 9, as applicable. The termination of this Agreement shall have no effect upon any obligation of a party hereto to make a payment for any Shares purchased pursuant to the provisions of this Agreement or to pay any other amounts owing by it under this Agreement prior to the date of such termination.

9.2 Arbitration Proceedings.

In the event of any dispute, claim, question or difference between or among any parties relating to any matter, covenant, commitment or agreement provided for or contained in this Agreement, any party may by written notice (the "**Arbitration Notice**") to the other party or parties, require same to be settled by arbitration pursuant to and in accordance with the provisions of the *Arbitrations Act*, 1991 (Ontario). Any arbitration commenced pursuant to this Section 9.2 shall be based on the following:

- (a) the arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the parties involved who is qualified by education and training to pass upon the particular matter to be decided, or in the event of failure to agree within ten (10) Business Days, either party may apply to the Superior Court of Justice of Ontario under the *Arbitrations Act*, 1991 (Ontario) to appoint the arbitrator;
- (b) the arbitrator shall be instructed that time is of the essence in proceeding with his/her determination of any dispute, claim, question or difference and, in any event, the arbitration award must be rendered within thirty (30) days of the submission of such dispute to arbitration;
- (c) the arbitration shall take place in the City of Toronto, Ontario;
- (d) the law to be applied in connection with the arbitration shall be the laws of the Province of Ontario, including its conflict of law rules;

- (e) in its arbitration award, the arbitrator may award any remedy for any breach of this Agreement that might have been awarded by the Superior Court of Justice of Ontario except where the remedy for such breach has been expressly limited by this Agreement;
- (f) the arbitration award shall be given in writing and shall be final and binding on the parties, not subject to any appeal on a matter of law, a matter of fact, or a matter of mixed fact and law pursuant to the *Arbitrations Act*, 1991 (Ontario);
- (g) the arbitration award shall deal with the question of costs of arbitration and all matters related thereto;
- (h) judgment upon the award rendered may be entered in any court of competent jurisdiction, or, application may be made to such court for a judicial recognition of the award or an order of enforcement thereof, as the case may be; and
- (i) nothing herein will prevent the party who gave the Arbitration Notice from applying for injunctive relief pending such arbitration proceeding.

9.3 Legend on Certificates.

All certificates evidencing securities of the Corporation, including, without limitation, the Shares, shall have the following legend endorsed thereon forthwith after the execution of this Agreement:

"The securities represented by this certificate are subject to a Unanimous Shareholders Agreement dated as of the 25th day of July, 2014, between the Corporation and its shareholders, as the same may be amended or restated from time to time."

9.4 Notices.

All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to another shall be given in writing and shall be delivered in person, transmitted by facsimile or similar means of recorded electronic communication with receipt confirmed (if a facsimile number or other form of electronic communication address is provided below) addressed as follows:

- (a) to Bridging at:

c/o Bridging Finance Inc.
77 King Street West, Suite 2925, P.O. Box 322
Toronto, Ontario M5K 1K7

Attention: Ms. Natasha Sharpe
Telephone: (416) 777-1601
Email: nsharpe@bridgingfinance.ca

with a copy to:

Coco Paving Inc.
949 Wilson Avenue
Toronto, Ontario
M3K 1G2

Attention: Ms. Virginia Jenny Coco
Facsimile: (416) 633-6765
Email: jcoco@cocogroup.com

and with a copy to:

Fogler, Rubinoff LLP
77 King Street West, Suite 3000
Toronto, Ontario M5K 1G8

Attention: Mr. Ian Kady
Telephone: (416) 941-8809
Email: ikady@foglers.com

(b) to Mizrahi Co at:

Sam M Inc.
189 Forest Hill Road
Toronto, Ontario M5P 2N3

Attention: Sam Mizrahi
Telephone: (416) 818-5288
Email: Sam@MizrahiCorp.Com

(c) to the Corporation at:

Mizrahi Commercial (The One) GP Inc.
189 Forest Hill Road
Toronto, Ontario M5P 2N3

Attention: President and Vice President
Telephone: (416) 818-5288 and (416) 633-6765
Email: Sam@MizrahiCorp.Com and jcoco@cocogroup.com

Any such notice or other communication shall be deemed to have been given and received, if sent by personal delivery, upon delivery, if transmitted by telecopier number or similar means of recorded electronic communication, upon the completion of its transmission. Any party may at any time change its address for service and/or telecopier number or similar means of recorded electronic communication from time to time by giving notice to the other parties hereto in accordance with this Section 9.4.

9.5 Further Assurances.

The parties hereto shall sign such further and other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their votes and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

9.6 Enurement and Assignment.

Except as specifically contemplated herein, no party to this Agreement may assign, transfer or otherwise dispose of this Agreement or all or any part of its rights or obligations or any interest in this Agreement without the prior written consent of all of the other parties hereto. Subject to the foregoing, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal representatives, administrators, successors and permitted assigns, as the case may be.

9.7 Confidentiality.

The parties hereto agree that the terms and conditions of this Agreement are and shall remain confidential and shall not be disclosed by any party hereto to any Person without the prior written consent of the Corporation. Notwithstanding the foregoing, the parties hereto agree that the terms and conditions of this Agreement may be disclosed to such party's professional advisors in connection with the provision of professional services to such party, provided such advisors are advised of the confidential nature of such terms and conditions and agree to act in accordance with the terms and conditions of this Agreement. The parties hereto may also disclose such terms and conditions of this Agreement as they may become legally compelled to do so, and in such event, shall provide written notice of such disclosure to the other parties.

9.8 Waiver.

No party to this Agreement shall be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing, and then such waiver shall be limited to the circumstances set forth in such written waiver. No failure or delay on the part of a party in exercising any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver by a party of a default shall operate against such party as a waiver of such default unless made in writing and signed.

9.9 Entire Agreement and Amendment.

This Agreement constitutes the entire agreement between the parties hereto with respect to all of the matters herein. This Agreement shall not be amended, altered or qualified except by an instrument in writing signed by all of the parties hereto.

9.10 Joint Negotiation and Drafting.

The parties hereto acknowledge and confirm that they have participated jointly in the negotiation and drafting of this Agreement and that any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against a party hereto by virtue of the authorship of this Agreement, as the case may be, shall not apply to the construction and interpretation of this Agreement (or any provision of this Agreement).

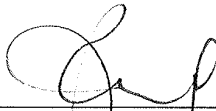
9.11 Counterparts.


This Agreement may be executed in several counterparts, by original or PDF or facsimile signature, each of which so executed shall be deemed to be an original and such counterparts together shall be deemed to be the same instrument and shall be deemed to be executed as of the date first above written.

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IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first shown above.

8891303 CANADA INC.


Per: 
Name: Jenny Coco
Title: A.S.O.


Per: 
Name: U. SHARPE
Title: SECRET
We have authority to bind the corporation

SAM M INC.

Per: _____
Name:
Title:
I have authority to bind the corporation

MIZRAHI COMMERCIAL (THE ONE) GP INC.

Per: 
Name: J. Jenny Coco
Title: Vice-President

Per: 
Name: U. SHARPE
Title: Secretary
We have authority to bind the corporation

SCHEDULE "A"
Form of Counterpart and Acknowledgment

COUNTERPART AND ACKNOWLEDGEMENT

TO: MIZRAHI COMMERCIAL (THE ONE) GP INC. (the "Corporation")

AND TO: EACH OTHER PARTY TO THE BELOW-MENTIONED UNANIMOUS SHAREHOLDERS AGREEMENT

RE: Unanimous Shareholders Agreement dated as of the 25th day of July, 2014, between the Corporation and the shareholders of the Corporation, as the same may be amended, restated or supplemented from time to time (the "Shareholders Agreement")

Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Shareholders Agreement.

The undersigned hereby:

1. acknowledges receipt of a copy of the Shareholders Agreement;
2. agrees to be bound by the terms of the Shareholders Agreement as a party to the Shareholders Agreement and as a shareholder of the Corporation, and shall be entitled to all benefits and obligations of a Shareholder pursuant to the Shareholders Agreement, as fully and effectively as though the undersigned had executed an original copy of the Shareholders Agreement together with the other parties to the Shareholders Agreement;
3. agrees to remain a Permitted Transferee for so long as it shall have any registered or beneficial interest in any Shares or other securities of the Corporation; and
4. this Counterpart and Acknowledgment forms part of the Shareholders' Agreement.

IN WITNESS WHEREOF the undersigned has executed this Counterpart and Acknowledgment this: _____.

Witness



This is Exhibit "O" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

LIMITED PARTNERSHIP AGREEMENT
FOR
MIZRAHI RESIDENTIAL (THE ONE) LP

July 25, 2014

TABLE OF CONTENTS

Article 1 INTERPRETATION1

1.1 Definitions.....1

1.2 Interpretation Not Affected by Headings.....9

1.3 Currency.....9

1.4 Governing Law.....9

1.5 Extended Meanings.....9

1.6 Time of Essence.....10

1.7 Calculations in Accordance with GAAP.....10

1.8 Severability.....10

1.9 Calculation of Time Periods.....10

1.10 Statutory Instruments.....10

1.11 Incorporation of Schedules.....10

Article 2 THE PARTNERSHIP10

2.1 Formation.....10

2.2 Name.....11

2.3 Principal Place of Business.....11

2.4 Duration.....11

2.5 Fiscal Year.....11

Article 3 BUSINESS.....11

3.1 Business of the Partnership.....11

3.2 Restrictions upon Business.....11

Article 4 PARTNERSHIP INTEREST AND UNITS12

4.1 Partnership Interests.....12

4.2 Attributes of LP Units.....12

4.3	Certificates.....	13
Article 5 CAPITAL CONTRIBUTIONS & FINANCING		13
5.1	Initial Contributions.	13
5.2	Class A Capital Contributions.....	14
5.3	Additional Class A1 Capital Contributions.....	14
5.4	Land Transfer Tax.....	14
5.5	Funding of Costs.	14
5.6	Construction Loan.	15
5.7	Development Loan.	15
5.8	Allocation of Construction Loan and Development Loan	16
5.9	No Other Obligation to Fund.....	16
Article 6 TRANSFER OF UNITS		16
6.1	Restriction on Transfer.	16
6.2	Permitted Transfer of LP Units by Limited Partners.	16
6.3	Conditions to Transfer.	17
6.4	General Partner May Refuse Transfer.....	18
6.5	Limited Partner Ceasing to be Resident.....	18
6.6	Transfer by General Partner.	19
6.7	Non-recognition of Trusts or Beneficial Interests.....	19
6.8	Liability after Transfer of a Unit.....	19
6.9	Class B Limited Partner Right of First Offer.	20
6.10	Redemption of the Class B Units of the Class B Limited Partner.....	21
6.11	Determination of Residential Project Valuation Amount.....	24
6.12	Drag-Along Right.....	26
6.13	Class B Limited Partner Right of First Refusal.....	28

6.14	Transfer in contravention of Agreement.....	30
Article 7 PARTICIPATION IN PROFITS AND LOSSES.....		30
7.1	Separate Capital Accounts.....	30
7.2	Reimbursement of Expenses.....	31
7.3	Timing and Determination of Distributions.....	31
7.4	Return to the Class A1 Limited Partner.....	32
7.5	Distributions to the Partners.....	32
7.6	Calculation of Entitlement of the Holders of Units.....	33
7.7	Adjustments.....	33
7.8	Adjustment Lien.....	33
7.9	Determination of Net Income or Net Loss.....	33
7.10	Time of Allocation.....	33
7.11	Allocation of Income or Loss for Accounting & Tax Purposes.....	33
7.12	Tax Returns.....	34
7.13	No Right to Withdraw Amounts.....	34
Article 8 FINANCIAL INFORMATION.....		35
8.1	Books and Records.....	35
8.2	Annual Report.....	35
8.3	Monthly Reports.....	35
8.4	Income Tax and Land Transfer Tax Information.....	36
Article 9 GENERAL PARTNER.....		36
9.1	Powers, Duties and Obligations.....	36
9.2	Specific Powers and Duties.....	36
9.3	Title to Properties.....	39
9.4	Standard of Care.....	39

9.5	Safekeeping of Assets.....	39
9.6	Limitation of Liability.	39
9.7	Indemnification.	40
9.8	Restrictions upon the General Partner.....	40
9.9	Retainer of an Affiliate.....	40
9.10	Removal of General Partner.....	40
9.11	Voluntary Change of a General Partner.	41
9.12	Indemnity to Former General Partner.....	41
9.13	Status of the General Partner.....	41
9.14	Ordinary Resolution.....	42
9.15	Extra-Ordinary Resolution.....	43
Article 10 LIMITED PARTNERS.....		43
10.1	Admission of Limited Partners.....	43
10.2	Status of the Limited Partners.....	43
10.3	Limitations on Authority of Limited Partners.....	45
10.4	Limited Liability of Limited Partners.....	46
10.5	Indemnification of Limited Partners and Insurance.....	46
10.6	Activities of Limited Partners.....	47
10.7	No Actions or Liens.....	47
10.8	Compliance with Laws.	47
Article 11 REGISTRAR AND TRANSFER AGENT.....		47
11.1	Appointment.....	47
11.2	Duties.....	47
Article 12 THE REGISTER.....		48
12.1	The Register.....	48

12.2	Direction from General Partner.....	48
12.3	Liability of Registrar and Transfer Agent.....	49
12.4	Effective Date.	49
12.5	Inspection of Register.	49
Article 13 MEETINGS		49
13.1	Requisition of Meeting.....	49
13.2	Place of Meeting.....	50
13.3	Notice of Meeting.	50
13.4	Proxies.....	50
13.5	Validity of Proxies.....	50
13.6	Corporations.....	50
13.7	Attendance of Others.....	50
13.8	Chairperson.....	50
13.9	Quorum.....	51
13.10	Voting.....	51
13.11	Poll.....	51
13.12	Resolutions Binding.....	51
13.13	Resolution in Lieu of Meeting.....	52
13.14	Minutes.....	52
13.15	Additional Rules and Procedures.....	52
Article 14 NOTICES.....		52
14.1	Notices.	52
Article 15 DISSOLUTION AND LIQUIDATION		54
15.1	Dissolution.	54
15.2	Liquidation of the Partnership Assets.....	54

15.3	Distribution.....	54
15.4	Statement.....	54
15.5	Cash Distribution.....	55
15.6	Termination.....	55
15.7	Continuity.....	55
15.8	Receiver.....	55
Article 16 POWER OF ATTORNEY		55
16.1	Power of Attorney.....	55
Article 17 MISCELLANEOUS		56
17.1	Confidentiality.....	56
17.2	Entire Agreement, Waiver.....	57
17.3	Amendment.....	57
17.4	Binding Agreement, Enurement.....	57
17.5	Further Assurances.....	57
17.6	Tender.....	57
17.7	Expenses.....	58
17.8	Counterparts.....	58
SCHEDULE "A" Form of LP Unit Certificate.....		1
SCHEDULE "B" Form of Assignment and Transfer Form.....		1

LIMITED PARTNERSHIP AGREEMENT

THIS LIMITED PARTNERSHIP AGREEMENT is dated as of the 25th day of July, 2014,

BETWEEN:

MIZRAHI RESIDENTIAL (THE ONE) GP INC., a corporation existing under the laws of the Province of Ontario

(the "**General Partner**")

- and -

8891303 CANADA INC., a corporation existing under the Federal laws of Canada

(the "**Class A1 Limited Partner**")

- and -

MIZRAHI ENTERPRISES INC., a corporation existing under the laws of the Province of Ontario

(the "**Class B Limited Partner**", and together with the Class A1 Limited Partner, collectively, the "**Limited Partners**")

WHEREAS:

- A. The General Partner and the Limited Partners wish to establish a limited partnership pursuant to the Act (as defined below) and the laws of the Province of Manitoba for the purposes of acquiring the Properties (as defined below) and constructing, developing and operating the Residential Project (as defined below); and
- B. The parties hereto wish to set forth their rights and liabilities in respect of the Partnership (as defined below);

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions.

As used in this Agreement (including the Schedules attached hereto), the following words and phrases shall have the following meanings, respectively:

- (a) "**Accountant**" means the firm of Ernst & Young LLP or such others appointed from time to time under this Agreement as the accountants of the Partnership;
- (b) "**Act**" means *The Partnership Act* (Manitoba) and all regulations thereunder;
- (c) "**Affiliate**" means, with respect to any Person, any other Person, directly or indirectly, Controlling, Controlled by or under common Control with such Person;
- (d) "**Agreement**" means this limited partnership agreement, including the schedules hereto, in each case as they may be amended, modified or supplemented from time to time;
- (e) "**Arm's Length**" has the meaning given to it in the ITA;
- (f) "**Assignment and Transfer Form**" has the meaning given to it in Section 6.3(a);
- (g) "**Attributable Partner Expense**" has the meaning given to it in Section 7.11(b)(i);
- (h) "**BNRA**" means *The Business Names Registration Act* (Manitoba);
- (i) "**Bond Issuer**" means Aviva Insurance Company of Canada;
- (j) "**Business Day**" means any day other than a Saturday, Sunday or other day which is a statutory holiday in the Province of Manitoba or the Province of Ontario;
- (k) "**Capital Account**" has the meaning given to it in Section 7.1;
- (l) "**Capital Contribution**" means the Class A1 Capital Contributions or the Class B Capital Contributions of a Limited Partner, as applicable;
- (m) "**Certificate**" means a certificate evidencing ownership of any LP Units, in the form set out in Schedule "A", issued in accordance with this Agreement;
- (n) "**Class A1 Capital Contribution**" means the amount of cash which the Class A1 Limited Partner has contributed to the Partnership in payment of the subscription price of the Class A1 Units issued to the Class A1 Limited Partner from time to time;
- (o) "**Class A1 Units**" has the meaning given to it in Section 4.1(a)(i);
- (p) "**Class B Capital Contribution**" means the amount of cash which the Class B Limited Partner has contributed to the Partnership in payment of the subscription price of the Class B Units issued to the Class B Limited Partner from time to time;
- (q) "**Class B Proportionate Share of the Residential Project Valuation Amount**" has the meaning given to it in Section 6.11(c);
- (r) "**Class B Units**" has the meaning given to it in Section 4.1(a)(iii);

- (s) "**Confidential Information**" means the confidential information concerning or otherwise relating to the Partnership, including, without limitation, its financial statements, accounts, and non-public financial information; provided that, "Confidential Information" shall not include any of the foregoing which: (i) is in the public domain; (ii) is generally known throughout the industry in which the Partnership operates; or (iii) becomes available to the general public or other businesses generally; in each case of (i), (i) and (iii), otherwise than as the result of the breach by a Partner or by any of the employees of, or consultants and independent contractors to, the Partnership of their respective obligations of confidentiality to the Partnership, including as provided herein;
- (t) "**Construction Loan**" has the meaning given to it in Section 5.5(b);
- (u) "**Control**" as used with respect to any Person, means the possession, directly or indirectly, through one or more intermediaries or otherwise, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting or other securities, by contract or in any other manner whatsoever; and the terms "**Controlling**", "**Controlled by**" and "**under common Control with**" have corresponding meanings;
- (v) "**Cost Consultant**" has the meaning given to it in the Residential Development Management Agreement (i.e., Altus Group Limited);
- (w) "**Declaration**" means the declaration in respect of the Partnership filed or to be filed in accordance with the Act and the BNRA, as such declaration may be amended, supplemented, or otherwise modified from time to time in accordance with the Act and the BNRA;
- (x) "**Development Lender**" has the meaning given to it in Section 5.7(a);
- (y) "**Development Loan**" has the meaning given to it in Section 5.7(a);
- (z) "**Disposition**" means the sale, transfer, assignment or other disposition of (i) the Residential Component or a material portion thereof, (ii) the Parking Component, or a material portion thereof, and (iii) if applicable, the Hotel Component, or a material portion thereof, other than, in each case, as security pursuant to a Lien permitted by this Agreement;
- (aa) "**Distributable Cash**" means, at any date of determination, the aggregate of proceeds received by the Partnership (or by the General Partner on behalf of the Partnership) as at such date in respect of the following:
 - (i) the Disposition of the Residential Component, the Parking Component, or, if applicable, the Hotel Component,
 - (ii) any insurance in respect of the Residential Component, the Parking Component, or, if applicable, the Hotel Component,

- (iii) any expropriation of any portion of the Residential Component, the Parking Component, or, if applicable, the Hotel Component,
- (iv) any financing of the Residential Component, the Parking Component or, if applicable, the Hotel Component;
- (v) all receipts of an income nature or a capital nature, including all rents, interest, and other revenues from the Residential Component, the Parking Component and, if applicable, the Hotel Component; and
- (vi) the amount of all Capital Contributions,

less the aggregate of all amounts which are required to be paid by the Partnership (or by the General Partner on behalf of the Partnership) or for which the Partnership (or the General Partner on behalf of the Partnership) is then liable on account of:

- (vii) expenses of the Partnership in accordance with the Residential Initial Budget or the Residential Approved Budget, as the case may be (including expenses on account of realty taxes) accrued as at such date, other than as accounted for in the Reserve,
 - (viii) all mortgage and other non-contingent liabilities and obligations of any and every nature and kind whatsoever of the Partnership (and whether on account of principal, interest, financing fees or otherwise) as at such date, other than as accounted for in the Reserve,
 - (ix) Third Party costs incurred in connection with the matters in (i), (ii), (iii) and (iv) of this Section 1.1(aa), as the case may be, and
 - (x) any Reserve;
- (bb) "**DM Reports**" has the meaning given to it in Section 8.3;
- (cc) "**Extra-Ordinary Resolution**" means:
- (A) a resolution passed at a duly constituted meeting of the Partnership by the affirmative vote of: (1) the Class A1 Limited Partner, and (2) the Class B Limited Partner, or
 - (B) a written resolution signed in one or more counterparts by (1) the Class A1 Limited Partner, and (2) the Class B Limited Partner;
- (dd) "**Fair Market Value**" means the price determined in an open and unrestricted market between informed prudent parties, acting at Arm's Length and under no compulsion to act, expressed in terms of money or money's worth;

- (ee) "**Fiscal Year**" means the fiscal year of the Partnership determined pursuant to this Agreement;
- (ff) "**Former General Partner**" has the meaning given to it in Section 9.10;
- (gg) "**GAAP**" means generally accepted accounting principles in Canada in effect at the time being referred to;
- (hh) "**General Partner**" means Mizrahi Residential (The One) GP Inc. and any other duly appointed and designated general partner of the Partnership under this Agreement;
- (ii) "**GP Unit**" has the meaning given to it in Section 4.1(b);
- (jj) "**Hotel Component**" means the component of the Residential Project comprised of the space that may be constructed for hotel uses.
- (kk) "**Incapacitated**" means, in respect of Mizrahi, the condition: (i) where Mizrahi becomes unable, by reason of illness, disease, mental or physical disability or incapacity, to perform his duties as principal of the Residential Development Manager and/or the Residential Construction Manager for a period of one hundred and twenty (120) days in the aggregate during any period of three hundred and sixty-five (365) consecutive calendar days, or (ii) where Mizrahi has been declared by a court of competent jurisdiction to be mentally incompetent and such declaration has not been revoked within thirty (30) days of such declaration;
- (ll) "**Income Tax Act**" or "**ITA**" means the *Income Tax Act* (Canada);
- (mm) "**Land Transfer Tax**" means Ontario, Toronto and other real property and land transfer taxes and land registration fees and charges, and any similar taxes, fees and charges, whether imposed on a registered or unregistered transaction;
- (nn) "**Lien**" means any mortgage, charge, pledge, hypothecation, security interest, assignment, encumbrance, lien (statutory or otherwise), title retention agreement or arrangement, restrictive covenant or and any other encumbrances of any nature;
- (oo) "**Limited Partner**" means each of the Class A1 Limited Partner and the Class B Limited Partner so long as it owns any LP Units and any other Person who acquires any LP Units in accordance with the terms of this Agreement, and "**Limited Partners**" means the Limited Partner, collectively;
- (pp) "**LP Unit**" has the meaning given to it in Section 4.1(a)(iii);
- (qq) "**Mizrahi**" means Sam Mizrahi, an individual resident in the Province of Ontario;
- (rr) "**Net Income**" or "**Net Loss**" means, respectively, the net income or net loss of the Partnership in respect of the period then being referred to for accounting purposes as determined by the General Partner in accordance with GAAP;

- (ss) **"New General Partner"** has the meaning given to it in Section 9.10;
- (tt) **"Ordinary Resolution"** means:
- (A) a resolution passed at a duly constituted meeting of the Partnership by the affirmative vote of the Class A1 Limited Partner, or
 - (B) a written resolution signed by the Class A1 Limited Partner;
- (uu) **"Parking Component"** means the component of the Residential Project comprising the parking spaces intended for the Residential Component and, if applicable, the Hotel Component and not the commercial office or retail project;
- (vv) **"Partner"** means any of the General Partner or a Limited Partner; and **"Partners"** means the General Partner and the Limited Partners, collectively;
- (ww) **"Partnership"** means the limited partnership created by this Agreement, and known as "Mizrahi Residential (The One) LP";
- (xx) **"Permitted Transferee"** means:
- (i) in relation to the Class A1 Limited Partner, any one or more of (A) its Affiliates, or (B) at any time following the date on which the Class A1 Limited Partner has satisfied its obligations to purchase all of the Class A1 Units as contemplated in each Subscription and Power of Attorney Form delivered by the Class A1 Limited Partner from time to time, any Third Party, and
 - (ii) in relation to the Class B Limited Partner, any one or more of (A) Mizrahi, (B) a trust Controlled by Mizrahi and whose the sole beneficiaries are any one or more of Mizrahi, Mizrahi's spouse, Mizrahi's children (natural or adopted), and any other direct lineal descendant of Mizrahi, and (C) a corporation Controlled by Mizrahi and whose sole shareholders are any one or more of Mizrahi, Mizrahi's spouse, Mizrahi's children (natural or adopted), and any other direct lineal descendant of Mizrahi;
- (yy) **"Person"** means an individual, corporation, body corporate, partnership, joint venture, association, trust or unincorporated organization or any trustee, executor, administrator or other legal representative;
- (zz) **"Power of Attorney"** means the power of attorney duly executed in the form set out in the Subscription and Power of Attorney Form or such similar form as is acceptable to the General Partner;
- (aaa) **"Pre-Capitalization Income or Loss"** has the meaning given to it in Section 7.11(b)(i);

- (bbb) "**Prime**" means the commercial lending rate of interest which the Partnership's bank quotes, in Toronto, as the reference rate of interest (commonly known as "prime") for the purposes of determining the rate of interest that it charges to its commercial customers for loans in Canadian funds;
- (ccc) "**Properties**" has the meaning given to it in the Residential Development Management Agreement;
- (ddd) "**Purchase Nominee Agreement**" means the Nominee Agreement Re Purchase Agreements made as of the 22nd day of May, 2014 between the Class A1 Limited Partner and Mizrahi Real Estate Group Inc.;
- (eee) "**Register**" means the register of Partners required to be maintained by the General Partner or Registrar and Transfer Agent in accordance with Article 12;
- (fff) "**Registrar and Transfer Agent**" means the registrar and transfer agent appointed by the General Partner pursuant to Section 11.1;
- (ggg) "**Reserve**" means any amount deemed by the General Partner to be necessary as a reserve to cover expenses of the Partnership in accordance with the Residential Initial Budget or the Residential Approved Budget, as the case may be, and to preserve the capital of the Partnership;
- (hhh) "**Residential Component**" means the component of the Residential Project comprising the space for residential condominium uses;
- (iii) "**Residential Approved Budget**" has the meaning given to it in the Residential Development Management Agreement;
- (jjj) "**Residential Construction Management Agreement**" has the meaning given to it in the Residential Development Management Agreement;
- (kkk) "**Residential Construction Manager**" means Mizrahi Inc. and includes its successors and permitted assigns under the Residential Construction Management Agreement;
- (lll) "**Residential Development Management Agreement**" means the Residential Development Management Agreement made as of the date hereof between the Partnership, as owner of the Residential Project, and the Residential Development Manager, as manager, with respect to the development of the Residential Project, as same may be amended, modified or supplemented from time to time;
- (mmm) "**Residential Development Manager**" means Mizrahi Inc. and includes its successors and permitted assigns under the Residential Development Management Agreement;
- (nnn) "**Residential Initial Budget**" has the meaning given to it in the Residential Development Management Agreement;

- (ooo) "**Residential Project**" means the residential project, including residential components and, if applicable, hotel components, together with any parking components intended for the residential project and not a commercial retail or office project, to be constructed on the Properties;
- (ppp) "**Residential Project Valuation Amount**" has the meaning given to it in Section 6.11(c);
- (qqq) "**Residential Project Costs**" means all costs and expenses (including reasonable legal fees and disbursements) in connection with: (i) the assembly and acquisition of the Properties, including reasonable due diligence costs and expense and interest costs and lender fees incurred in connection with the purchase of the Properties, (ii) the Residential Project soft costs included in the Residential Initial Budget or the Residential Approved Budget, as the case may be, and (iii) the development of the Residential Project in accordance with the Residential Initial Budget or the Residential Approved Budget, as the case may be, and is not otherwise funded by the Construction Loan;
- (rrr) "**Shareholders Agreement**" means the Unanimous Shareholders Agreement of even date herewith among the Class A1 Limited Partner, the Class B Limited Partner, as shareholders, and the General Partner, governing the business and affairs and ownership of the shares of the General Partner, as same may be amended, modified or supplemented from time to time;
- (sss) "**Subscription and Power of Attorney Form**" means the form of subscription form and power of attorney form required to be completed and delivered upon subscription for LP Units;
- (ttt) "**Subsequent Declaration**" means a declaration supplemental to the Declaration and filed pursuant to the Act and the BNRA;
- (uuu) "**Substantial Completion**" has the meaning given to it in the Residential Development Management Agreement;
- (vvv) "**Substituted Limited Partner**" means a Limited Partner admitted to the Partnership upon the Transfer of a LP Unit or LP Units from a transferring Limited Partner;
- (www) "**Takeout Financing**" has the meaning given to it in Section 5.5(d);
- (xxx) "**Tarion**" means Tarion Warranty Corporation;
- (yyy) "**Third Party**" means a Person who is at Arm's Length to, and is not an Affiliate of, the Partnership, the General Partner or the Class A1 Limited Partner;
- (zzz) "**Title Nominee**" means Mizrahi Development Group (The One) Inc., a corporation existing under the laws of the Province of Ontario;

- (aaaa) "**Time of Closing**" means 10:00 o'clock a.m. (local time) or such other time on the relevant closing date or redemption date as may be agreed to by the parties in the subject transaction;
- (bbbb) "**Total Project**" means the Residential Project, and a commercial project, including retail, and, if applicable, office and related parking components, to be constructed on the Properties; and
- (cccc) "**Transfer**" includes any sale, exchange, assignment, transfer, gift, donation, bequest, disposition, granting of Lien or other arrangement of any nature or kind whatsoever howsoever effected (whether directly or indirectly) by which possession, legal title or beneficial ownership passes, actually or contingently, from one Person to another, or to the same Person in a different capacity, whether or not voluntary and whether or not for value, and the words "**Transferred**", "**Transferring**" and other words of similar import shall have corresponding meanings.

1.2 Interpretation Not Affected by Headings.

The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular section, subsection or other portion hereof. Unless otherwise expressly indicated in this Agreement, any reference which is made in this Agreement to an "Article", "Section" or "Subsection", means and refers to the Article, Section or Subsection of this Agreement so referenced.

1.3 Currency.

All dollar amounts expressed in this Agreement are expressed in Canadian dollars and all payments contemplated by this Agreement shall be made in Canadian funds.

1.4 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the Federal Laws of Canada applicable therein and this Agreement shall in all respects be treated as an Ontario contract. The parties hereto irrevocably attorn to the jurisdiction of the courts of the Province of Ontario to resolve any dispute which may arise among them concerning this Agreement and the subject matters hereof.

1.5 Extended Meanings.

In this Agreement, unless the context otherwise requires, words importing the singular number include the plural and vice versa and words importing the masculine gender include the feminine and neuter genders and vice versa. The term "including" means "including without limitation".

1.6 Time of Essence.

Time shall be of the essence of every provision of this Agreement.

1.7 Calculations in Accordance with GAAP.

Every calculation and other determination for accounting purposes (e.g., Net Income and Net Loss) required to be made pursuant to this Agreement shall be made in accordance with GAAP for private entities in Canada, consistently applied.

1.8 Severability.

Any provision of this Agreement which is invalid, prohibited or unenforceable in any jurisdiction for any reason whatsoever shall, as to such jurisdiction only, be ineffective and severable from this Agreement to the extent of such invalidity, prohibition or unenforceability but such invalidity, prohibition or unenforceability shall not invalidate or otherwise affect the remaining provisions of this Agreement nor shall it affect the validity or enforceability of such provision in any other jurisdiction.

1.9 Calculation of Time Periods.

When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period in question shall end on the immediately following Business Day.

1.10 Statutory Instruments.

Any references in this Agreement to any statute, law, by-law, rule, regulation, order or act of any governmental or regulatory authority shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.

1.11 Incorporation of Schedules.

The following schedules are attached to and incorporated by reference into this Agreement:

- Schedule "A" - Form of Certificate
- Schedule "B" - Assignment and Transfer Form

ARTICLE 2
THE PARTNERSHIP

2.1 Formation.

The General Partner, the Class A1 Limited Partner and the Class B Limited Partner hereby form a limited partnership pursuant to provisions of the Act and pursuant to the terms of this

Agreement effective upon the filing of the Declaration. The rights and obligations of the Partners shall be as provided in the Act, except as otherwise provided herein. The Partnership shall continue until terminated in accordance with the provisions of this Agreement.

2.2 Name.

The name of the Partnership shall be "Mizrahi Residential (The One) LP" or such other name or names as the General Partner may from time to time deem appropriate to comply with the laws of the jurisdictions in which the Partnership may carry on business.

2.3 Principal Place of Business.

The principal place of business of the Partnership shall be 189 Forest Hill Road Toronto, Ontario M5P 2N3 or such other address as the General Partner may from time to time designate in written notice to the Limited Partners and effect by way of filing a subsequent Declaration. If required by law, a registered office shall be maintained in the Province of Manitoba at such location as the General Partner may from time to time designate.

2.4 Duration.

The Partnership shall continue until it is terminated in accordance with the provisions of this Agreement.

2.5 Fiscal Year.

The fiscal year of the Partnership shall end on December 31 in each year unless changed by the General Partner.

ARTICLE 3 **BUSINESS**

3.1 Business of the Partnership.

The Partnership has been formed for the purpose of: (a) acquiring the Properties for the purposes of developing the Residential Project; and (b) constructing, developing, and operating the Residential Project and otherwise maximizing the value of the Residential Project, including, if applicable, a Disposition of the Residential Project or one more of the components thereof. The Partnership may also engage in such other necessary or related activities as the General Partner deems advisable in order to carry on the principal business of the Partnership.

3.2 Restrictions upon Business.

The Partnership shall not carry on business in any jurisdiction in which, in the opinion of counsel to the Partnership, compliance with the laws of that jurisdiction applicable to the Partnership will not permit the liability of the Limited Partners to be limited to the same extent that such Limited Partners enjoy limited liability under the laws of the Province of Manitoba, unless the General Partner has taken all steps which may be required by the laws of that jurisdiction for the Limited Partners to benefit from such limited liability.

ARTICLE 4
PARTNERSHIP INTEREST AND UNITS

4.1 Partnership Interests.

- (a) The interests of the Limited Partners in the Partnership shall be initially divided into, consist of and be represented by:
- (i) ^{TEN (10) of us} ▶ Class A1 units (the "**Class A1 Units**");
 - (ii) ^{TEN (10) of us} an aggregate of ▶ (▶) additional Class A1 Units, which Class A1 Units the Partnership shall be authorized to issue upon the approval of the General Partner and the approval of the Class A1 Limited Partner by Ordinary Resolution.
 - (iii) Ten (10) Class B units (the "**Class B Units**", and, together with the Class A1 Units collectively, the "**LP Units**").

Each LP Unit represents an undivided interest in the Partnership.

- (b) The interest of the General Partner in the Limited Partnership shall consist of and be represented by a single unit (the "**GP Unit**"). The General Partner is not entitled to vote at any meetings of the Limited Partners, in its capacity as general partner.

4.2 Attributes of LP Units.

The LP Units shall have the following attributes:

- (a) except as provided for herein, no LP Unit shall have any preference, conversion, exchange, pre-emptive or redemption rights over any other LP Unit;
- (b) the Class A1 Limited Partner shall be entitled to one vote per Class A1 Unit in respect of all matters to be decided by the Limited Partners and no decision shall be approved in respect of the Limited Partners or binding on the Limited Partners unless such decision has been approved by the Class A1 Limited Partner. Except for any Extra Ordinary Resolution, the holder of the Class B Units shall not have the right to vote at any meetings of the Limited Partners but shall have the right to attend and receive notice of any meetings of the Limited Partners;
- (c) no LP Unit may be divided or split into fractions and the Partnership shall not issue fractional LP Units; and
- (d) each LP Unit shall be a "security" for the purposes of the *Securities Transfer Act*, 2006 (Ontario).

4.3 Certificates.

- (a) The General Partner shall deliver or cause to be delivered to each Limited Partner a Certificate specifying the number of LP Units held by such Limited Partner.
- (b) Each Certificate must be signed by an authorized signatory of the General Partner.
- (c) A Certificate may be sent through the mail by registered prepaid mail or delivered to the order of the Limited Partner and neither the General Partner nor any registrar and transfer agent appointed by the General Partner will be liable for any loss by a Limited Partner that results from the loss of a Certificate by reason that it is so sent.
- (d) LP Units may only be registered in the name of a single entity, unless the General Partner decides otherwise.
- (e) Where a Limited Partner claims that its Certificate has been defaced, lost, apparently destroyed or wrongfully taken, the General Partner shall issue a new Certificate in substitution for the original Certificate if the Limited Partner files with the General Partner a form of proof of loss and, at the option of the General Partner, an indemnity bond each in form and, in the case of the indemnity bond, in amount, satisfactory, in the opinion of the General Partner, to protect the General Partner and the Partnership from any loss, cost or damage that they may incur or suffer by complying with the request to issue a new Certificate and if the Limited Partner satisfies such other reasonable requirements as are imposed by the General Partner.

ARTICLE 5
CAPITAL CONTRIBUTIONS & FINANCING

5.1 Initial Contributions.

- (a) On the date of this Agreement, the General Partner shall contribute Ten Dollars (\$10.00) in connection with its purchase of the GP Unit and the issuance of such GP Unit is hereby authorized and approved.
- (b) On the date of this Agreement, the Class A1 Limited Partner shall execute and deliver a Subscription and Power of Attorney Form for **TEN (10)** Class A1 Units representing a **TEN (10)** Dollar (\$**TEN (10)**) Class A1 Capital Contribution, for a subscription price of One Dollar (\$1.00) per Class A1 Unit, and the issuance of such Class A1 Units is hereby authorized and approved.
- (c) On the date of this Agreement, the Class B Limited Partner shall execute and deliver a Subscription and Power of Attorney Form for Ten (10) Class B Units representing a Ten Dollar (\$10.00) Class B Capital Contribution, for a subscription price of One Dollar (\$1.00) per Class B Unit, and the issuance of such Class B Units is hereby authorized and approved.

5.2 Class A Capital Contributions.

The General Partner may accept additional offers to subscribe for Class A1 Units from the Class A1 Limited Partner from time to time up to the maximum number of authorized Class A1 Units at the applicable time, for a subscription price of One Dollar (\$1.00) per Class A1 Unit. In connection with any such offer to subscribe for Class A1 Units, the Class A1 Limited Partner shall be required to complete, execute and deliver to, or to the order of, the General Partner: (i) a Subscription and Power of Attorney Form, and (ii) such other documents that the General Partner requires for the issuance of such additional Class A1 Units to comply with all applicable laws. The General Partner shall file such amendments to the Declaration, as necessary, in accordance with the Act to reflect such additional Class A1 Capital Contributions.

5.3 Additional Class A1 Capital Contributions.

From time to time during the term of this Agreement as and when requested by the General Partner in writing, with respect to any Subscription and Power of Attorney Form that has been entered into by the Class A1 Limited Partner after the date hereof for the purchase of additional Class A1 Units, the Class A1 Limited Partner shall purchase, for a subscription price of One Dollar (\$1.00) per Class A1 Unit, that number of Class A1 Units requested by the General Partner in writing and set forth in any such additional Subscription and Power of Attorney Form, subject to the maximum number of Class A1 Units that the Class A1 Limited Partner has agreed to purchase in any such additional Subscription and Power of Attorney Form. In exchange for each such Class A1 Capital Contribution from time to time, the Class A1 Limited Partner shall receive one (1) Class A1 Unit per One Dollar (\$1.00) of Class A1 Capital Contribution made.

5.4 Land Transfer Tax.

Each Limited Partner shall be responsible for compliance with all provisions of applicable law relating to filing Land Transfer Tax returns and other documents and payment of Land Transfer Tax in connection with the acquisition of LP Units by such Limited Partner as may be applicable, and for ensuring compliance by Persons with direct or indirect interests in such Limited Partner with such matters as required by applicable law. Where applicable, each Limited Partner shall provide to the General Partner on request evidence satisfactory to the General Partner of compliance with the foregoing obligations.

5.5 Funding of Costs.

The Partnership shall fund all of its expenses and liabilities in accordance with the Residential Initial Budget or the Residential Approved Budget, as the case may be:

- (a) from its own cash on hand and other assets, including cash on hand from the Class A1 Capital Contributions made pursuant to Sections 5.1, 5.2, and 5.3;
- (b) by borrowing funds from a reputable financial institution(s) in accordance with Section 5.6 for the purpose of funding the construction of the Residential Project and, if applicable, the Total Project (the "**Construction Loan**");

- (c) by borrowing the Development Loan from the Development Lender pursuant to Section 5.7 for the purpose of funding the Residential Project and the Residential Project Costs and, if applicable, other Total Project costs in excess of the Class A1 Capital Contributions and other cash on hand; and
- (d) as and when available, the refinancing of the Construction Loan and the Development Loan (commonly referred to in the industry in which the Partnership operates as "Takeout Financing") ("**Takeout Financing**").

Notwithstanding anything to the contrary in the foregoing, it is hereby acknowledged and agreed that the Partnership shall first apply the proceeds from the Class A1 Capital Contributions made pursuant to Sections 5.1, 5.2, and 5.3 to repay the Class A1 Limited Partner for all of its costs and expenses incurred pursuant to the Purchase Nominee Agreement.

5.6 Construction Loan.

The General Partner shall select the reputable financial institution from whom the Construction Loan will be borrowed for the purposes of funding the construction of the Residential Project and, if applicable, the Total Project and the terms and conditions of the Construction Loan and the General Partner shall, if required, obtain such debt upon the security of the assets of the Partnership, the General Partnership and the Title Nominee in connection with obtaining the Construction Loan.

5.7 Development Loan.

- (a) The General Partner, for and on behalf of the Partnership, shall and does hereby retain the Class A1 Limited Partner to arrange, on a "best efforts basis", a loan or series of loans (the "**Development Loan**") from those Person(s) determined by the Class A1 Limited Partner (the "**Development Lender**", which Person or Persons may be or include an Affiliate of the Class A1 Limited Partner) to the Partnership to fund the Residential Project Costs and other costs related to the Residential Project and, if applicable, the Total Project in excess of the Class A1 Capital Contributions and other cash on hand of the Partnership. The terms of such engagement between the Partnership and the Class A1 Limited Partner shall be set forth in written engagement letter to be entered into between the Partnership and the Class A1 Limited Partner (or an Affiliate thereof), such agreement to be in a form and substance satisfactory to the General Partner and the Class A1 Limited Partner. It is hereby acknowledged, agreed, confirmed and approved by the Partners that the terms of such engagement shall include (i) a fee payable to the Class A1 Limited Partner on successful completion of the Development Loan, in an amount not greater than ten percent (10%) (and which fee, for greater certainty, shall not be duplicate of any fee payable to the Class A1 Limited Partner or any Affiliate or in connection any similar services provided to the owner of the balance of the Total Project) of the amount of the Development Loan, and (ii) that all reasonable costs and expenses of the Class A1 Limited Partner in connection with arranging and obtaining the Development Loan

(including reasonable legal fees and disbursements) shall be reimbursed by the Partnership.

- (b) The terms and conditions of the Development Loan shall be satisfactory to the General Partner and the Class A1 Limited Partner. If so satisfactory, the General Partner, for and on behalf of the Partnership, shall obtain the Development Loan and, if required and in connection therewith, the General Partner shall be permitted to grant a Lien on the Residential Project in favour of the Development Lender (or a collateral agent on its behalf), which Lien shall be subordinate to any Lien granted on the Residential Project and in favour of (i) the lender under Construction Loan, (ii) Tarion, and (iii) the Bond Issuer.

5.8 Allocation of Construction Loan and Development Loan

If applicable, the General Partner shall, acting reasonably and in good faith, allocate the expenses and liabilities of the Construction Loan and the Development Loan, including the fee payable to the Class A1 Limited Partner as provided in Section 5.7(a), as between the Partnership in connection with the Residential Project, on the one hand, and the owner of the balance of the Total Project, on the other.

5.9 No Other Obligation to Fund.

For greater certainty, from and after the date hereof, except as provided for in Section 5.1 and 5.3 hereof, no Limited Partner shall have any obligation whatsoever to make any Capital Contributions to the Partnership, or loan or advance any money to the Partnership, or provide any guarantee, post any security or make any other financial commitment in respect of the Partnership.

ARTICLE 6 **TRANSFER OF UNITS**

6.1 Restriction on Transfer.

No Transfer by any Limited Partner of any of its LP Units to any Person shall be permitted except as explicitly permitted under this Article 6.

6.2 Permitted Transfer of LP Units by Limited Partners.

Subject to Sections 6.3 and 6.4, any or all of the LP Units of a Limited Partner may be Transferred by a Limited Partner:

- (a) to any Permitted Transferee of such Limited Partner; and
- (b) to any bona fide lender to the Partnership pursuant to a mortgage, charge, pledge or hypothecation; provided that: (i) the consent of the General Partner shall be first had and obtained, which consent may be unreasonably withheld, and (ii) the mortgagee, chargee or pledgee agrees by written instrument delivered to the General Partner and accepted by the General Partner that such mortgage, charge,

pledge or hypothecation (including enforcement thereunder) is subject to the terms of this Agreement and any Transfer of any Units pursuant to an enforcement of such mortgage, charge, pledge or hypothecation must be a Transfer that has otherwise complies with this Article 6.

6.3 Conditions to Transfer.

No Transfer by a Limited Partner of its LP Units pursuant to Section 6.2 shall be effective unless and until the following conditions have been satisfied:

- (a) Assignment and Transfer Form: the transferring Limited Partner shall have delivered to the General Partner or the Registrar and Transfer Agent a duly completed and executed assignment and transfer form naming the transferee of the LP Units, in the form of Schedule "B" attached hereto (the "**Assignment and Transfer Form**");
- (b) Transferee Bound: the transferee shall have agreed in writing to be bound by the terms of this Agreement and to assume the obligations of the transferring Limited Partner under this Agreement in respect of the LP Units being transferred by executing the Assignment and Transfer Form;
- (c) Delivery of Endorsed Certificate: the transferring Limited Partner shall have delivered to the General Partner or to the Registrar and Transfer Agent the Certificate representing the LP Units to be Transferred, duly endorsed for transfer, and where the Certificate is lost or destroyed at the time of transfer, the provisions of Section 4.3(e) apply;
- (d) Certified Documents: where either the transferor or the transferee is a corporation, partnership, limited partnership or other entity, the transferor or the transferee shall have delivered such certified copies of resolutions, extracts of by-laws, articles or other constituent documents of the transferor or the transferee as the General Partner may reasonably require;
- (e) Income Tax Releases: the transferring Limited Partner shall have delivered such releases for income tax purposes, if any, as may be required by the General Partner, acting reasonably;
- (f) Compliance with Laws: the Transfer complies with all applicable laws, including applicable securities laws;
- (g) Transfer Costs: the transferring Limited Partner shall have provided payment of such costs and expenses, including reasonable legal fees, as are incurred by the General Partner and the Partnership in respect of completing the Transfer;
- (h) Land Transfer Tax Requirements: the transferee shall have acknowledged the transferee's obligations to file any required Land Transfer Tax returns and pay any applicable Land Transfer Tax in connection with the Transfer of LP Units and the transferee shall have agreed to reimburse the General Partner or the Partnership,

as applicable, for any valuation costs incurred for purposes of providing information to the transferee in connection with Land Transfer Tax; and

- (i) Consents: all required consents to such Transfer, including all Third Party consents, shall have been obtained in writing and delivered as required.

Upon compliance with these conditions, the General Partner will record in the Register the name, address, number of LP Units and Capital Contribution of the transferee, issue a Certificate in the name of the transferee for the number of LP Units acquired and record and file such other information as is required to be recorded and filed in each jurisdiction in which the Partnership carries on business and the transferee will become bound as a Limited Partner and will be entitled to all the rights and subject to all of the obligations of a Limited Partner under the provisions of this Agreement. No Transfer of a LP Unit relieves the transferor Limited Partner from any obligations to the Partnership incurred prior to the transfer becoming effective. In circumstances where less than all of the LP Units of a Limited Partner are Transferred, the General Partner shall cause a new certificate representing the balance of the LP Units retained by the transferring Limited Partner to be issued to the transferring Limited Partner.

6.4 General Partner May Refuse Transfer.

The General Partner has the right to deny a Transfer of LP Units made pursuant to Section 6.2 for any one or more of the following reasons:

- (a) Non-Resident: the transferee is a "non-resident" within the meaning of the ITA;
- (b) Dissolution: the proposed Transfer of Units is more than ten (10) days after the sending of the notice of dissolution of the Partnership as provided herein;
- (c) Protection of the Partnership: the Transfer of LP Units will result in a Lien upon or against the property of the Partnership or any portion thereof;
- (d) Reputation: the transferee has been convicted of an indictable offence involving moral turpitude, including, without limitation, theft, fraud, embezzlement, forgery, misappropriation or wilful misapplication or an offence of a similar character involving dishonest acts and as a result of such conviction the admission of such transferee to the Partnership is likely to negatively impact the value of the Partnership's assets; and
- (e) No Breach: the Transfer of LP Units will not result in the transferee being in breach of any representation, warranty or covenant made on the part of the transferor in this Agreement at the time of the completion of the Transfer.

6.5 Limited Partner Ceasing to be Resident.

If a Limited Partner becomes a "non-resident" of Canada within the meaning of the ITA it shall, prior to becoming a non-resident and unless it has otherwise completed a permitted Transfer of its LP Units hereunder, be required to transfer its LP Units to a Permitted Transferee of such Limited Partner that is not a "non-resident" of Canada within the meaning of the ITA, failing

which such Limited Partner shall, effective immediately prior to such Limited Partner becoming a "non-resident", be deemed to have withdrawn from, and shall cease to be a Limited Partner of, the Partnership and all of its LP Units and all contributions of capital and entitlement to distributions in respect thereof, shall be irrevocably forfeited for no consideration.

6.6 Transfer by General Partner.

The General Partner shall not Transfer in whole or in part the GP Unit or its legal or beneficial interest in the Partnership without the written approval of the Limited Partners by Ordinary Resolution.

6.7 Non-recognition of Trusts or Beneficial Interests.

No Person will be recognized by the Partnership or any Partner as holding any LP Unit in trust, and the Partnership and Partners shall not be bound to see to the execution of any trust, express, implied or constructive or to ascertain or enquire whether any Transfer of any LP Unit or interest therein by a Limited Partner or its personal representatives is authorized by such trust, charge, pledge or equity or to recognize any Person as having any interest therein except an absolute right to the entirety of the LP Unit of the Limited Partner registered as holder of such LP Unit.

6.8 Liability after Transfer of a Unit.

- (a) Subject to Section 6.8(b), when a transferee of any LP Unit has become a Substituted Limited Partner, the transferor of that LP Unit will be relieved of all other liabilities under this Agreement relating to such LP Unit to the extent permitted by law and the transferee will assume all such liabilities, provided that no transfer shall relieve the transferor from any obligations to the Partnership incurred prior to the transfer becoming effective and not expressly discharged to the satisfaction of the Partnership thereafter.
- (b) In the case of: (i) a Transfer of Class A1 Units by the Class A1 Limited Partner to an Affiliate thereof, or (ii) a Transfer of Class B Units by the Class B Limited Partner to a Permitted Transferee thereof, in each case, the following shall apply: (A) the transferor Limited Partner covenants to take such actions as may be necessary to cause such Affiliate or such Permitted Transferee, as applicable, to at all times fully and faithfully perform and discharge its obligations under this Agreement and to comply with the terms and conditions of this Agreement; and (B) the transferor Limited Partner shall at all times after such Transfer be jointly and severally liable with such Affiliate or such Permitted Transferee for the performance and discharge such Affiliate's or such Permitted Transferee's obligations, as applicable, under this Agreement and compliance by it with the terms and conditions of this Agreement, as applicable. For greater certainty, this Section 6.8(b) shall not apply to a Transfer by the Class A1 Limited Partner to a Permitted Transferee thereof who is a Third Party.

6.9 Class B Limited Partner Right of First Offer.

- (a) If the General Partner (including in connection with any dissolution or liquidation of the Partnership pursuant to Section 15.1) desires to sell (i) the Residential Component or any material portion thereof, (ii) the Parking Component or any material portion thereof, or (iii) if applicable, the Hotel Component or any material portion thereof (in this Section 6.9, such Component, the "**Offered Portion**"), the terms of which sale have been approved by the Class A1 Limited Partner, the General Partner shall deliver to the Class B Limited Partner, by notice in writing, an offer (in this Section 6.9, the "**Mizrahi Offer**"), containing all fundamental terms upon which the Partnership would be willing to sell the Offered Portion to the Class B Limited Partner or its Affiliate (in this Section 6.9, the "**Mizrahi Offeree**"). The General Partner shall act at the direction of the Class A1 Limited Partner in carrying the terms of this Section 6.9.
- (b) The Mizrahi Offeree shall have a period of ten (10) days from the date the Mizrahi Offer is received (in this Section 6.9, the "**Mizrahi Offer Period**") to accept the Mizrahi Offer in writing.
- (c) If the Mizrahi Offer is accepted by the Mizrahi Offeree during the Mizrahi Offer Period, the Partnership and the Mizrahi Offeree shall, within thirty (30) days of the expiry of the Mizrahi Offer Period, use commercially reasonable efforts to enter into a purchase and sale agreement for the Offered Portion on the terms and conditions of the Mizrahi Offer and complete the purchase and sale of the Offered Portion within sixty (60) days of the expiry of the Mizrahi Offer Period.
- (d) If (i) the Mizrahi Offer is not accepted by the Mizrahi Offeree during the Mizrahi Offer Period, or (ii) the Partnership and the Mizrahi Offeree do not enter into a purchase and sale agreement for the Offered Portion within the thirty (30) day period referred to in Section 6.9(c) above, or (iii) if the Partnership and the Mizrahi Offeree do not complete the purchase and sale of the Offered Portion within the sixty (60) day period referred to Section 6.9(c) above, then the Partnership shall be entitled, within a period of one hundred and eighty (180) days after the expiry of the Mizrahi Offer Period, to enter into an agreement (in this Section 6.9, the "**Third Party Mizrahi Offer**") to sell the Offered Portion to a Third Party (in this Section 6.9, the "**Buyer**"), which Third Party Mizrahi Offer shall provide for a price not less than the price set forth in the Mizrahi Offer and other terms not more favourable to the Buyer than the terms and conditions contained in the Mizrahi Offer.
- (e) If a Third Party Mizrahi Offer is not entered into within the one hundred and eighty (180) day period referred to above, or if a Third Party Mizrahi Offer is entered into within such one hundred and eighty (180) day period but the sale of the Offered Portion pursuant to such Third Party Mizrahi Offer is not completed within sixty (60) days following the originally scheduled closing date set out in the Third Party Mizrahi Offer, no sale of the Offered Portion shall be made without the Partnership again complying with the terms of this Section 6.9.

- (f) It is acknowledged and agreed that the rights in favour of the Class B Limited Partner set out in this Section 6.9 shall be void and of no force or effect forthwith upon the occurrence of any of the following: (i) the occurrence of any one or more of the events described in Section 6.10(a); or (ii) the Class B Limited Partner or its Permitted Transferee no longer owns any LP Units.

6.10 Redemption of the Class B Units of the Class B Limited Partner.

- (a) If:
- (i) the Residential Development Management Agreement is terminated in accordance with Section 7.1 thereof;
 - (ii) the Residential Construction Management Agreement is terminated in accordance with Part 7 thereof, or
 - (iii) Mizrahi dies or becomes Incapacitated at any time prior to Substantial Completion of the Residential Project, or
 - (iv) the Class B Limited Partner is no longer owned and Controlled by a Permitted Transferee of the Class B Limited Partner for any other reason, or
 - (v) the Class B Limited Partner commits (A) a material breach of any of the provisions of this Agreement amounting to fraud or other financial malfeasance (e.g., misappropriation of funds) and such default is not remedied within five (5) days after written notice thereof has been given to the Class B Limited Partner by the Class A1 Limited Partner or the General Partner, or (B) a material breach of any of the provisions of this Agreement other than as set forth in Section 6.10(a)(v)(A) and such default is not remedied within twenty (20) days after written notice thereof has been given to the Class B Limited Partner by the Class A1 Limited Partner or the General Partner, or
 - (vi) Sam M Inc. (or its permitted transferee under the Shareholders Agreement) commits (A) a material breach of any of the provisions of the Shareholders Agreement amounting to fraud or other financial malfeasance (e.g., misappropriation of funds) and such default is not remedied within five (5) days after written notice thereof has been given to the Class B Limited Partner by the Class A1 Limited Partner or the General Partner, or (B) a material breach of any of the provisions of the Shareholders Agreement other than as set forth in Section 6.10(a)(vi)(A) and such default is not remedied within twenty (20) days after written notice thereof has been given to Sam M Inc. by the Class A1 Limited Partner or the General Partner;

in each case, the General Partner shall have the right (but not the obligation) to cause the Partnership to redeem all (but not less than all) of the Class B Units

owned by the Class B Limited Partner (including its Permitted Transferees) (in this Section 6.10, the "**Class B Redemption Option**"), and the General Partner shall have the right to exercise the Class B Redemption Option by sending to Class B Limited Partner a notice in writing to that effect (in this Section 6.10, the "**Class B Redemption Notice**") within the ninety (90) day period following the date of the event set forth in Section 6.10(a) giving rise to the Class B Redemption Option (in this Section 6.10, the "**Class B Redemption Period**"). The General Partner shall act at the direction of the Class A1 Limited Partner in carrying out the terms of this Section 6.10, including, without limitation, in determining the Class B Proportionate Share of the Residential Project Valuation Amount pursuant to Section 6.11 and all matters related thereto.

- (b) If, prior to the expiration of the Class B Redemption Period, the General Partner delivered a Class B Redemption Notice to the Class B Limited Partner, the Partnership shall redeem all (but not less than all) of the Class B Units owned by the Class B Limited Partner in accordance with the provisions of this Section 6.10.
- (c) For any redemption of the Class B Units of the Class B Limited Partner made pursuant to this Section 6.10:
 - (i) the redemption amount payable to the Class B Limited Partner for the redemption of all (but not less than all) of its Class B Units (in this Section 6.10, the "**Class B Redemption Amount**") shall be equal to the Class B Proportionate Share of the Residential Project Valuation Amount;
 - (ii) the Class B Redemption Amount shall be paid to the Class B Limited Partner out of Distributable Cash available following the Disposition of any or all of the Residential Component, the Parking Component and, if applicable, the Hotel Component; provided that, for the purposes of this Section 6.10(c)(ii), a Disposition of the Residential Component, the Parking Component and, if applicable, the Hotel Component shall be deemed to have occurred, and the Class B Redemption Amount shall be paid to the Class B Limited Partner, no later than thirty (30) days after the Partnership completes a Takeout Financing;
 - (iii) if the redemption of the Class B Units is made pursuant to the event specified in Section 6.10(a)(iii), then the unpaid portion of the Class B Redemption Amount shall bear interest commencing from the Class B Redemption Date until paid at a rate of Prime per annum. For greater certainty, if the redemption of the Class B Units is made pursuant to any event specified in Section 6.10(a) other than in Section 6.10(a)(iii), no unpaid portion of the Class B Redemption Amount shall bear any interest;
 - (iv) such redemption shall take place at the offices of legal counsel for the Partnership on the date (in this Section 6.10, the "**Class B Redemption Date**") which is the earlier of: (A) (60) days following the expiration of

the Class B Redemption Period; and (B) fifteen (15) days after the Class B Proportionate Share of the Residential Project Valuation Amount is finally determined in accordance with Section 6.11;

- (v) at the Time of Closing on the Class B Redemption Date, the General Partner shall cause the Partnership to deliver an unsecured promissory note of the Partnership in the amount of the Class B Redemption Amount against presentation and surrender by the Class B Limited Partner of the certificate(s) representing the Class B Units and delivery by the Class B Limited Partner to the General Partner of good and marketable title to the Class B Units, free and clear of any Liens whatsoever;
- (vi) upon delivery of the promissory note referenced in Section 6.10(c)(v) above, the Class B Units shall be redeemed and the rights of the Class B Limited Partner under this Agreement shall terminate, except as provided herein;
- (vii) if, at the Time of Closing on the Class B Redemption Date, the Class B Limited Partner is indebted to the Partnership in an amount recorded on the books of the Partnership and verified by the Accountant, such indebtedness shall be repaid from the Class B Redemption Amount and the amount so satisfied shall reduce the Class B Redemption Amount in order of maturity; provided that, if the total amount of such indebtedness exceeds the Class B Redemption Amount, the Class B Limited Partner shall repay in full all of such excess indebtedness at the Time of Closing on the Class B Redemption Date;
- (viii) if, at the Time of Closing on the Class B Redemption Date, the Partnership is indebted to the Class B Limited Partner in an amount recorded on the books of the Partnership and verified by the Accountant, such indebtedness shall be satisfied and repaid in full at the Time of Closing on the Class B Redemption Date; provided that, if and to the extent that such indebtedness relates to indebtedness under the Residential Development Management Agreement and/or the Residential Construction Management Agreement, then notwithstanding the foregoing, such indebtedness shall be satisfied as provided for in such agreements; and
- (ix) if the Class B Limited Partner fails to complete the redemption of the Class B Units hereunder, the General Partner shall have the right, without prejudice to any other rights which it may have, to deliver the promissory note referenced in Section 6.10(c)(v) above to legal counsel for the Partnership and thereafter to make payment on account of the Class B Redemption Amount by depositing such amount to the credit of Class B Limited Partner in the main branch of the Partnership's bankers in the City of Toronto. Upon the delivery of the promissory note referenced in Section 6.10(c)(v) above as aforesaid, then from and after the date of delivery, the redemption of the Class B Units hereunder shall be deemed

to have been fully completed. The General Partner shall also have the right to execute and deliver, on behalf of and in the name of the Class B Limited Partner, such deeds, transfers, unit certificates, resignations and other documents that may be necessary to complete the redemption of the Class B Units hereunder and the Class B Limited Partner irrevocably appoints the General Partner or its designee as its attorney in that behalf with no restriction or limitation in that regard and declaring that this power of attorney may be exercised during any subsequent legal incapacity on its part.

6.11 Determination of Residential Project Valuation Amount.

- (a) If the General Partner has delivered a Class B Redemption Notice (as defined in Section 6.10) to the Class B Limited Partner pursuant to Section 6.10, then, the General Partner shall commence the process of determining the Residential Project Valuation Amount by first initiating an appraisal to determine the Fair Market Value of the Residential Project as at the last day of the month prior to the delivery of the Class B Redemption Notice (in this Section 6.11, the "**Appraisal**").
- (b) The General Partner shall, within ten (10) days of delivering the Class B Redemption Notice, retain the Cost Consultant to complete the Appraisal. If the Cost Consultant shall be unable or unwilling to so act, then within fifteen (15) days following the receipt by the General Partner of the advice that the Cost Consultant is unable or unwilling to so act, the General Partner and the Class B Limited Partner whose LP Units are to be redeemed shall mutually agree upon and appoint another duly qualified and independent appraiser to complete the Appraisal; provided that, if the identity of such other duly qualified and independent appraiser is not agreed to within such fifteen (15) day period, each of the General Partner and the Class B Limited Partner shall appoint its own appraiser by written notice to the other within ten (10) days after such fifteen (15) day period, and if either of them does not appoint an appraiser within such ten (10) period day, then the appraiser appointed by the other of them shall be the sole real estate appraiser for the Residential Project. If two real estate appraisers are appointed, then the appraised value for the Residential Project shall be the average of such two appraisers' appraisals. All real estate appraisers appointed pursuant to this Section 6.11(b) (including the Cost Consultant) shall be AACI (Accredited Appraiser Canadian Institute) qualified real estate appraisers. The General Partner shall instruct the Cost Consultant or such other real estate appraiser(s) to provide such real estate appraisal(s) to the Partnership within thirty (30) days of their engagement. If there is only one appraiser, the costs and expenses of the Appraisal shall be borne by the Partnership. If both the General Partner and the Class B Limited Partner have appointed an appraiser, each such party shall bear the costs and expenses of the appraiser appointed by such party.
- (c) Upon completion of the Appraisal, the General Partner shall, within ten (10) days of completion of such Appraisal, complete and provide to the Class B Limited

Partner a written statement setting forth the determination of the Residential Project Valuation Amount, the Class B Proportionate Share of the Residential Project Valuation Amount. In this Agreement:

"Residential Project Valuation Amount" shall be equal to the result of the following: (i) the Fair Market Value of the Residential Project as at the last day of the month prior to the delivery of the Class B Redemption Notice (for greater certainty, being the amount determined by the Appraisal) less (ii) the amount of all of the outstanding indebtedness and liabilities of the Partnership as at the last day of the month prior to the delivery of the Class B Redemption Notice;

"Class B Proportionate Share of the Residential Project Valuation Amount" shall be equal to the amount of money the Class B Limited Partner would be entitled to receive as at the last day of the month prior to the delivery of the Class B Redemption Notice if the dollar amount equal to the Residential Project Valuation Amount had been distributed to the Class B Limited Partner after applying the "waterfall" of priorities to such notional distribution as set forth in Section 7.5; and

- (d) Within seven (7) days after receiving the determination of the Residential Project Valuation Amount and the Class B Proportionate Share of the Residential Project Valuation Amount, the Class B Limited Partner shall deliver a written notice to the General Partner indicating whether it objects in good faith to any aspect of such determinations (other than the determination of the Fair Market Value of the Residential Project in accordance with Section 6.11(b)) (in this Section 6.11, the **"Objection Notice"**). The Objection Notice shall set out the reasons for the objection as well as the amount in dispute and reasonable details of the calculation of such amount. If the Class B Limited Partner does not object to any aspect of such calculations, the Class B Limited Partner may notify the General Partner in writing to that effect (in this Section 6.11, the **"Acceptance Notice"**). If the Class B Limited Partner does not deliver an Objection Notice or an Acceptance Notice to the General Partner within the seven (7) day period referred to above, the Class B Limited Partner shall be deemed to have delivered an Acceptance Notice to the General Partner on the last day of such seven (7) day period.
- (e) The General Partner shall give the Class B Limited Partner and its accountants sufficient access to the working papers necessary to enable such party to fully review the determinations and the basis on which they were prepared. The General Partner and the Class B Limited Partner shall attempt to resolve all of the items in dispute set out in any Objection Notice within seven (7) days of receipt of the Objection Notice by the General Partner. Any items in dispute not resolved within such seven (7) day period shall be referred within seven (7) days thereafter by the General Partner to an independent auditor (in this Section 6.11, the **"Independent Auditor"**) to be mutually agreed by the General Partner and the Class B Limited Partner; provided that, if such parties fail to mutually agree on an independent auditor within such seven (7) day period, any such party may apply

to the Superior Court of Justice in Toronto, Ontario, to have such Independent Auditor appointed. The Independent Auditor shall act as expert and not as arbitrator and shall be required to determine the items in dispute that have been referred to it as soon as reasonably practicable but in any event not later than thirty (30) days after the date of referral of the dispute. In making its determination, the Independent Auditor shall only consider the issues in dispute placed before it. The General Partner and the Class B Limited Partner shall provide or make available, and ensure that its accountants provide or make available, all documents and information and working papers in its and their possession or under its and their control as are reasonably required by the Independent Auditor to make its determination. The determination of the Independent Auditor shall be final and binding on the parties, absent manifest error, and the Residential Project Valuation Amount, and the Class B Proportion Share of the Residential Project Valuation Amount shall be the amount(s) calculated in accordance with such determination.

- (f) The costs and expenses of the Independent Auditor shall be born equally by the Partnership and the Class B Limited Partner.

6.12 Drag-Along Right.

- (a) As used in this Section 6.12, "**Takeout Offer**" means a bona fide offer in writing made by a Third Party pursuant to which such Third Party offers to purchase all (but not less than all) of the LP Units owned by all of the Limited Partners and the purchase price for the LP Units is expressed in a dollar amount and payable either in cash or by a promissory note(s) of the Third Party's own make and issue or by a combination of cash and such promissory note(s).
- (b) If at any time and from time to time, a Takeout Offer is received or solicited by the Partnership, the General Partner or the Class A1 Limited Partner which the Class A1 Limited Partner wishes to accept, then the General Partner shall send a notice in writing (in this Section 6.12, the "**Drag-Along Notice**") to the Class B Limited Partner which notice shall attach a copy of the Takeout Offer. The General Partner shall act at the direction of the Class A1 Limited Partner in carrying out the terms of this Section 6.12.
- (c) The Drag-Along Notice shall be subject to the right of first refusal in favour of the Class B Limited Partner made in respect of all (but not less than all) of the Class A1 Units of the Class A1 Limited Partner, as more particularly set out in Section 6.13
- (d) Subject to the Class B Limited Partner exercising its right of first refusal pursuant to Section 6.13, the Class B Limited Partner hereby waives, to the extent permitted by applicable Law, all rights to object to or dissent from such Takeout Offer and hereby agrees to consent to and raise no objections against such Takeout Offer. In addition, the Class B Limited Partner hereby agrees to cooperate fully in any such Takeout Offer and not to take any action prejudicial to

or inconsistent with such Takeout Offer. Without limiting the generality of the foregoing, the Class B Limited Partner hereby agrees:

- (i) to vote its LP Units to approve the terms of any such Takeout Offer and such matters ancillary thereto as may be necessary in the judgment of the General Partner and/or the Class A1 Limited Partner to effect such Takeout Offer;
 - (ii) to waive any appraisal or dissenters' rights that the Class B Limited Partner would have with respect to such Takeout Offer; and
 - (iii) to execute and deliver all related documentation and take such other action in support of such Takeout Offer as shall reasonably be requested by the General Partner and/or the Class A1 Limited Partner in order to carry out the terms and provision of this Section 6.12.
- (e) Subject to the Class B Limited Partner exercising its right of first refusal pursuant to Section 6.13, and in addition to Section 6.12(d), the delivery of the Drag-Along Notice shall require the Class B Limited Partner to sell all (but not less than all) of their LP Units to the Third Party pursuant and on the same terms and conditions contained in such Takeout Offer and in accordance with this Section 6.12. The delivery of the Drag-Along Notice by the General Partner to the Class B Limited Partner shall result in each of the Class B Limited Partner being deemed to have agreed to sell, and they shall sell, all (but not less than all) of the LP Units owned by them to the Third Party that made the Takeout Offer at the same time and as part of the same closing as the sale of the LP Units owned by the Class A1 Limited Partner to such Third Party on the terms and conditions contained in the Takeout Offer in respect of which the Drag-Along Notice had been sent. The aggregate consideration receivable by the Limited Partners shall be allocated among the Limited Partners on the basis of their relative entitlement to such consideration based on the "waterfall" of priorities as set forth in Section 7.5 as of the date of the closing of the Takeout Offer;
- (f) Subject to the Class B Limited Partner exercising its right of first refusal pursuant to Section 6.13, if, after the delivery of a Drag-Along Notice, the Class B Limited Partner fails to complete the purchase and sale of its LP Units in accordance with the terms of the Takeout Offer in respect of which the Drag-Along Notice had been sent, the General Partner or its designee shall have the right, without prejudice to any other rights which it may have, to: (i) direct that the purchase price payable to the Class B Limited Partner on the closing of the Takeout Offer be paid to the credit of the Class B Limited Partner in the main branch of the Partnership's bankers, and (ii) execute and deliver on behalf of and in the name of the Class B Limited Partner such documents, agreements, deeds, transfers, certificates, powers of attorney, resignations, releases or other documents that may be necessary to complete the Takeout Offer and the Class B Limited Partner hereby irrevocably appoints the General Partner or the Class A1 Limited Partner or its designee as the attorney of the Class B Limited Partner in that behalf and it

is hereby agreed, acknowledged and declared that this power of attorney is irrevocable and may be exercised during any subsequent legal incapacity on the part of the Class B Limited Partner.

- (g) Notwithstanding anything to the contrary in this Section 6.12, no the Class B Limited Partner will not be required to comply with Sections 6.12(d) and 6.12(e) in connection with any Takeout Offer unless:
- (i) the liability for indemnification, if any, of the Class B Limited Partner in the Takeout Offer for the inaccuracy of any representations and warranties made by the Limited Partners or the General Partner in connection with such Takeout Offer is pro rata in proportion to, and does not exceed, the amount of consideration paid to the Class B Limited Partner in connection with such Takeout Offer;
 - (ii) the terms of such Takeout Offer do not provide a collateral benefit to any Partner which is not provided to the Class B Limited Partner; and
 - (iii) there is no requirement for the Class B Limited Partner to enter into a non-competition agreement or non-solicitation agreement as a condition to the completion of the Takeout Offer.

6.13 Class B Limited Partner Right of First Refusal.

- (a) If the General Partner has delivered a Drag-Along Notice, as defined in and pursuant to Section 6.12, the Drag-Along Notice shall first constitute an offer (in this Section 6.13, the "**ROFR Offer**") of the Class A1 Limited Partner to sell all (but not less than all) of the Class A1 Units of the Class A1 Limited Partner to the Class B Limited Partner on the same terms and conditions (including a purchase price equal to such portion of the total Takeout Offer purchase price otherwise payable to the Class A1 Limited Partner pursuant to Section 6.12(e)), *mutatis mutandis*, as are contained in the Takeout Offer but only in respect of the Class A1 Units of the Class A1 Limited Partner, and subject, however, to any modifications thereto expressly required by this Section 6.13. The ROFR Offer shall be open for acceptance by the Class B Limited Partner for a period of ten (10) days (in this Section 6.13, the "**ROFR Period**") commencing on the date upon which the Drag-Along Notice is received by the Class B Limited Partner.
- (b) Prior to the expiration of the ROFR Period in respect of which a Drag-Along Notice has been sent, the Class B Limited Partner shall have the right to accept such ROFR Offer by sending to the General Partner and the Class A1 Limited Partner a notice in writing to that effect (in this Section 6.13, the "**ROFR Acceptance Notice**").
- (c) If, prior to the expiration of the ROFR Period, the General Partner and the Class A1 Limited Partner have received a ROFR Acceptance Notice from the Class B Limited Partner:

- (i) the ROFR Acceptance Notice shall constitute the irrevocable agreement of the Class B Limited Partner to purchase all (but not less than all) of the Class A1 Units of the Class A1 Limited Partner; and
 - (ii) each Class A1 Limited Partner shall sell to the Class B Limited Partner, and the Class B Limited Partner shall purchase from the Class A1 Limited Partner, all (but not less than all) of its Class A1 Units for the price and on the terms and conditions contained in the Takeout Offer and in accordance with the provisions of this Section 6.13.
- (d) For any purchase and sale of the Class A1 Units of the Class A1 Limited Partner made pursuant to this Section 6.13:
- (i) the Purchase Price payable to the Class A1 Limited Partner for the purchase of all (but not less than all) of the Class A1 Units (in this Section 6.14, the "**Purchase Price**") shall be as set out in the Takeout Offer.
 - (ii) the Purchase Price shall be payable either in cash at the Time of Closing on the ROFR Closing Date (as defined in this Section 6.13) or otherwise in the manner set out in the Takeout Offer, including for greater certainty, by the issue of promissory notes of the Class B Limited Partner's own make and issue and/or in cash in a manner consistent with the Takeout Offer;
 - (iii) the closing of such purchase and sale shall take place at the offices of legal counsel for the Partnership on the date (in this Section 6.13, the "**ROFR Closing Date**") which is thirty (30) days after the expiry of the ROFR Period;
 - (iv) at the Time of Closing on the ROFR Closing Date, the Class A1 Limited Partner shall:
 - (A) assign and transfer to the Class B Limited Partner its Class A1 Units and deliver the certificate(s) representing such Class A1 Units duly endorsed for transfer to the Class B Limited Partner or as directed by it, and
 - (B) do all things required in order to deliver good and marketable title to its Class A Units to the Class B Limited Partner free and clear of any Liens whatsoever;
 - (v) at the Time of Closing on the ROFR Closing Date, the Class B Limited Partner shall pay to the Class A1 Limited Partner the Purchase Price so payable at the Time of Closing and deliver any promissory note(s) to the Class A1 Limited Partner required to satisfy such Purchase Price; and
 - (vi) if the Class A1 Limited Partner fails to complete the purchase and sale of its Class A1 Units hereunder, the Class B Limited Partner shall have the

right, without prejudice to any other rights which it may have, to pay the Purchase Price payable to the Class A1 Limited Partner by depositing such amount to the credit of the Class A1 Limited Partner in the main branch of the Partnership's bankers in the City of Toronto. Upon the payment of the Purchase Price as aforesaid, then from and after the date of deposit, the completion of the purchase and sale of the Class A1 Units of the Class A1 Limited Partner shall be deemed to have been fully completed. The Class B Limited Partner shall also have the right to execute and deliver, on behalf of and in the name of the Class A1 Limited Partner, such deeds, transfers, unit certificates, resignations and other documents that may be necessary to complete the purchase and sale of its Class A1 Units hereunder and the Class A1 Limited Partner irrevocably appoints the Class B Limited Partner or its designee as its attorney in that behalf with no restriction or limitation in that regard and declaring that this power of attorney may be exercised during any subsequent legal incapacity on its part.

6.14 Transfer in contravention of Agreement.

Any Transfer of LP Units contrary to the provisions of this Agreement shall be deemed to be null and void and of no force and effect.

ARTICLE 7 **PARTICIPATION IN PROFITS AND LOSSES**

7.1 Separate Capital Accounts.

The General Partner will maintain a separate capital account (each a "**Capital Account**") on the books of the Partnership for each Partner. The Capital Account of each Partner shall be:

- (a) credited with the following:
 - (i) the amount of all of the Capital Contributions made by such Partner, and
 - (ii) the amount of all allocations of Net Income allocated to such Partner in accordance with Sections 7.5 and 7.11; and
- (b) debited by the following:
 - (i) the amount of all distributions made to such Partner in accordance with Sections 7.5, 7.11 and Article 15 below, and
 - (ii) the amount of all allocations of Net Losses allocated to such Partner in accordance with Section 7.11.

A negative balance in the Capital Account of a Limited Partner shall not terminate the interest of such Limited Partner in the Partnership.

7.2 Reimbursement of Expenses.

The Partnership will reimburse the General Partner for all direct costs actually incurred by the General Partner in the performance of its duties hereunder including reasonable costs directly incurred for the benefit of the Partnership (including, without limitation, reasonable legal fees of the General Partner with respect to the preparation of this Agreement, the Shareholders Agreement, the Residential Construction Management Agreement, and the Residential Development Management Agreement), professional fees for the services rendered by the General Partner under this Agreement, but specifically excluding, without limitation, expenses of any action, suit or other proceedings in which or in relation to which the General Partner is adjudged to be in breach of any duty or responsibility imposed on it hereunder, and only to the extent provided for in the Residential Initial Budget or the Residential Approved Budget, as the case may be, or otherwise expended in accordance with the terms of this Agreement.

7.3 Timing and Determination of Distributions.

- (a) Subject to Sections 7.3(b), 7.3(c), 7.3(d) and 7.3(e), following Substantial Completion of the Residential Project, (i) Distributable Cash shall be determined on a monthly basis or such other period as the General Partner shall determine, and (ii) provided that Distributable Cash is a positive number, distributions of Distributable Cash shall be made as and when determined by the General Partner and distributed amongst the Partners in accordance with the "waterfall" of priorities in Section 7.5.
- (b) If applicable, following the Disposition of the Residential Component or a material portion thereof, the General Partner shall calculate and determine the amount of Distributable Cash with respect to such Disposition. Distributions of Distributable Cash following such Disposition shall be distributed as and when approved by the General Partner amongst the Partners in accordance with the "waterfall" of priorities in Section 7.5.
- (c) If applicable, following the Disposition of the Parking Component or a material portion thereof, the General Partner shall calculate and determine the amount of Distributable Cash with respect to such Disposition. Distributions of Distributable Cash following such Disposition shall be distributed as and when approved by the General Partner amongst the Partners in accordance with the "waterfall" of priorities in Section 7.5.
- (d) If applicable, following the Disposition of the Hotel Component or a material portion thereof, the General Partner shall calculate and determine the amount of Distributable Cash with respect to such Disposition. Distributions of Distributable Cash following such Disposition shall be distributed as and when approved by the General Partner amongst the Partners in accordance with the "waterfall" of priorities in Section 7.5.
- (e) Notwithstanding anything to the contrary in this Section 7.3, at any time and from time to time the General Partner may determine Distributable Cash for any

particular period, and, provided that Distributable Cash is a positive number, distribute Distributable Cash as and when determined by the General Partner amongst the Partners in accordance with the "waterfall" of priorities in Section 7.5.

7.4 Return to the Class A1 Limited Partner

The Class A1 Limited Partner shall be entitled to a return on the outstanding amount of its Class A1 Capital Contributions from time to time at a rate of fourteen percent (14%) per annum, calculated and compounded annually. The return on the Class A1 Capital Contributions and the return of the Class A1 Capital Contributions shall be payable in accordance with the "waterfall" of priorities in Section 7.5.

7.5 Distributions to the Partners.

- (a) A portion of Distributable Cash equal to 99.99% thereof shall be distributed amongst the Limited Partners in accordance with the following "waterfall" of priorities:
- (i) first: to the Class A1 Limited Partner, a return, from and after the date hereof, on the outstanding amount from time to time of its Class A1 Capital Contributions at a rate of fourteen percent (14%) per annum, calculated and compounded annually, and
 - (ii) second: a return of the amount of the Class A1 Capital Contributions to the Class A1 Limited Partner, and
 - (iii) third: to the Class B Limited Partner, an amount equal to the aggregate amount of all distributions previously paid to the Class A1 Limited Partner pursuant to Section 7.5(a)(i); and
 - (iv) fourth, the balance:
 - (A) fifty percent (50%) to the Class A1 Limited Partner, and
 - (B) fifty percent (50%) to the Class B Limited Partner.
- (b) A portion of Distributable Cash equal to 0.01% thereof shall be allocated and distributed to the General Partner.

Distributions (if any) to the Partners shall be accompanied by a statement from the General Partner calculating the amount thereof and shall be sent to the Limited Partners and the General Partner on or before the one hundredth (100th) day immediately following day on which such distribution has been made.

7.6 Calculation of Entitlement of the Holders of Units.

The entitlement of each Limited Partner to distributions pursuant to Section 7.5 shall be calculated and accrued from the date of purchase of its LP Units.

7.7 Adjustments.

Subject to the following provisions of this Section, the determination of the General Partner of the proportionate share of a Limited Partner in the distribution or allocation of Distributable Cash shall be binding upon the Partnership and the Limited Partners. If the Accountant determines that the proportionate share of a Limited Partner in the distribution or allocation of Distributable Cash differs from the Limited Partner's entitlement as determined by the General Partner, then the determination of the Accountant shall be deemed to be correct and binding upon the Partnership and the Limited Partners and the General Partner will cause the necessary adjustments to be made by payment or reallocation to or from the Limited Partner as the case may be and in such regard may set-off against any future payments any debt owing by the Limited Partner to the Partnership.

7.8 Adjustment Lien.

Each Limited Partner hereby grants a Lien on its LP Units in favour of the Partnership to the extent of the sums due or owing by such Limited Partner to the Partnership as a result of any adjustment under Section 7.7 which requires the Limited Partner to make a payment to the Partnership. The General Partner will within seven (7) days after receiving the report of the Accountant, send a notice in writing to each Limited Partner whose share of Distributable Cash is to be adjusted notifying each such Limited Partner of the amount of the adjustment sum, together with either a cheque for that sum payable to the Limited Partner or a request for payment of the sum payable by the Limited Partner.

7.9 Determination of Net Income or Net Loss.

The Net Income or Net Loss of the Partnership shall be allocated among the Limited Partners and the General Partner for each Fiscal Year in accordance with Section 7.11. In allocating Net Income, consideration shall be given to the priority of payments under Section 7.5.

7.10 Time of Allocation.

Amounts accrued and required to be allocated pursuant to Section 7.11 shall be allocated as of the last day of each Fiscal Year.

7.11 Allocation of Income or Loss for Accounting & Tax Purposes.

The Net Income or Net Loss of the Partnership for each Fiscal Year shall be allocated in the following manner:

- (a) to the General Partner, an amount equal to 0.01% thereof to a maximum of \$10.00; and

- (b) the balance after making the allocation referred to in Section 7.11(a), to the Limited Partners as follows:
- (i) if any cost/outlay or expense, or any portion thereof, incurred directly by a Partner (for which such Partner does not receive reimbursement from the Partnership) is added to the cost of any assets of the Partnership for the purpose of computing the income or loss of the Partnership for Canadian tax purposes, the Net Income or Net Loss of the Partnership for the Fiscal Year shall first be notionally computed (the "**Pre-Capitalization Income or Loss**") without taking into account any such cost, outlay or expense which would otherwise be reasonably attributable to the computation of Net Income or Net Loss in the Fiscal Year (an "**Attributable Partner Expense**");
 - (ii) the Pre-Capitalization Loss shall be allocated to and among the Class A1 Limited Partner at the end of the Fiscal Year;
 - (iii) the Pre-Capitalization Income shall allocated to and among the Limited Partners at the end of the Fiscal Year in the amount that substantially corresponds to the portion of the Distributable Cash that was distributed to each Limited Partner during the Fiscal Year in accordance with this Agreement, such allocation to be determined by the General Partner, acting reasonably and fairly; and
 - (iv) the allocation of income or loss of the Partnership to the Partners as computed in Sections 7.11(b)(ii) and 7.11(b)(iii) above shall be adjusted such that all Attributable Partner Expenses for the Fiscal Year shall be deducted from the allocation of Pre-Capitalization Income or added to the allocation of Pre-Capitalization Loss to the Limited Partner that incurred such Attributable Partner Expense, as the case may be.

7.12 Tax Returns.

Each Partner shall prepare and file such documents as may be required to be prepared and filed for purposes of the Income Tax Act and shall include in its computation of income, the income or loss of the Partnership for tax purposes as may be determined and allocated to it pursuant to this Agreement.

7.13 No Right to Withdraw Amounts.

No Partner will have any right to withdraw any amount or receive any distribution from the Partnership, except as expressly provided for in this Agreement.

ARTICLE 8
FINANCIAL INFORMATION

8.1 Books and Records.

The General Partner shall cause to be kept during the term of the Partnership and for a period of six (6) years thereafter, at the General Partner's principal place of business, books of account and records reflecting the assets, liabilities, gross revenue and expenditures of the Partnership and all other records necessary to record the business and affairs of the Partnership and required to be kept pursuant to the Act or the ITA.

8.2 Annual Report.

In respect of each Fiscal Year of the Partnership, the General Partner shall, at the expense of the Partnership, send or cause to be sent to each Limited Partner within one hundred and twenty (120) days following the end of each Fiscal Year of the Partnership an annual report containing:

- (a) the Accountant's report on the financial statements of the Partnership;
- (b) a balance sheet for the Partnership as at the end of the immediately preceding Fiscal Year;
- (c) income or loss statement;
- (d) statement of cash flows;
- (e) a statement of changes in each Partner's Capital Account for that Fiscal Year, including a report on the income/loss allocated to each Limited Partner, and the contributions and distributions, if any, from or to the Limited Partners; and
- (f) such other information as, in the reasonable opinion of the General Partner, is material to the operations of the Partnership or required by applicable law.

8.3 Monthly Reports.

Prior to Substantial Completion of the Residential Project, and unless and to the extent such matters are the subject of reports already provided by the Residential Development Manager pursuant to the Residential Development Management Agreement (the "**DM Reports**"), the General Partner shall, at the expense of the Partnership, prepare and send or cause to be sent to each Limited Partner within fifteen (15) days following end of each calendar month a written report in respect of the progress of the Residential Project, the Residential Initial Budget or the Residential Approved Budget, as the case may be, and such other information as the Class A1 Limited Partner may approve in respect of the Residential Project.

8.4 Income Tax and Land Transfer Tax Information.

- (a) The General Partner shall send or cause to be sent to each Limited Partner on or before March 31 in each calendar year, all information necessary for the Limited Partners to prepare their income tax returns in respect of the preceding year.
- (b) The General Partner shall notify a Limited Partner if the General Partner becomes aware that such Limited Partner (or Person(s) with an interest in the Limited Partner) is liable for Land Transfer Tax in connection with such Limited Partner's acquisition of its LP Units, and shall provide to such Limited Partner on request any information and valuations necessary to prepare applicable Land Transfer Tax returns and to compute applicable Land Transfer Tax. The Limited Partners acknowledge that they may be required to file Land Transfer Tax returns and pay Land Transfer Tax in connection with the acquisition of LP Units.

ARTICLE 9
GENERAL PARTNER

9.1 Powers, Duties and Obligations.

The General Partner has:

- (a) unlimited liability for the debts, liabilities and obligations of the Partnership; and
- (b) subject to Section 9.14 the full and exclusive right, power and authority to manage, conduct, control, administer and operate the business and affairs and to make all decisions regarding the undertaking and business of the Partnership.

Subject to Section 9.14, an action taken by the General Partner on behalf of the Partnership is deemed to be the act of the Partnership, and binds the Partnership. The General Partner shall have all the rights and powers which may be possessed by a general partner pursuant to the Act and such rights and powers otherwise conferred by law and by this Agreement. A Person in dealing with a General Partner acting on behalf of the Partnership is not required to inquire into the authority of the General Partner to bind the Partnership and is entitled to rely conclusively upon the power and authority of the General Partner as set out in this Agreement.

9.2 Specific Powers and Duties.

Without limiting the generality of the foregoing, but subject to the provisions hereof including Section 9.14, the General Partner has the power and authority to do the following:

- (a) General Management: the General Partner shall provide over-all management, financial, and business planning to the Partnership and take all measures necessary or appropriate for the business of the Partnership or ancillary thereto including the appointment, termination and replacement of the Accountant;
- (b) Execute Documents: the General Partner may enter into, execute and carry out all agreements by or on behalf of the Partnership involving matters or transactions or

services to be rendered to the Partnership which are within the ordinary course of the Partnership's business and may execute, acknowledge and deliver any and all other deeds, documents and instruments and do all acts as may be necessary or desirable to carry out the intent and purpose of this Agreement;

- (c) Incur Expenses: the General Partner may incur expenses in accordance with the Residential Initial Budget or the Residential Approved Budget, as the case may be, and in the ordinary course of business of the Partnership on behalf of the Partnership and be reimbursed by the Partnership for such expenses;
- (d) Retaining Employees etc.: the General Partner may, on behalf of the Partnership, employ, retain or dismiss from employment personnel, agents, representatives or professionals with the powers and duties, upon the terms, at the places and for the compensation as in the discretion of the General Partner may be necessary or advisable in the carrying on of the business of the Partnership;
- (e) Banking: the General Partner may open accounts in banks or other recognized financial institutions for the Partnership in the name of the Partnership, designate signatories and, from time to time, change the signatories to the accounts;
- (f) Borrowing: the General Partner may borrow money or arrange credit facilities in the name of the Partnership from time to time and do all matters in connection therewith (including the payment of any fees, including the fee to the Class A1 Limited Partner as provide in Section 5.7) (i) in respect of the Construction Loan, (ii) in respect of the Development Loan, and (iii) from Arm's Length parties selected by it or any recognized financial institution on such terms and conditions as it deems is required;
- (g) Security: subject to Section 9.14(b), the General Partner may pledge, mortgage and/or encumber as security in respect of any borrowings or credit facilities arranged hereunder any assets of the Partnership;
- (h) Acquisition of Residential Project: the General Partner may take an assignment of the Residential Project or cause the Residential Project to be assigned to the Partnership or to the Title Nominee, and may attend to all matters relating to the acquisition of the Residential Project by the Partnership, the General Partnership or the Title Nominee;
- (i) Management: the General Partner may manage, administer, conserve, develop and operate the Residential Project and complete the sale of residential condominiums constituting the Residential Component and in general to engage in any and all phases of the business of the Partnership and, generally, to do the things and take the steps in connection with the Residential Project and the other assets and undertaking of the Partnership which would customarily be carried out by a reasonable business Person in the Province of Ontario. Without limiting the generality of the foregoing, the General Partner may delegate day-to-day management of the Properties, in whole or in part, to a third party manager and

does hereby delegate the development, construction, and management of the Residential Project to the Residential Construction Manager pursuant to the Residential Construction Management Agreement and to the Residential Development Manager pursuant to the Residential Development Management Agreement, as applicable. The General Partner is hereby authorized by the Partners: (i) to enter into, on behalf of the Partnership, the Residential Development Management Agreement and the Residential Construction Management Agreement and, (ii) in the event of the death or Incapacity of Mizrahi, to appoint, on behalf of the Partnership, the Class A1 Limited Partner or an Affiliate thereof to act as the substitute development manager under the Residential Development Management Agreement and to act as the substitute construction manager under the Residential Construction Management Agreement;

- (j) Units: subject to Sections 9.15(a) and 9.15(b), the General Partner may enter into agreements and attend to all matters relating to the sale and issuance of LP Units, and shall provide an up-to-date list of all Limited Partners and their addresses for service to all Limited Partners, as required from time to time to ensure that all Partners are aware of all current Limited Partners;
- (k) Sale of Assets: subject to the prior written consent of the Class A1 Limited Partner and Section 6.9, the General Partner may enter into agreements and attend to all matters relating to the sale of the Residential Component, the Parking Component or the Hotel Component, if any, or any material portion of each such component;
- (l) Investments: the General Partner may invest and reinvest funds not immediately required for the operation of the Partnership in short-term securities of Canadian Schedule 1 chartered bank;
- (m) Legal Proceedings: the General Partner may commence or defend any action or proceeding in connection with any actions or proceedings brought by or against the Partnership;
- (n) Elections, etc.: the General Partner may make, on behalf of the Partnership and of each Limited Partner, all elections, determinations or designations under the ITA or any other taxation or other legislation or laws of like import of Canada or any jurisdiction within or outside of Canada in respect of any Partner's interest in the Partnership;
- (o) Change Name: the General Partner may change the name of the Partnership to comply with the laws of the jurisdictions in which the Partnership may carry on business;
- (p) Change Address: the General Partner may change the address of the Partnership on written notice to the Limited Partners and upon the filing of a Subsequent Declaration reflecting the change;

- (q) Filings: the General Partner may file on a timely basis returns and any other documents which may be required to be filed by any governmental or like authority;
- (r) Fiscal Year End: subject to Section 9.14(f), the General Partner may change the Fiscal Year of the Partnership if it deems it necessary; and
- (s) Title Nominee: the General Partner may make all material decisions, obligations and actions respecting the business affairs and management of the Title Nominee.

9.3 Title to Properties.

Legal title to the assets of the Partnership may be held by the General Partner and in such case the General Partner shall hold such assets in trust for the benefit of the Partnership and will execute from time to time such declarations of trust and make such filings as the Class A1 Limited Partner from time to time may request.

9.4 Standard of Care.

The General Partner covenants that it will exercise the powers and discharge its duties under this Agreement honestly, in good faith, and in the best interest of the Limited Partners and the Partnership, and that it will exercise the care, diligence and skill of a reasonably prudent Person performing comparable duties, and will maintain the confidentiality of financial and other information and data which it may obtain through or on behalf of the Partnership, the disclosure of which may adversely affect the interests of the Partnership or a Limited Partner, except to the extent that disclosure is required by law or is, in its opinion, in the best interest of the Partnership to disclose, and it will utilize the information and data only for the business of the Partnership.

9.5 Safekeeping of Assets.

The General Partner is responsible for the safekeeping and use of all funds and assets of the Partnership whether or not in its immediate possession or control and will not employ or permit another to employ the funds or assets except for the exclusive benefit of the Partnership.

9.6 Limitation of Liability.

The General Partner is not personally liable for the return of any Capital Contribution made by a Limited Partner to the Partnership. Moreover, notwithstanding anything else contained in this Agreement, neither the General Partner nor its officers, directors, shareholders, employees or agents are liable, responsible for, or accountable in damages or otherwise to the Partnership or a Limited Partner for an action taken or failure to act on behalf of the Partnership within the scope of the authority conferred on the General Partner by this Agreement or by law unless the act or omission was performed or omitted fraudulently or in bad faith or constituted gross negligence or wilful misconduct.

9.7 Indemnification.

The Partnership hereby agrees to indemnify and hold harmless the General Partner, its officers, directors, shareholders, employees, or agents from and against any claim, demand, action, cause of action, damages, loss, cost, liability or expense by reason of acts, omissions or alleged acts or omissions arising out of the activities of the General Partner on behalf of the Partnership or in furtherance of the interests of the Partnership, but only if the acts, omissions or the alleged acts or omissions on which the actual or threatened action, proceeding or claim are based were performed in good faith and were not performed or omitted fraudulently or as a result of gross negligence or wilful misconduct by the General Partner, its officers, directors, shareholders, employees, or agents.

9.8 Restrictions upon the General Partner.

The General Partner shall not:

- (a) cause the Partnership to do any act or thing for which approval is required under Sections 9.14 or 9.15 without first obtaining such approval;
- (b) co-mingle the funds of the Partnership with the funds of the General Partner, its Affiliates, or any third party; and
- (c) cause the Partnership material damage as a result of its own fraud, gross negligence or wilful misconduct.

9.9 Retainer of an Affiliate.

The General Partner may employ or retain Affiliates on behalf of the Partnership to provide goods or services to the Partnership, provided such services are charged to the Partnership in a manner in which, and at a cost to the Partnership not greater than the cost which such services would be charged to the Partnership by Arm's-Length parties providing similar services. The General Partner represents, warrants and covenants to the Limited Partners that all such services shall be charged to the Partnership in a manner in which, and at a cost to the Partnership not greater than, the cost which such services would be charged to the Partnership by Arm's-Length parties providing similar services.

9.10 Removal of General Partner.

The General Partner may be removed and a replacement general partner appointed by the approval of the Limited Partners by Extra Ordinary Resolution only in the following events:

- (a) the adjudication of the General Partner as a bankrupt or the appointment of a receiver of the assets and undertaking of the General Partner;
- (b) the General Partner making an assignment for the benefit of creditors; or
- (c) the dissolution, winding-up or liquidation of the General Partner.

In addition, the General Partner may be removed and a substitute general partner appointed by approval of the Limited Partners by Extra Ordinary Resolution in the event of the default by the General Partner in the performance of its obligations under this Agreement, which default remains unremedied for a period in excess of thirty (30) days after the Limited Partners have given written notice of such default to the General Partner. The replacement general partner appointed by the Limited Partners by Extra Ordinary Resolution (the "**New General Partner**") shall assume all of the responsibilities and obligations of the removed General Partner (the "**Former General Partner**") under this Agreement from the date of such removal and upon the following additional terms:

- (d) the New General Partner shall, prior to assuming its responsibilities as a general partner under the terms of this Agreement, execute the documents presented by the Partnership to give effect to the assumption; and
- (e) the Former General Partner will execute such form of assignment or notices as may be required in order to enable the New General Partner to become registered as the assignee of the GP Unit and, if applicable, the registered owner of the Residential Project.

9.11 Voluntary Change of a General Partner.

The General Partner shall not resign, nor shall it transfer or dispose of its interest or any part thereof in the Partnership unless such resignation, transfer or disposition has been approved by Extra Ordinary Resolution of the Limited Partners or is in connection with or ancillary to a merger or amalgamation of the General Partner resulting in a surviving or continuing corporation or body corporate which is then the General Partner. The General Partner is bound by the terms of this Agreement until the transfer or disposition of its interest in the Partnership to the New General Partner has been completed.

9.12 Indemnity to Former General Partner.

On the resignation or removal of the Former General Partner, the Partnership will release and hold harmless the Former General Partner from any costs, damages, liabilities or expenses suffered or incurred by the Former General Partner as a result of or arising out of events, other than any default, negligence or wilful act or omission by the Former General Partner, which occur in relation to the Partnership prior to such resignation or removal.

9.13 Status of the General Partner.

The General Partner represents, warrants, covenants and agrees with each other Partner that:

- (a) Corporate Status: the General Partner is a duly incorporated, organized and subsisting corporation under the laws of the Province of Ontario;
- (b) Capacity: the General Partner is duly qualified to carry on business and is in good standing in each jurisdiction in which the nature of the business conducted by it or the Residential Project makes such qualification necessary;

- (c) Corporate Capacity: the General Partner has and will continue to have the capacity and corporate authority to act as the General Partner and to perform its obligations under this Agreement and that such obligations do not and will not conflict with or breach its articles of incorporation, by-laws or any agreements by which it is bound;
- (d) Commitment: the General Partner will devote to the conduct of the business of the Partnership such time as may be reasonably required for the proper management of the business of the Partnership and will not carry on any other business;
- (e) Residence: the General Partner is not a "non-resident" of Canada within the meaning of the ITA, and is not a "non-Canadian" within the meaning of the *Investment Canada Act* (Canada);
- (f) Status: the General Partner shall not change its status as represented and warranted herein and shall promptly provide evidence of such status to the Limited Partners upon request; and
- (g) Tax Shelter Investment: the purchase by the General Partner of its interest in the Partnership shall not at any time cause any Unit to be a "tax shelter investment" for purposes of Section 143.2 of the ITA or result in the application of any analogous provision of any provincial tax legislation.

The representations, warranties, covenants and agreements contained in this Section 9.13 shall survive the execution of this Agreement until the termination hereof.

9.14 Ordinary Resolution.

Notwithstanding any other provision of this Agreement, the General Partner shall have no authority to enter into and no action by the General Partner or the Partnership will be taken with respect to any of the following matters without the prior approval of the Limited Partners by Ordinary Resolution:

- (a) the incurring of any voluntary indebtedness for borrowed money or the guaranteeing of any such indebtedness, other than (i) as specifically provided for in this Agreement, and (ii) incurred in the ordinary course of business of the Partnership;
- (b) the granting of any Lien on the assets of the Partnership or the Title Nominee, other than: (i) in favour of the lender under the Construction Loan, (ii) in favour of the Development Lender pursuant to the Development Loan, (iii) in favour of Tarion, (iv) in favour of the Bond Issuer, (v) in favour of a lender in respect of indebtedness or guarantees otherwise approved pursuant to Section 9.14(a), and (vi) in the ordinary course of the business of the Partnership;
- (c) the taking or institution of any proceedings for the winding up, termination or dissolution of the Partnership;

- (d) the removal and replacement of the general partner of the Partnership;
- (e) changing, in any material respect, the Partnership's accounting method, either for financial or tax reporting purposes; and
- (f) changing the Accountant or Fiscal Year of the Partnership, or requiring an audit of the Partnership's financial statements.

9.15 Extra-Ordinary Resolution.

Notwithstanding any other provision of this Agreement, the General Partner shall have no authority to enter into and no action by the General Partner or the Partnership will be taken with respect to any of the following matters without the prior approval of the Limited Partners by Extra-Ordinary Resolution:

- (a) any addition, change or removal of any rights, privileges, restrictions and conditions attaching to the LP Units; and
- (b) the issuance of a new class of units to represent the interests of Limited Partners in the Partnership that is equal or superior to the Class A1 Units and the Class B Units.

ARTICLE 10 **LIMITED PARTNERS**

10.1 Admission of Limited Partners.

The General Partner, by the execution of this Agreement as the duly appointed attorney for the Limited Partners, hereby admits the Limited Partners to the Partnership as limited partners and agrees to record the Limited Partners in the Register and to cause to be executed and filed, as soon as practicable after the execution hereof, all such declarations, instruments and documents as may be required under applicable law to amend and restate the original agreement and reconstitute the Partnership as herein provided. The admission of the Limited Partners to the Partnership shall be effective from the date on which the Limited Partners are recorded in the Register.

10.2 Status of the Limited Partners.

Each of the Limited Partners severally and not jointly represents, warrants, covenants and agrees with each other Partner that it:

- (a) has and will have the capacity and competence and, if a corporation, partnership, limited partnership or other entity, the necessary authority, to enter into this Agreement;
- (b) has obtained any consents or approvals of any governmental authorities or Third Parties that are required for the execution and delivery of this Agreement by it;

- (c) is not party to any litigation, action or proceeding that, if adversely determined, could have a material adverse effect on, or enjoin, restrict or otherwise prevent it from performing its obligations under this Agreement;
- (d) is not a "non-resident" of Canada within the meaning of the ITA;
- (e) has the legal capacity and competence and, if a corporation, has been duly authorized, to enter into this Agreement and take all actions required pursuant hereto;
- (f) will not change its status as represented and warranted herein, shall promptly provide evidence of such status to the General Partner upon request and shall not transfer or purport to transfer its LP Unit to any Person that would be unable to make the representations and warranties set out above;
- (g) neither the purchase of LP Units nor the holding of the LP Units by the Limited Partner will at any time cause any LP Units to be a "tax shelter investment" for purposes of Section 143.2 of the ITA or result in the application of any analogous provision of any provincial taxing legislation;
- (h) it has obtained independent legal and tax advice as to its liabilities and obligations under this Agreement and any subscription agreement, and acknowledges that the relevant provisions of the ITA and related statutes are complex and that it has taken such steps as it considers necessary to ensure that it understands the meaning and effect of such representations, warranties and indemnity;
- (i) it is not a "financial institution" as that term is defined in subsection 142.2(1) of the ITA unless such Limited Partner has provided written notice to the contrary to the General Partner prior to the date of acceptance of the Limited Partner's subscription for its Units. A Limited Partner who is not an individual may be obliged to provide the General Partner with a declaration that it is not a "financial institution" as that term is defined in subsection 142.2(1) of the ITA;
- (j) that payment of the subscription price for each Limited Partner's Units was not financed through indebtedness for which recourse is or deemed to be limited within the meaning of the ITA;
- (k) it owns its LP Units legally and beneficially free and clear of all Liens, other than Liens created pursuant to this Agreement;
- (l) it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of an investment in the Partnership and making an informed investment decision with respect thereto;
- (m) it is able to bear the economic and financial risk of an investment in the Partnership and understands that it has no right to withdraw and have its LP Units repurchased by the Partnership;

- (n) it is acquiring its LP Units for investment only and not with a view to, or for resale in connection with, any distribution to the public or public offering thereof, and will provide to the General Partner such financial information with respect to its itself and its interest in the Partnership as may be reasonably required from time to time in connection with the registration of the development with any governmental or quasi-governmental agencies having jurisdiction, including and without limitations Tarion pursuant to the Ontario New Home Warranty Program. It is acknowledged and agreed that no Limited Partner shall be required to provide any guarantees or indemnities with respect to any such registrations;
- (o) it understands that the equity interests in the Partnership have not been registered under the securities laws of any jurisdiction and cannot be disposed of unless they are subsequently registered and/or qualified or fall within an exemption under applicable securities laws and the provisions of this Agreement have been complied with; and
- (p) it has not received or been provided with an "offering memorandum" (as defined under applicable securities laws) in connection with its acquiring its LP Units.

Insofar as they relate to it, the following representations and warranties are true and correct:

- (q) it is acquiring its LP Units as principal for its own account, not for the benefit of any other Person, and not with a view to the resale or distribution of all or any part of its LP Units;
- (r) it is not resident in a jurisdiction outside of Canada;
- (s) it is not a bank listed in Schedule I to the Bank Act (Canada);
- (t) it is an "accredited investor" as that term is defined in National Instrument Rule 45-106 "Prospectus and Registration Exemptions";
- (u) it was not incorporated or created solely to permit the acquisition of its LP Units without the need for the filing of a prospectus; and
- (v) if required by any laws, it will execute, deliver, file and otherwise assist the Partnership in filing within the applicable limitations of time, such reports, undertakings and other documents with respect to the acquisition or disposition of all or any part of its LP Units as may be required.

The representations, warranties covenants and agreements contained in this Section 10.2 shall survive the execution of this Agreement until the termination hereof.

10.3 Limitations on Authority of Limited Partners.

No Limited Partner in its capacity as a limited partner, except to the extent permitted by law, shall:

- (a) take part in the control or management of the business of the Partnership or exercise any power in connection therewith;
- (b) execute any document or take any action which binds or purports to bind any other Partner or the Partnership;
- (c) hold itself out as having the power or authority to bind any other Partner or the Partnership;
- (d) have any authority or power to act for or undertake any obligation or responsibility on behalf of any other Partner or the Partnership; or
- (e) bring any action for petition or sale in connection with any assets of the Partnership, whether real or personal, or register or permit any Lien to be filed or registered or remain undischarged against any assets of the Partnership.

10.4 Limited Liability of Limited Partners.

- (a) Subject to the provisions of the Act, the liability of each Limited Partner for the liabilities and obligations of the Partnership shall be limited to its Capital Contribution, and each Limited Partner shall have no further liability for any other debts, liabilities or obligations of the Partnership and shall not be liable for any claims or assessments or be required to make further contributions to the Partnership except as specifically provided for herein.
- (b) The General Partner shall use commercially reasonable efforts to include the following provisions in all contracts entered into by the Partnership:

"The parties hereto acknowledge that Mizrahi Residential (The One) LP (the "**Limited Partnership**") is a limited partnership formed under the laws of the Province of Manitoba, a limited partner of which is only liable for any of the Limited Partnership's liabilities to the extent of the amount that the limited partner has contributed to the capital of the Limited Partnership. The parties hereto acknowledge that the obligations of the Limited Partnership are not personally binding upon, nor shall recourse be had to, the property of any of the limited partners or the property of any successor or assign of any of the limited partners, and that recourse shall only be had to the property of the Limited Partnership or the property of Mizrahi Residential (The One) GP Inc., which is the sole general partner of the Limited Partnership. The parties expressly acknowledge having been advised prior to entering into this agreement that each of 8891303 Canada Inc. and Mizrahi Inc. is a limited partner of the Limited Partnership and that, accordingly, its liability is limited as aforesaid."

10.5 Indemnification of Limited Partners and Insurance.

The General Partner hereby agrees to indemnify and hold harmless each Limited Partner (including former Limited Partners) for any claim, demand, action, cause of action, damage, loss, cost, liability or expense (including reasonable professional fees and disbursements) brought

against or incurred by such Limited Partner if its liability is not limited in the manner provided for in this Agreement other than any lack of limited liability caused by any act or omission of such Limited Partner. The General Partner will be liable to indemnify and hold harmless the Partnership for any claim, demand, action, cause of action, damages or incurred by the Partnership as a result of any breach by the General Partner of its obligations set forth in this Agreement. The General Partner will use its commercially reasonable efforts to obtain and maintain comprehensive general liability insurance in an amount and manner satisfactory to the General Partner. The cost of such insurance shall be borne by the Partnership.

10.6 Activities of Limited Partners.

Any Limited Partner, including such Limited Partner's officers, directors, shareholders, partners and agents, may engage in or hold an interest in any other business, venture, investment or activity whether similar to or competitive with the business of the Partnership and the same shall be deemed not to be a conflict of interest or breach of fiduciary duty. The General Partner and the Limited Partners hereby consent to any such activities and waive, relinquish and renounce any right or claim of participation or accounting.

10.7 No Actions or Liens.

Except as specifically set out herein, each Limited Partner covenants that it shall not during the term of this Agreement bring any action for partition or sale or otherwise in connection with any interest in the Residential Project or other assets of the Partnership whether real or personal, corporeal or incorporeal, nor register, nor, other than as provided herein, permit any Lien to be recorded or remain undischarged against its interest in the assets of the Partnership.

10.8 Compliance with Laws.

Each Limited Partner shall upon request of the General Partner immediately execute any documents or do such other things as considered by the General Partner to be necessary to comply with any applicable law or regulation of any jurisdiction in which the Partnership carries on business in relation to the continuation, operation and good standing of the Partnership.

ARTICLE 11 **REGISTRAR AND TRANSFER AGENT**

11.1 Appointment.

The General Partner may designate and appoint a Registrar and Transfer Agent to maintain the Register of the Partnership. To the extent that no such appointment is made, the General Partner shall be the Registrar and Transfer Agent.

11.2 Duties.

The Registrar and Transfer Agent, on behalf of the General Partner, shall do the following:

- (a) Office: the Registrar and Transfer Agent shall maintain a registered office at the office of the General Partner, or its legal counsel, or such other place as may be

stipulated by the General Partner and shall keep there a copy of the Declaration, any Subsequent Declarations and a copy of this Agreement and any amendments hereto;

- (b) Register: the Registrar and Transfer Agent shall maintain, either directly or through an intermediary appointed by it, the Register and shall record therein the full names and addresses of the Partners, the number and class of Units held by each Partner, whether each Partner is a limited or a general partner, particulars of registration and transfer of Units and shall record therein any mortgage or pledge of any Unit;
- (c) Other Records: the Registrar and Transfer Agent shall maintain such other records as may be required by law; and
- (d) Filings, etc.: The Registrar and Transfer Agent shall from time to time make on behalf of the Partnership all filings with any governmental authority that are required to be made by the Partnership.

ARTICLE 12

THE REGISTER

12.1 The Register.

The Register shall set forth the following information regarding each Limited Partner:

- (a) such Limited Partner's name and address or address for service, including municipality, street and number, if any, and postal code, and such Limited Partner's corporation number, if any; and
- (b) the amount of Capital Contributions of such Limited Partner.

12.2 Direction from General Partner.

The Registrar and Transfer Agent shall rely upon the direction of the General Partner in recording Limited Partners in the Register and the General Partner shall so direct the Registrar and Transfer Agent as follows:

- (a) Acceptance of Subscription: the General Partner shall provide to the Registrar and Transfer Agent written notice that the subscription of a proposed or current Limited Partner has been accepted together with a copy of the duly completed Subscription and Power of Attorney Form duly accepted by the General Partner;
- (b) Acceptance of Transfer: the General Partner shall provide to the Registrar and Transfer Agent written notice that the transfer or assignment of a LP Unit by a Partner has been accepted together with a copy of the duly completed Assignment and Transfer Form and written confirmation by the General Partner that

satisfactory arrangements have been made in respect of the obligations of the transferring Partner to the Partnership; and

- (c) Capital Contribution: the General Partner shall provide to the Registrar and Transfer Agent written notice of any changes in the capital contribution or agreed capital contribution of a Partner together with such evidence as is deemed appropriate by the General Partner.

12.3 Liability of Registrar and Transfer Agent.

The Registrar and Transfer Agent shall not be liable for any error in the Register to the extent that such error was made in acting in accordance with the direction of the General Partner as provided in Section 12.2.

12.4 Effective Date.

The rights and obligations of a Limited Partner as a Limited Partner under this Agreement as between such Limited Partner and the other Partners commence on and are enforceable from the date on which the name and other required information in respect of such Limited Partner is recorded in the Register.

12.5 Inspection of Register.

Any registered holder of a LP Unit, or an agent duly authorized in writing by such registered holder, shall have the right to inspect and take extracts from the Register during normal business hours, and, upon payment of a reasonable fee to the General Partner, to obtain a copy of the Register within a period of ten (10) days from the date of the filing of a written request therefore with the General Partner at the principal place of business of the Partnership.

ARTICLE 13 **MEETINGS**

13.1 Requisition of Meeting.

- (a) General: Meetings of the Limited Partners may be called by the General Partner at any time upon at least ten (10) days' notice. The Class A1 Limited Partner may by the giving of written notice signed by it request a meeting of the Partnership to the General Partner, the General Partner shall, within ten (10) days of receipt of such notice, call a special meeting of the Limited Partners and, if it fails to do so, the Class A1 Limited Partner may call such meeting by giving notice to the Limited Partners in accordance with this Agreement, signed by an authorized signatory of the Class A1 Limited Partner. Every meeting, however convened, will be conducted in accordance with this Agreement.
- (b) Annual Meetings: The General Partner shall convene an annual meeting of the Limited Partners within one hundred and eighty (180) days of the end of each Fiscal Year.

13.2 Place of Meeting.

Every meeting will be the head office of the Partnership or such other place as may be stipulated by the General Partner.

13.3 Notice of Meeting.

Notice of any meeting will be given to each Limited Partner and to the General Partner. The notice shall be delivered at least ten (10) and not more than fifty (50) days prior to the meeting and shall specify:

- (a) the time, date, and place of the meeting; and
- (b) in reasonable detail, the nature of the business to be transacted at the meeting.

13.4 Proxies.

Any Limited Partner entitled to vote at a meeting may vote by proxy if the proxy has been received by the General Partner or the chairman of the meeting for verification prior to the meeting.

13.5 Validity of Proxies.

A proxy purporting to be executed by or on behalf of a Limited Partner will be considered to be valid unless challenged at the time of or prior to its exercise, and the Person challenging will have the burden of proving to the satisfaction of the chairman of the meeting that the proxy is invalid and any decision of the chairman concerning the validity of a proxy will be final.

13.6 Corporations.

A Limited Partner which is a corporation, limited partnership or other entity may appoint an officer, director, manager or other authorized Person as its representative to attend, vote and act in its behalf at a meeting of Limited Partners.

13.7 Attendance of Others.

The General Partner, any officer or director of the General Partner, the solicitors for the General Partner and the Partnership, representatives of the Accountant and any other Person authorized by the General Partner as well as the solicitors for each Limited Partner will be entitled to attend any meeting of Limited Partners.

13.8 Chairperson.

The General Partner may nominate an individual (who need not be a Limited Partner) to be chairperson of a meeting of the Limited Partners and the individual nominated by the General Partner will be chairperson of such meeting.

13.9 Quorum.

A quorum at any meeting of the Limited Partners will consist of the Class A1 Limited Partner present in person; provided that, in respect of any meeting of the Limited Partners at which a matter requiring approval by Extra Ordinary Resolution will be considered, quorum will consist of the Class A1 Limited Partner and the Class B Limited Partner. No meeting of the Limited Partners at which an Extra Ordinary Resolution will be considered (in this Section 13.9, an "**Original Special Meeting**") shall continue in the absence of a quorum; provided that, if at any such meeting of the Limited Partners a quorum shall not be present by reason only of the fact that either the Class A1 Limited Partner or Class B Limited Partner (in this Section 13.9, each a "**Required Limited Partner**") is absent from such meeting, then, notwithstanding anything herein contained, the Required Limited Partner that is present at such meeting may call a supplementary meeting (in this Section 13.9, a "**Supplementary Special Meeting**") of the Limited Partners on not less than five (5) Business Days' notice to each of the Required Limited Partners, and the business at the Supplementary Special Meeting shall be limited to the business set out in the notice of the Original Special Meeting. If the Required Limited Partner that did not attend the Original Special Meeting does not attend the Supplementary Special Meeting, the Required Limited Partner attending the Supplementary Special Meeting shall constitute a quorum for the transaction of the business referred to in the notice of the Original Special Meeting. Subject to the foregoing, no meeting shall continue with the transaction of business in the absence of a quorum.

13.10 Voting.

- (a) Every question submitted to a meeting will be decided on a show of hands unless a poll is demanded by a Limited Partner, in which case a poll will be taken.
- (b) In the case of an equality of votes, the chairperson will not have a casting vote and the resolution will be deemed to be defeated.
- (c) On any vote at a meeting of the Limited Partners, a declaration of the chairperson concerning the result of the vote will be conclusive.

13.11 Poll.

A poll requested or required concerning:

- (a) the election of a chairperson or an adjournment, shall be taken immediately on request; or
- (b) any other matter, will be taken at the meeting or an adjournment of the meeting in such manner as the chairperson directs.

13.12 Resolutions Binding.

Any resolution passed in accordance with this Agreement shall be binding on all the Limited Partners and their respective heirs, executors, administrators, successors and permitted assigns,

whether or not any such Limited Partner was present in person or voted against any resolution so passed.

13.13 Resolution in Lieu of Meeting.

Any resolution consented to at any time during the Partnership's existence by the signature of the requisite number of Limited Partners is as valid and effective as if passed at a meeting of the Partners duly called, constituted and held for that purpose.

13.14 Minutes.

The General Partner will cause minutes to be kept of all proceedings and resolutions passed at every meeting or consented to by all of the Limited Partners, and to be entered in books to be kept for that purpose, and any minutes, if signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting, will be deemed conclusive evidence of the matters stated in them and such meeting shall be deemed to have been duly convened and held and all resolutions and proceedings shown in them shall be deemed to have been duly passed and taken.

13.15 Additional Rules and Procedures.

To the extent that the rules and procedures for the conduct of a meeting of the Limited Partners are not prescribed in this Agreement, the rules and procedures will be determined by the chairperson of the meeting.

ARTICLE 14 **NOTICES**

14.1 Notices.

A notice, demand, request, statement or other evidence required or permitted to be given under this Agreement must be in writing. It will be sufficiently given if delivered, or during the times the post office is normally operating, mailed prepaid or delivered by hand, facsimile transmission, email, a recognized courier service or other telecommunications facilities to a party addressed as follows:

- (a) to the General Partner:

Mizrahi Residential (The One) GP Inc.
189 Forest Hill Road
Toronto, Ontario M5P 2N3

Attention: President and Vice-President
Telephone: (416) 818-5288 and (416) 633-6765
Email: Sam@MizrahiCorp.Com and jcoco@cocogroup.com

- (b) to the Class A1 Limited Partner:

c/o Bridging Finance Inc.
77 King Street West, Suite 2925, P.O. Box 322
Toronto, Ontario M5K 1K7

Attention: Ms. Natasha Sharpe
Telephone: (416) 777-1601

Email: nsharpe@bridgingfinance.ca

with a copy to:

Coco Paving Inc.
949 Wilson Avenue
Toronto, Ontario
M3K 1G2

Attention: Ms. Virginia Jenny Coco
Facsimile: (416) 633-6765
Email: jcoco@cocogroup.com

and with a copy to:

Fogler, Rubinoff LLP
77 King Street West, Suite 3000
Toronto, Ontario M5K 1G8

Attention: Mr. Ian Kady
Telephone: (416) 941-8809
Email: ikady@foglers.com

(c) to the Class B Limited Partner:

Mizrahi Enterprises Inc.
189 Forest Hill Road
Toronto, Ontario M5P 2N3

Attention: Sam Mizrahi
Telephone: (416) 818-5288
Email: Sam@MizrahiCorp.Com

or to such other address as each party may from time to time advise the others in writing, and any such notice will be deemed to have been received seventy-two (72) hours after mailing, or if sent by facsimile or email transmission or courier, on the next Business Day, or if delivered, when delivered, provided that if the notice is mailed and there occurs between the time of mailing and the actual or deemed receipt of the notice, a mail strike, slow down, or other labour dispute which might affect delivery of the notice, then the notice is effective only when actually delivered. A party may change its address for notices by giving notice in accordance with the foregoing. The accidental omission in the giving of, or failure to give, a notice required by this

Agreement will not invalidate or affect in any way the legality of any meeting or other proceeding in respect of which such notice was or was intended to be given.

ARTICLE 15

DISSOLUTION AND LIQUIDATION

15.1 Dissolution.

The Partnership shall be dissolved upon the occurrence of any of the following events:

- (a) the approval of the Limited Partners by Ordinary Resolution approving the dissolution of the Partnership; or
- (b) subject, for greater certainty, to Section 6.9, all of the remaining assets of the Partnership are sold, all liabilities of the Partnership have been paid in full, and all Distributable Cash has been allocated and distributed to the Limited Partners and the General Partner in accordance with the provisions hereof.

Dissolution will be effective on the day on which the event occurred giving rise to the dissolution but the Partnership will not terminate until its assets have been distributed in accordance with this Agreement.

15.2 Liquidation of the Partnership Assets.

In the event of the dissolution of the Partnership, a receiver appointed by the General Partner (which may be the General Partner) shall commence to wind up the affairs of the Partnership and to liquidate its assets. The Partners will continue to share profits and losses during the period of liquidation in the same proportions as before the dissolution. The General Partner or receiver, as the case may be, has the full right and unlimited discretion to determine the time, manner and terms of any sale of assets of the Partnership pursuant to the liquidation, having regard to the activity and condition of the relevant market and general economic conditions.

15.3 Distribution.

Following the payment of all debts and liabilities of the Partnership and all expenses of liquidation, but conditional upon the right of the General Partner or receiver to set up such cash reserves as it may deem necessary for any contingent or unforeseen liabilities or obligations of the Partnership, the proceeds of the liquidation and the other funds of the Partnership will be distributed to the Partners in accordance with the applicable provisions of Article 7, *mutatis mutandis*.

15.4 Statement.

Within a reasonable time following the completion of the liquidation of the Partnership, the General Partner will supply to each of the Limited Partners a statement, reviewed by the Accountant, setting out the assets and liabilities of the Partnership as of the date of complete liquidation and the distribution of its assets.

15.5 Cash Distribution.

No Limited Partner has the right to demand or receive the properties and assets of the Partnership other than cash upon dissolution and termination of the Partnership.

15.6 Termination.

Upon the completion of the liquidation of the Partnership and the distribution of all of the Partnership funds, the Partnership shall terminate and the General Partner has the authority to execute and record, and shall execute and record, any certificate as well as any other documents required to effect the dissolution or termination of the Partnership.

15.7 Continuity.

Except as specifically set out in this Agreement, the Partnership shall not dissolve or terminate upon the occurrence of any event, including the admission of a New General Partner or Substituted Limited Partner or be terminated by the withdrawal, removal, death, insolvency, bankruptcy or other disability of a Limited Partner, as the case may be.

15.8 Receiver.

Subject to Section 9.10, the General Partner shall be the receiver of the Partnership charged with the responsibility of liquidating the Partnership upon its dissolution. If the General Partner is unable or unwilling to act in that capacity, then the General Partner shall appoint another appropriate Person to act as the receiver of the Partnership. The receiver shall proceed diligently to wind up the affairs of the Partnership and to distribute the net proceeds from the sale of the assets of the Partnership. During the course of the liquidation, the receiver shall operate the properties and undertaking of the Partnership and in doing so is vested with all of the powers and authority of the General Partner in relation to the Partnership under the terms of this Agreement. The Partnership shall pay to the receiver its reasonable fees and disbursements incurred in carrying out its duties.

ARTICLE 16
POWER OF ATTORNEY

16.1 Power of Attorney.

Each Limited Partner does hereby irrevocably nominate, constitute and appoint the General Partner and any New General Partner, with full power of substitution, as its agent and true and lawful attorney to act on its behalf with full power and authority in its name, place, and stead to execute, deliver and record or file as and where required:

- (a) all agreements, instruments and documents relating to the issuance of LP Units;
- (b) this Agreement and all instruments and declarations necessary to reflect any amendment to this Agreement;

- (c) the Declaration, any Subsequent Declaration and any other instruments or documents required to form, qualify, continue, amend and keep in good standing the Partnership as a limited partnership in all jurisdictions in which the Partnership may conduct its business;
- (d) any instrument required in connection with the dissolution, liquidation and termination of the Partnership;
- (e) all elections, determinations or designations under the ITA or any other taxation or other legislation or laws of similar import of Canada or of any provinces or other jurisdictions in respect of the affairs of the Partnership or of a Partner's interest in the Partnership;
- (f) all instruments relating to the admission of additional Limited Partners or Substituted Limited Partners subject to the terms and restrictions of this Agreement;
- (g) all documents as may be necessary to give effect to a transfer or assignment of LP Units pursuant to this Agreement;
- (h) the documents necessary to be filed with the appropriate governmental body or authority in connection with the business, assets and undertaking of the Partnership, including the Residential Project;
- (i) the documents as may be necessary to give effect to the conduct of the business of the Partnership as described in this Agreement; and
- (j) all other instruments and documents as may be necessary and appropriate to carry out fully this Agreement.

Each Limited Partner agrees to be bound by any representation and action of the General Partner made or taken in conformity with this power of attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under such power of attorney. The power of attorney granted herein is irrevocable and is a power coupled with an interest and survives the assignment by a Limited Partner of the whole or any part of the interest of each such Limited Partner in the Partnership and extends to the heirs, executors, administrators, successors, permitted assigns and other legal representatives of such Limited Partner, as the case may be, and may be exercised notwithstanding the subsequent legal incapacity of such Limited Partner, where applicable, and may be exercised by the General Partner on behalf of each Limited Partner in executing such instrument with a single signature as attorney and agent for all of them. A transferee of a LP Unit shall, upon becoming a Limited Partner, be conclusively deemed to have provided the General Partner with the power of attorney described in this Section 16.1.

ARTICLE 17

MISCELLANEOUS

17.1 Confidentiality.

The parties hereto agree that the terms and conditions of this Agreement are and shall remain confidential and shall not be disclosed by any party hereto to any Person without the prior written consent of the General Partner. Notwithstanding the foregoing, the parties hereto agree that the terms and conditions of this Agreement may be revealed to such party's professional advisors in connection with the provision of professional services to such party, provided such advisors are advised of the confidential nature of such terms and conditions and agree to act in accordance with the terms and conditions of this Agreement. The parties hereto may also disclose such terms and conditions of this Agreement as they may become legally compelled to do so, and in such event, shall provide written notice of such disclosure to the other parties.

17.2 Entire Agreement, Waiver.

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement. There are no warranties, representations or agreements between the parties in connection with such subject matter except as specifically set forth or referred to in this Agreement. No waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

17.3 Amendment.

This Agreement shall not be amended except by a written instrument signed by the General Partner, the Class A1 Limited Partner and the Class B Limited Partner.

17.4 Binding Agreement, Enurement.

Except as specifically contemplated herein, no party to this Agreement may assign, transfer or otherwise dispose of this Agreement or all or any part of its rights or obligations or any interest in this Agreement without the prior written consent of all of the other parties hereto. Subject to the foregoing, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal representatives, administrators, successors and permitted assigns, as the case may be. This Agreement supersedes the Letter of Intent dated April 16, 2014 by Bridging Finance Inc. and accepted by Mizrahi Real Estate Group Inc., the Residential Construction Manager and the Residential Development Manager, which letter of intent shall be of no further force or effect.

17.5 Further Assurances.

The parties hereto shall sign such further and other documents, cause such meetings to be held, resolutions passed, exercise their votes and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

17.6 Tender.

If a party hereto wishes to tender documents or money upon any other party hereto, such tender may, at the tendering party's option, be made upon such other party or upon its solicitors and any

tender of money shall be made by way of a certified cheque, bank draft or other means of immediately available funds.

17.7 Expenses.

Except as specifically set out herein, each Party will be responsible for any and all costs and expenses it incurs in connection with this Agreement.

17.8 Counterparts.


This Agreement may be executed in several counterparts, by original or PDF or facsimile signature, each of which so executed shall be deemed to be an original and such counterparts together shall be deemed to be the same instrument. This Agreement may also be executed and adopted by signing the Assignment and Transfer Form or similar instrument signed by a Substituted Limited Partner with the same effect as if such Substituted Limited Partner had executed a counterpart of this Agreement. All counterparts and adopting instruments shall be construed together and shall constitute one and the same agreement.


[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first shown above.

General Partner:


MIZRAHI RESIDENTIAL (THE ONE) GP INC.


Per: 
Name: U. Jenny Coco
Title: Vice-President

Per: 
Name: Natesha Sharpe
Title: Secretary
We have authority to bind the corporation

Class A1 Limited Partner:

8891303 CANADA INC.

Per: 
Name: U. Jenny Coco
Title: A.S.O.

Per: 
Name: Natesha Sharpe
Title: A.S.O.
We have authority to bind the corporation

Class B Limited Partner:

MIZRAHI ENTERPRISES INC.

Per: _____
Name:
Title:
I have authority to bind the corporation

SCHEDULE "A"
Form of LP Unit Certificate

UNIT CERTIFICATE

Class _____ LP Unit(s) Certificate No.: _____

Mizrahi Residential (The One) LP
(A Limited Partnership formed under the laws of the Province of Manitoba)

THE UNDERSIGNED, being the general partner (the "**General Partner**") of **Mizrahi Residential (The One) LP** (the "**Partnership**"), hereby certifies on behalf of the Partnership that:

(Print Name of Registered Holder)

is the registered holder of _____ units (the "**LP Unit**" or "**LP Units**") in the Partnership.

The rights of a holder of LP Units are governed by a limited partnership agreement dated as of the 25th day of July, 2014, as the same may be amended or restated from time to time (the "**Partnership Agreement**"). The liability of the holder of this Certificate is limited to the amount of capital he, she or it has contributed or agreed to contribute to the Partnership plus his, her or its share of the undistributed income of the Partnership. A Limited Partner may lose the protection of limited liability if he, she or it takes part in the control of the business of the Partnership and may be liable to third parties as a result of false statements in public filings made pursuant to the laws of the Province of Manitoba and applicable legislation of other jurisdictions.

A transfer of any LP Units represented by this Certificate are subject to the provisions of the Partnership Agreement and may only be transferred in accordance with the terms of the Partnership Agreement.

Each LP Unit evidenced by this certificate is a "security" for the purposes of the *Securities Transfer Act*, 2006 (Ontario).

Capitalized terms not defined herein shall have the meaning ascribed to them in the Partnership Agreement.

IN WITNESS WHEREOF the undersigned has caused this Certificate to be signed by its duly authorized officer.

DATED this ____ day of _____, 20__.

MIZRAHI RESIDENTIAL (THE ONE) GP INC., in
its capacity as General Partner of **MIZRAHI
RESIDENTIAL (THE ONE) LP**

Per: _____
Authorized Officer

Per: _____
Authorized Officer

(REVERSE SIDE OF UNIT CERTIFICATE)
MIZRAHI RESIDENTIAL (THE ONE) LP
UNIT CERTIFICATE

Certificate No: _____

(Print Name of Registered Holder)

Class of Units: _____

Number of Units: _____

Date: _____

FOR VALUE RECEIVED, the undersigned hereby assigns and transfer unto:

(Print name of Transferee)

_____ Unit(s) represented by this Certificate.

DATED at _____ this _____ day of _____, 20__.

(Signature of Witness)

(Signature of Registered Holder)

SCHEDULE "B"
Form of Assignment and Transfer Form
ASSIGNMENT AND TRANSFER FORM

A TRANSFER OF ANY OF THE WITHIN LP UNITS ARE SUBJECT TO THE PROVISIONS OF A PARTNERSHIP AGREEMENT IN RESPECT OF **MIZRAHI RESIDENTIAL (THE ONE) LP** AND MAY ONLY BE TRANSFERRED IN ACCORDANCE WITH THE TERMS OF SUCH LIMITED PARTNERSHIP AGREEMENT.

THE UNDERSIGNED being a Limited Partner of **Mizrahi Residential (The One) LP** (the "**Partnership**"), hereby transfers, assigns and sells to:

(Print Name of Transferee)

(Print Address of Transferee)

(City, Province, Postal Code)

(the "**Transferee**") _____ units of limited partnership interest in the Partnership (the "**LP Unit**" or "**LP Units**") registered in the name of the undersigned.

THE UNDERSIGNED hereby constitutes the above named Transferee as a Substituted Limited Partner to the extent of the said number of LP Units and agrees to execute and deliver to the General Partner any documents required to effect a valid transfer of the said LP Units or which are necessary or advisable in the opinion of the General Partner to preserve the status of the Partnership as a limited partnership.

Capitalized terms not defined herein shall have the meaning ascribed to them in the Partnership Agreement in respect of the Partnership.

THE UNDERSIGNED agrees that the power of attorney previously granted to the General Partner will be effective for the purpose of executing and filing all certificates, amendments and other instruments necessary to give effect to this transfer.

DATED at _____ Province of _____ this ___ day of _____, 20__.

(Signature of Limited Partner)

(Name of Limited Partner – Please Print)

(Residence Address)

(City, Province, Postal Code)

(REVERSE SIDE OF ASSIGNMENT AND TRANSFER FORM)

Acknowledgement of Transferee

THE UNDERSIGNED, being the Transferee named above hereby accepts the Transfer of the Unit(s) as herein provided and, in consideration of the General Partner accepting this Transfer and conditional thereon, hereby:

1. agrees to be bound as a Limited Partner in the Partnership by the terms of the Partnership Agreement as from time to time amended and in effect and the Transferee hereby expressly ratifies and confirms the power of attorney given to the General Partner therein;
2. irrevocably constitutes and appoints the General Partner, with full power of substitution, as his true and lawful attorney and agent, with full power and authority in its name, place and stead to execute and deliver, for and on its behalf, the Partnership Agreement and any amendments thereto and hereby ratifies, for all legal purposes, execution of the Partnership Agreement on its behalf and all actions taken on its behalf pursuant thereto; and
3. declares that it is not a "non-Canadian" within the meaning of the *Investment Canada Act* (Canada) and that it is not a "non-resident" within the meaning of the *Income Tax Act* (Canada).

THE UNDERSIGNED hereby acknowledges that the power of attorney granted herein and in the Partnership Agreement is irrevocable and is a power coupled with an interest and survives the assignment by the undersigned of the whole or any part of the interest of the undersigned in the Partnership and extends to the heirs, executors, administrators, successors, assigns and other legal representatives of the undersigned and shall survive the death or disability of the undersigned until notice of death or disability is delivered to the General Partner and may be exercised by the General Partner on behalf of the undersigned in executing such instrument with a single signature as attorney and agent for all of them. The undersigned agrees to be bound by representation or action made or taken by the General Partner pursuant to such power of attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under such power of attorney.

THE UNDERSIGNED hereby accepts that this transfer form, the Partnership Agreement and related documents be in the English language only.

DATED at _____ Province of _____ this _____ day of _____, 20__.

(Signature of Witness)

(Signature of Transferee)

(Print Name of Witness)

(Name of Transferee – Please Print)

(Address of Transferee)

(City, Province, Postal Code)

(Social Insurance Number)

This is Exhibit "P" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

Message

From: Jenny Coco [JCoco@cocogroup.com]
Sent: 10/24/2015 1:11:59 PM
To: N Sharpe [NSharpe@bridgingfinance.ca]
CC: Patricia Bradley [pbradley@cocogroup.com]
Subject: Consolidated Summary.xlsx

Hi Natasha,

As per attached, the Coco investment is already over the threshold in investment in One Bloor.

Just another item to discuss.

JC

The One Consolidated Summary

Total Coco Group Funding - All Entities									
Coco Shareholder Investments Into 8891303 Canada Inc.						CII Loan			Total Coco group
Jenny (SH) 1277015 Ontario	Rocky (SH) RA Coco Engineering	Bill (SH) G& N Coco	Nina (SH) 1364671 Ontario	Coco SH Total	Expenses	Interest	Total CII	Total Coco group	
014	250,000	250,000	250,000	250,000	1,000,000			-	1,000,000
014	500,000	500,000	500,000	500,000	2,000,000			-	2,000,000
014	3,512,443	3,512,443	3,512,443	3,512,443	14,049,772			-	14,049,772
014	150,000	150,000	150,000	150,000	600,000			-	600,000
014	250,000	250,000	250,000	250,000	1,000,000			-	1,000,000
014	500,000	500,000	500,000	500,000	2,000,000			-	2,000,000
014	35,625	35,625	35,625	35,625	142,500			-	142,500
014	62,500	62,500	62,500	62,500	250,000			-	250,000
014	500,000	500,000	500,000	500,000	2,000,000			-	2,000,000
014							228,323	228,323	228,323
014							577,210	577,210	577,210
014							330,109	330,109	330,109
014	1,459,611	1,459,611	1,459,611	1,459,611	5,838,444			-	5,838,444
014	7,220,179	7,220,179	7,220,179	7,220,179	28,880,716		1,135,643	1,135,643	30,016,359
015	(25,284)	(25,284)	(25,284)	(25,284)	(101,138)			-	(101,138)
015							347,839	347,839	347,839
015							611,507	611,507	611,507
015							552,329	552,329	552,329
015							611,507	611,507	611,507
015							241,758	241,758	241,758
015						1,632,906		1,632,906	1,632,906
015						1,657,677		1,657,677	1,657,677
015						400,262	1,052,740	1,453,002	1,453,002
015						1,913,071	1,099,863	3,012,934	3,012,934
015						1,080,375	1,099,863	2,180,238	2,180,238
015						1,450,243	1,434,110	2,884,352	2,884,352
015								-	-
015								-	-
015								-	-
015								-	-
015								-	-
	(25,284)	(25,284)	(25,284)	(25,284)	(101,138)	8,134,534	7,051,514	15,186,048	15,084,911
	7,194,895	7,194,895	7,194,895	7,194,895	28,779,579	8,134,534	8,187,157	16,321,691	45,101,270
	23.76%	23.76%	23.76%	23.76%	95.02%				

396

F2690

F422

The One Consolidated Summary

Total Coco Group Funding - All Entities										Natasha (SH) 2333065 Ont Inc.	Investment 8891
Coco Shareholder Investments Into 8891303 Canada Inc.					CII Loan			Total Coco group			
Date	Jenny (SH) 1277015 Ontario	Rocky (SH) RA Coco Engineering	Bill (SH) G& N Coco	Nina (SH) 1364671 Ontario	Coco SH Total	Expenses	Interest		Total CII		
Yonge deposit	7/22/2014	250,000	250,000	250,000	250,000	1,000,000	-	-	-	1,000,000	
1 - 1 and 11 Bloor	7/31/2014	500,000	500,000	500,000	500,000	2,000,000	-	-	-	2,000,000	
with closing half of 11 Bloor	8/20/2014	3,512,443	3,512,443	3,512,443	3,512,443	14,049,772	-	-	-	14,049,772	902,619
Partners	8/29/2014	150,000	150,000	150,000	150,000	600,000	-	-	-	600,000	
de deposit #1	9/5/2014	250,000	250,000	250,000	250,000	1,000,000	-	-	-	1,000,000	
2 - 1 and 11 Bloor	9/10/2014	500,000	500,000	500,000	500,000	2,000,000	-	-	-	2,000,000	
	9/12/2014	35,625	35,625	35,625	35,625	142,500	-	-	-	142,500	7,500
1 - 774 Yonge St	10/15/2014	62,500	62,500	62,500	62,500	250,000	-	-	-	250,000	
up October 17, 2014	10/17/2014	500,000	500,000	500,000	500,000	2,000,000	-	-	-	2,000,000	
RA \$120M Interest	11/3/2014	57,081	57,081	57,081	57,081	228,323	228,323	228,323	228,323	228,323	
RA \$120M Interest	12/1/2014	144,303	144,303	144,303	144,303	577,210	577,210	577,210	577,210	577,210	
RA \$120M Interest	12/17/2014	82,527	82,527	82,527	82,527	330,109	330,109	330,109	330,109	330,109	
	12/19/2014	1,459,611	1,459,611	1,459,611	1,459,611	5,838,444	-	-	-	5,838,444	496,243
December 31, 2014	12/31/2014	7,504,090	7,504,090	7,504,090	7,504,090	30,016,359	-	1,135,643	1,135,643	30,016,359	1,406,362
repayment to COCO SH	3/12/2015	(25,284)	(25,284)	(25,284)	(25,284)	(101,138)	-	-	-	(101,138)	101,138
uses & Interest	1/31/2015	-	-	-	-	-	347,839	347,839	347,839	-	
RA \$120M Interest	2/2/2015	152,877	152,877	152,877	152,877	611,507	-	-	-	611,507	
RA \$120M Interest	3/2/2015	138,082	138,082	138,082	138,082	552,329	-	-	-	552,329	
RA \$120M Interest	4/2/2015	152,877	152,877	152,877	152,877	611,507	-	-	-	611,507	
uses & Interest	2/28/2015	-	-	-	-	-	241,758	241,758	241,758	-	
uses & Interest	5/31/2015	-	-	-	-	-	1,632,906	1,632,906	1,632,906	1,632,906	
uses & Interest	6/30/2015	-	-	-	-	-	1,657,677	1,657,677	1,657,677	1,657,677	
uses & Interest	7/31/2015	-	-	-	-	-	400,262	1,052,740	1,453,002	400,262	
uses & Interest	8/31/2015	-	-	-	-	-	1,913,071	1,099,863	3,012,934	1,913,071	
uses & Interest	9/30/2015	-	-	-	-	-	1,080,375	1,099,863	2,180,238	1,080,375	
uses & Interest	10/31/2015	-	-	-	-	-	1,450,243	1,434,110	2,884,352	1,450,243	
		-	-	-	-	-	-	-	-	-	
		-	-	-	-	-	-	-	-	-	
		-	-	-	-	-	-	-	-	-	
		-	-	-	-	-	-	-	-	-	
December 31, 2015		418,551	418,551	418,551	418,551	1,674,205	8,134,534	5,276,172	13,410,706	9,808,739	101,138
TOTAL TO DATE		7,922,641	7,922,641	7,922,641	7,922,641	31,690,564	8,134,534	6,411,814	14,546,349	39,825,098	1,507,500
Contribution %		23.86%	23.86%	23.86%	23.86%	95.46%					4.54%

CII Loan to The One by Vendor
Updated 10/22/2015

Row Labels	Sum of Cheque Amount
Foster + Partners	4,069,511.40
Core Architects Inc.	868,831.24
Treasurer, City of Toronto	404,548.07
Schwartz & Schwartz Professional Corporation	388,750.00
Sean Teperman Consulting Corp.	387,537.96
Adam J Brown	331,258.23
Read Jones Christoffersen	175,612.98
MGI Asset Management	169,500.00
MCW Consultants Ltd.	169,500.00
Altus Group	164,213.92
Brenbaum, Steinberg, Landow, Savin & Colrairie LLP	150,000.00
Skyway Canada Limited	119,133.64
BA Consulting Group	107,046.63
Fogler Rubinoff	72,916.65
Rowan Williams Davies & Irwin	65,540.00
Daoust Vukovich LLP	59,277.52
Terraprobe Inc	58,929.52
The Planning Partnership	39,557.85
Bousfields Inc.	36,115.83
Lerch Bates Inc.	33,900.00
Cole Engineering Group Ltd.	32,246.12
Ernst & Young LLP	31,498.75
Krcmar surveyors ltd	30,186.29
Ontario Hydro-Vac Inc.	29,645.41
DLB Construction	23,566.60
Extreme Electrical Services Ltd.	22,095.31
CRA	18,714.60
Safety First Consulting Professional Corporation	16,697.96
Masters Insurance Ltd.	13,662.00
Jensen Hughes (Formerly RBA)	13,469.60
Enbridge	10,273.24
Laughlins Solutions Incorporated	5,358.73
Goldsmith Borgal & Company Ltd.	4,350.50
Gowling Lafleur Henderson LLP	4,104.09
McCarthy Tetrault	3,955.00
Guild Electric Ltd.	3,028.40
(blank)	
Grand Total	8,134,534.04
Interest	7,051,514.24
Total Loan balance	15,186,048.28

behalf of GP Commercial (The One) by CII - Loan Details

Vendor	Invoice #	Invoice Date	Cheque / Wire #	Cheque / Wire Date	Cheque Amount	Description
Foster + Partners	2304.06	January 31, 2015	WW15050432889117	May 4, 2015	924,000.00	Architect fees - concept and design
Assurer, City of Toronto	009-15-TEYM	April 30, 2015	1495	May 5, 2015	17,605.97	City Planning - expanded notice - community consultation
GI Asset Management	1202186	April 27, 2015	WW1505432889078	May 4, 2015	33,900.00	Asset Management Fee
Adam J Brown	15702	February 5, 2015	1497	May 7, 2015	17,074.30	Legal Fees - PATH system, Demolition permit, ZBA
Adam J Brown	15777	March 3, 2015	1498	May 7, 2015	42,424.32	Legal Fees - GFA Calc, heritage study, correspondence with Mayors
Core Architects	58662 & 58718	March 16, 2015	1499	May 7, 2015	144,358.79	Architect fees - design development
rcmar surveyors ltd	28907/15	February 27, 2015	1496	May 7, 2015	23,146.34	Surveying - topography information
nd Jones Christoffersen	176145 & 174507	February 27, 2015	1500	May 12, 2015	67,232.57	Engineering consulting - Schematic Design
n Williams Davies & Irwin	11738	March 12, 2015	1501	May 14, 2015	65,540.00	Wind Engineering Services
Terraprobe Inc	72450	December 31, 2014	1502	May 14, 2015	30,919.64	Geotechnical Investigation, substance survey, shoring design drawing
DLB Construction	624	February 24, 2015	1506	May 14, 2015	16,861.18	General Labour
DLB Construction	633	March 31, 2015	1507	May 14, 2015	2,495.04	General Labour
eperman Consulting Corp.	stcc49	March 31, 2015	1503	May 14, 2015	1,548.10	Covered Walkway - ground level
eperman Consulting Corp.	stcc491	March 25, 2015	1504	May 14, 2015	13,312.53	Covered Walkway - ground level
eperman Consulting Corp.	stcc479	March 25, 2015	1505	May 14, 2015	58,571.79	Covered Walkway - ground level
Lerch Bates Inc.	1253	February 26, 2015	1508	May 19, 2015	4,011.50	SD Progress Review
Lerch Bates Inc.	1301	March 30, 2015	1509	May 19, 2015	4,011.50	Schematic Design
GI Asset Management	1202188	May 26, 2015	WW15052733014947	May 27, 2015	33,900.00	Asset Management Fee
Adam J Brown	15830	March 25, 2015	1510	May 29, 2015	84,515.50	Planning
Adam J Brown	15898	April 10, 2015	1511	May 29, 2015	47,477.18	Planning
					1,632,906.25	
IA Consulting Group	50609	February 23, 2015	1513	June 2, 2015	10,613.03	Transportation advisory - loading area review
Bousfields Inc.	27044	January 28, 2015	1514	June 3, 2015	1,401.72	Urban design planning - preparation of massing
Core Architects Inc.	58741	April 14, 2015	1515	June 3, 2015	144,083.48	Design development
Core Architects Inc.	58746	April 14, 2015	1516	June 3, 2015	3,727.72	Printing
nsulting Professional Corporation	10850	March 1, 2015	1518	June 3, 2015	7,214.77	Safety inspections
nsulting Professional Corporation	10700	February 1, 2015	1519	June 3, 2015	9,483.19	Safety inspections
eperman Consulting Corp.	stcc508	April 24, 2015	1520	June 3, 2015	45,200.00	Progress billing on \$183K contract
eperman Consulting Corp.	stcc515	May 5, 2015	1521	June 3, 2015	1,548.10	Skyway - rental 107'
e Planning Partnership	90-13661	January 31, 2015	1522	June 3, 2015	2,416.00	Preliminary coordination, scheduling and production
e Planning Partnership	90-13756	February 28, 2015	1523	June 3, 2015	17,776.83	Option 1 - pre-design and schematic design
ne Electrical Services Ltd.	580075	February 26, 2015	1524	June 11, 2015	7,176.92	Electrical work - light installation
ne Electrical Services Ltd.	580092	March 31, 2015	1525	June 11, 2015	1,261.84	Electrical work - voltage leak
asurer, City of Toronto	07/02/15 - 1 Bloor St W	May 7, 2015	1537	July 2, 2015	55,997.72	July property taxes - 1 Bloor St W
asurer, City of Toronto	07/02/15 - 11 Bloor St W	May 7, 2015	1538	July 2, 2015	26,536.03	July property taxes - 11 Bloor St W
asurer, City of Toronto	07/02/15 - 770 Yonge St	May 7, 2015	1539	July 2, 2015	9,170.70	July property taxes - 770 Yonge St
asurer, City of Toronto	07/02/15 - 774 Yonge St	May 7, 2015	1540	July 2, 2015	5,762.82	July property taxes - 774 Yonge St
asurer, City of Toronto	07/02/15 - 778 Yonge St	May 7, 2015	1541	July 2, 2015	6,785.11	July property taxes - 778 Yonge St
asurer, City of Toronto	07/02/15 - 780 Yonge St	May 7, 2015	1542	July 2, 2015	24,622.95	July property taxes - 780 Yonge St
berg, Landow, Savin & Colraie LLP	N/A	June 29, 2015	WW15062933209125	June 29, 2015	150,000.00	Deposit 768 Yonge
n Hughes (Formerly RBA)	2150212	February 27, 2015	1546	June 25, 2015	5,051.10	Preliminary consulting - engineering
Terraprobe Inc	72846	January 31, 2015	1545	June 25, 2015	15,164.60	Geotechnical investigation
ntario Hydro-Vac Inc.	3180	April 8, 2015	1548	June 25, 2015	29,645.41	Hydro Vac
ICW Consultants Ltd.	40425	February 27, 2015	1549	June 25, 2015	28,250.00	Design Development - engineering
rcmar surveyors ltd	29146/15	March 31, 2015	1544	June 25, 2015	1,525.06	Land Surveying
Foster + Partners	2304.08 / 2304.09	February 28, 2015	WW15062633198770	June 26, 2015	924,000.00	Concept & Schematic Design
Engineering Group Ltd.	29636 & 30219	January 15, 2015	1550	June 25, 2015	11,532.30	Engineering documents for re-zoning application
Adam J Brown	15975	May 4, 2015	1543	June 25, 2015	21,425.18	City Planning
Altus Group	144912	April 28, 2015	1547	June 25, 2015	56,404.47	Detailed construction cost estimate preparation
GI Asset Management	1202189	June 25, 2015	WW15062633198861	June 26, 2015	33,900.00	Asset Management Oversight
					1,657,677.05	

ng Lafleur Henderson LLP	18228765	June 12, 2015	1552	July 2, 2015	2,695.27	Amendments to agreements
Core Architects Inc.	58897	May 8, 2015	1551	July 2, 2015	144,082.90	Design Development
IA Consulting Group	50740	March 13, 2015	1553	July 16, 2015	18,667.60	Schematic Design
Bousfields Inc.	27415	March 30, 2015	1554	July 16, 2015	16,983.00	Planning / Urban Design Rationale Report
ICW Consultants Ltd.	40588	March 30, 2015	1556	July 16, 2015	42,375.00	Design Development
id Jones Christoffersen	177993	March 31, 2015	1557	July 16, 2015	27,319.50	Schematic Design
Terraprobe Inc	73703	March 28, 2015	1558	July 16, 2015	12,845.28	Shoring Design Drawings
Engineering Group Ltd.	30675	March 17, 2015	1555	July 16, 2015	11,366.39	Re-Zoning application
eperman Consulting Corp.	stcc525	May 25, 2015	1565	July 23, 2015	65,879.00	Covered Walkway - ground level
eperman Consulting Corp.	stcc523	May 25, 2015	1566	July 23, 2015	56,500.00	Covered Walkway - ground level
eperman Consulting Corp.	stcc535	June 3, 2015	1567	July 23, 2015	1,548.10	Covered Walkway - ground level
400,262.04						
asurer, City of Toronto	08/04/15 - 1 Bloor St W	August 4, 2015	1559	August 4, 2015	55,995.00	August property taxes - 1 Bloor St W
asurer, City of Toronto	08/04/15 - 11 Bloor St W	August 4, 2015	1560	August 4, 2015	26,534.00	August property taxes - 11 Bloor St W
asurer, City of Toronto	08/04/15 - 770 Yonge St	August 4, 2015	1561	August 4, 2015	9,168.00	August property taxes - 770 Yonge St
asurer, City of Toronto	08/04/15 - 774 Yonge St	August 4, 2015	5761	August 4, 2015	5,761.00	August property taxes - 774 Yonge St
asurer, City of Toronto	08/04/15 - 778 Yonge St	August 4, 2015	1563	August 4, 2015	6,784.00	August property taxes - 778 Yonge St
asurer, City of Toronto	08/04/15 - 780 Yonge St	August 4, 2015	1564	August 4, 2015	24,622.00	August property taxes - 780 Yonge St
GI Asset Management	1202191	July 27, 2015	WW15080533428599	August 5, 2015	33,900.00	Asset Management Oversight
yway Canada Limited	5904	July 30, 2015	1568	August 7, 2015	105,428.00	Scaffold purchase
Foster + Partners	2304.10 / 2304.11	March 31, 2015	WW15081133457128	August 11, 2015	907,116.90	Architect fees - concept and design
eperman Consulting Corp.	stcc560	June 26, 2015	1569	August 7, 2015	2,226.10	Covered Walkway - ground level
eperman Consulting Corp.	stcc553	June 25, 2015	1570	August 7, 2015	33,900.00	Covered Walkway - ground level
e Planning Partnership	90-13910	April 30, 2015	1571	August 7, 2015	13,746.95	Re-zoning / schematic design / design development
Fogler Rubinoff	21507851	June 23, 2015	1573	August 7, 2015	52,054.47	Draft numerous agreements - credit, loan, covenant
ng Lafleur Henderson LLP	18194437	April 22, 2015	1574	August 7, 2015	1,408.82	Development management agreement
Guild Electric Ltd.	80059	May 29, 2015	1575	August 7, 2015	3,028.40	Decorative pedestrian light pole - Labour
rcmar surveyors ltd	29311/15	April 30, 2015	1576	August 7, 2015	3,277.00	Land Surveying Fees
rcmar surveyors ltd	29671/15	May 29, 2015	1577	August 7, 2015	2,237.89	Land Surveying Fees
Lerch Bates Inc.	1443	June 22, 2015	1580	August 7, 2015	7,345.00	SD / concept & design
Lerch Bates Inc.	1390	May 21, 2015	1581	August 7, 2015	5,085.00	SD / concept & design
Daoust Vukovich LLP	79553	May 31, 2015	1582	August 7, 2015	5,018.90	Lease draft, legal fees
Daoust Vukovich LLP	79551	May 31, 2015	1583	August 7, 2015	6,127.71	Lease draft, legal fees
Daoust Vukovich LLP	79883	June 30, 2015	1584	August 7, 2015	3,738.04	Lease draft, legal fees
Daoust Vukovich LLP	79884	June 30, 2015	1585	August 7, 2015	8,636.28	Lease draft, legal fees
DLB Construction	647	May 27, 2015	1586	August 7, 2015	3,586.62	General Labour
DLB Construction	658	June 28, 2015	1587	August 7, 2015	623.76	General Labour
McCarthy Tetrault	2772006	May 28, 2015	1588	August 7, 2015	3,955.00	Loan structure review
ICW Consultants Ltd.	40891	May 29, 2015	1589	August 7, 2015	28,250.00	Design development
ICW Consultants Ltd.	40747	April 29, 2015	1590	August 7, 2015	14,125.00	Design development
n Hughes (Formerly RBA)	2151017	May 29, 2015	1591	August 7, 2015	5,051.10	Preliminary consulting
id Jones Christoffersen	179654	April 30, 2015	1592	August 7, 2015	35,248.94	Schematic design & design development
id Jones Christoffersen	181825	May 29, 2015	1593	August 7, 2015	6,014.78	Schematic design & design development
Enbridge	WR11439748	July 30, 2015	1594	August 7, 2015	10,273.24	Cut-off Gas Main
Ernst & Young LLP	CA0189929973	April 23, 2015	1595	August 7, 2015	31,498.75	Audited FS - The One 12/31/14
ne Electrical Services Ltd.	580107	May 26, 2015	1596	August 7, 2015	11,846.92	Generator Rental
ne Electrical Services Ltd.	580084	March 25, 2015	1597	August 7, 2015	1,809.63	Plug testing
Altus Group	149732	June 10, 2015	1598	August 7, 2015	5,438.29	Cost planning services
Altus Group	154695	July 23, 2015	1599	August 7, 2015	45,241.13	Detailed construction estimate
Bousfields Inc.	27619	April 28, 2015	1600	August 7, 2015	13,142.29	Zoning amendment and schedule / planning rationale
IA Consulting Group	50956	April 10, 2015	1601	August 7, 2015	29,285.53	Traffic analysis
IA Consulting Group	51348	May 8, 2015	1602	August 7, 2015	8,163.01	Revise loading / ground area
IA Consulting Group	51510 / 51510	June 5, 2015	1603	August 7, 2015	6,378.85	Ramp plan / site design

Adam J Brown	16075	June 5, 2015	1604	August 10, 2015	72,378.36	35 Balmuto
Engineering Group Ltd.	32436	July 16, 2015	1605	August 10, 2015	2,360.51	Re-zoning engineering package
Engineering Group Ltd.	31871	June 10, 2015	1606	August 10, 2015	6,986.92	Re-zoning engineering package
Core Architects Inc.	59005 \ 59016	June 8, 2015	1607	August 10, 2015	144,251.34	Design development
ins Solutions Incorporated	N/A - Permit	June 29, 2015	1609	August 17, 2015	4,021.41	Permit - Piling and Shoring
chwartz & Schwartz	N/A	August 20, 2015	WW15082033512250	August 20, 2015	100,000.00	Deposit 760 - 762 Yonge
015					1,913,070.84	
GI Asset Management	1202193	August 24, 2015	WW15090133584203	September 1, 2015	33,900.00	Asset Management Fee
asurer, City of Toronto	08/04/15 - 1 Bloor St W	September 1, 2015	1611	September 1, 2015	55,995.00	August property taxes - 1 Bloor St W
asurer, City of Toronto	08/04/15 - 11 Bloor St W	September 1, 2015	1612	September 1, 2015	26,534.00	August property taxes - 11 Bloor St W
asurer, City of Toronto	08/04/15 - 770 Yonge St	September 1, 2015	1613	September 1, 2015	9,168.00	August property taxes - 770 Yonge St
asurer, City of Toronto	08/04/15 - 774 Yonge St	September 1, 2015	1614	September 1, 2015	5,761.00	August property taxes - 774 Yonge St
asurer, City of Toronto	08/04/15 - 778 Yonge St	September 1, 2015	1615	September 1, 2015	6,784.00	August property taxes - 778 Yonge St
asurer, City of Toronto	08/04/15 - 780 Yonge St	September 1, 2015	1616	September 1, 2015	24,622.00	August property taxes - 780 Yonge St
IA Consulting Group	7412-15, 7412-04	July 3, 2015	1619	September 11, 2015	14,548.75	Transportation advisory / shoring & excavation plan
Bousfields Inc.	27982	June 29, 2015	1620	September 11, 2015	2,847.20	Planning - Urban Design
Core Architects Inc.	59163	July 10, 2015	1626	September 11, 2015	144,243.53	Design development installments
ith Borgal & Company Ltd.	7980, 7945	July 14, 2015	1625	September 11, 2015	4,350.50	Architectural research - field work
Lerch Bates Inc.	1495	July 16, 2015	1624	September 11, 2015	9,322.50	Concept / design
asters Insurance Ltd.	305447, 305446, 305445	August 27, 2015	1623	September 11, 2015	13,662.00	Insurance
ICW Consultants Ltd.	40981	June 29, 2015	1622	September 11, 2015	14,125.00	Design development
eperman Consulting Corp.	574, 559, 552, 538-540, 545	June 30, 2015	1621	September 11, 2015	50,725.14	Scaffolding rental and Demo Progress billing
e Planning Partnership	90-14062	May 31, 2015	1618	September 11, 2015	5,618.07	Schematic design and development
Foster + Partners	2304.12	April 30, 2015	WW15091733674491	September 14, 2015	658,168.50	Detail design
er 2015					1,080,375.19	
ins Solutions Incorporated	1156231 & 1156232	September 18, 2015	1629	October 6, 2015	1,337.32	Permits - Sign and Initial Building
yway Canada Limited	122104	September 24, 2015	1628	October 6, 2015	13,705.64	HST on Scaffolding
CRA	N/A	September 11, 2015	1630	October 6, 2015	18,714.60	Withholding taxes on Foster Payments
Adam J Brown	16200 / 16261	July 24, 2015	1631	October 13, 2015	45,963.39	Various - municipal approvals consultant
Altus Group	156276	August 12, 2015	1632	October 13, 2015	34,530.03	Budgeting / cost planning
IA Consulting Group	52162	August 28, 2015	1633	October 13, 2015	19,389.86	Transportation advisory - loading area review
Daoust Vukovich LLP	80412	July 31, 2015	1634	October 13, 2015	22,764.13	Condo leases and H&M lease
Daoust Vukovich LLP	80854	August 31, 2015	1635	October 13, 2015	12,992.46	Condo leases and Apple lease
ICW Consultants Ltd.	41135	July 30, 2015	1636	October 13, 2015	14,125.00	Design development
id Jones Christoffersen	185488	July 31, 2015	1637	October 13, 2015	22,741.25	Schematic design and design development
Core Architects Inc.	59306	August 6, 2015	1639	October 13, 2015	144,083.48	Design Development
Bousfields Inc.	28334	August 28, 2015	1638	October 13, 2015	1,741.62	Planning Architect
chwartz & Schwartz	N/A	October 15, 2015	WW15101533836048	October 15, 2015	288,750.00	Second Deposit 760 - 762 Yonge
Professional Corporation						
Altus Group	162069	October 20, 2015	1640	October 23, 2015	22,600.00	Deposit
id Jones Christoffersen	184144	June 30, 2015			17,055.94	Schematic design and design development
Fogler Rubinoff	21510724	August 26, 2015			20,862.18	Various - agreements and meetings
Foster + Partners	2304.14 & 2304.15	July 31, 2015			656,226.00	Detail design
n Hughes (Formerly RBA)	2151326	July 31, 2015			3,367.40	Preliminary consulting
Lerch Bates Inc.	1550	August 27, 2015			4,124.50	Concept / Design
ICW Consultants Ltd.	41271	August 28, 2015			28,250.00	Design development
eperman Consulting Corp.	576, 577, 586, 640	July 24, 2015			56,579.10	Demo
asurer, City of Toronto	8/17/2015	August 17, 2015			338.77	Water

2015

1,450,242.67

Since June 2015's burden

8,134,534.04

7,051,514.24

15,186,048.28

Adding interest on CREIT and FIERA loans starting July 2nd for the June interest amounts

Interest Payments paid by CII

, FIERA, VTB

dated October 17, 2015

Paid	Interest Period	CREIT \$70MM	CREIT \$50MM mezz	Fiera \$50 MM	Fiera \$25MM	778 VTB interest	Total
1/3/2014	14-Oct	228,323					228,323
2/1/2014	14-Nov	577,210					577,210
1/17/2014	14-Dec	330,109					330,109
1/2/2015	Dec-14	276,165	71,674				347,839
2/2/2015	Jan-15	611,507					611,507
3/2/2015	Feb-15	470,137		82,191.78			552,328.78
4/2/2015	Mar-15	611,507			-		611,507
2/3/2015	Jan-15		241,757.71				241,757.71
7/2/2015	Jun-15	345,205	255,479	246,575	205,479	-	1,052,738
8/4/2015	Jul-15	356,712	276,027	254,795	212,329	-	1,099,863
9/1/2015	Aug-15	356,712	276,027	254,795	212,329		1,099,863
10/1/2015	Sep-15	345,205	267,123	246,575	205,479		1,064,382
1/19/2015	Oct-15	200,548	169,178				369,726
Total		1,604,384	1,243,836	1,002,740	835,616	-	7,051,332

On behalf of GP Commercial (The One) by CII - Loan Details

Vendor	Invoice #	Invoice Date	Cheque / Wire #	Cheque / Wire Date	Cheque Amount	Description
Adam J Brown	15702	February 5, 2015	1497	May 7, 2015	17,074.30	Legal Fees - PATH system, Demolition permit, ZBA
Adam J Brown	15777	March 3, 2015	1498	May 7, 2015	42,424.32	Legal Fees - GFA Calc, heritage study, correspondence with Mayors Office
Adam J Brown	15830	March 25, 2015	1510	May 29, 2015	84,515.50	Planning
Adam J Brown	15898	April 10, 2015	1511	May 29, 2015	47,477.18	Planning
Adam J Brown	15975	May 4, 2015	1543	June 25, 2015	21,425.18	City Planning
Adam J Brown	16075	June 5, 2015	1604	August 10, 2015	72,378.36	35 Balmuto
Altus Group	144912	April 28, 2015	1547	June 25, 2015	56,404.47	Detailed construction cost estimate preparation
Altus Group	149732	June 10, 2015	1598	August 7, 2015	5,438.29	Cost planning services
Altus Group	154695	July 23, 2015	1599	August 7, 2015	45,241.13	Detailed construction estimate
Consulting Group	50609	February 23, 2015	1513	June 2, 2015	10,613.03	Transportation advisory - loading area review
Consulting Group	50740	March 13, 2015	1553	July 16, 2015	18,667.60	Schematic Design
Consulting Group	50956	April 10, 2015	1601	August 7, 2015	29,285.53	Traffic analysis
Consulting Group	51348	May 8, 2015	1602	August 7, 2015	8,163.01	Revise loading / ground area
Consulting Group	51510 / 51510	June 5, 2015	1603	August 7, 2015	6,378.85	Ramp plan / site design
Dousfields Inc.	27044	January 28, 2015	1514	June 3, 2015	1,401.72	Urban design planning - preparation of massing
Dousfields Inc.	27415	March 30, 2015	1554	July 16, 2015	16,983.00	Planning / Urban Design Rationale Report
Dousfields Inc.	27619	April 28, 2015	1600	August 7, 2015	13,142.29	Zoning amendment and schedule / planning rationale
Eng. Landow, Savin & Colrairie LLP	N/A	June 29, 2015	WW15062933209125	June 29, 2015	150,000.00	Deposit 768 Yonge
Engineering Group Ltd.	29636 & 30219	January 15, 2015	1550	June 25, 2015	11,532.30	Engineering documents for re-zoning application
Engineering Group Ltd.	30675	March 17, 2015	1555	July 16, 2015	11,366.39	Re-Zoning application
Engineering Group Ltd.	32436	July 16, 2015	1605	August 10, 2015	2,360.51	Re-zoning engineering package
Engineering Group Ltd.	31871	June 10, 2015	1606	August 10, 2015	6,986.92	Re-zoning engineering package
He Architects Inc.	58662 & 58718	March 16, 2015	1499	May 7, 2015	144,358.79	Architect fees - design development
He Architects Inc.	58741	April 14, 2015	1515	June 3, 2015	144,083.48	Design development
He Architects Inc.	58746	April 14, 2015	1516	June 3, 2015	3,727.72	Printing
He Architects Inc.	58897	May 8, 2015	1551	July 2, 2015	144,082.90	Design Development
He Architects Inc.	59005 \ 59016	June 8, 2015	1607	August 10, 2015	144,251.34	Design development
ust Vukovich LLP	79553	May 31, 2015	1582	August 7, 2015	5,018.90	Lease draft, legal fees
ust Vukovich LLP	79551	May 31, 2015	1583	August 7, 2015	6,127.71	Lease draft, legal fees
ust Vukovich LLP	79883	June 30, 2015	1584	August 7, 2015	3,738.04	Lease draft, legal fees

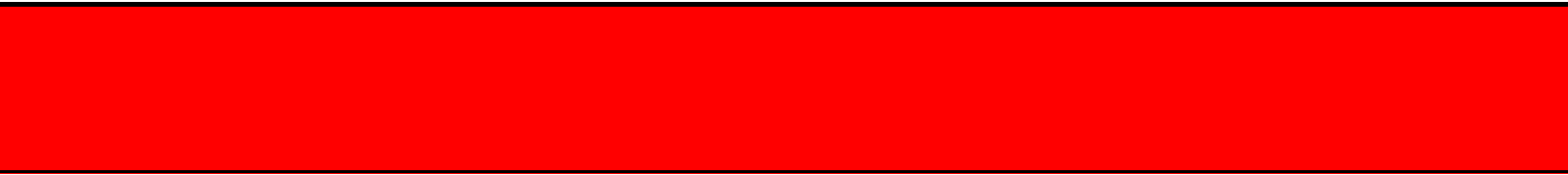
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The One Loan - Bloor
t Vukovich LLP
/2015

Invoice Date	Invoice #	Cheque / Wire #	Cheque / Wire Date	Description	Net of HS
May 31, 2015	79553	1582	August 7, 2015	Lease draft, legal fees	4,44
	79551	1583	August 7, 2015	Lease draft, legal fees	5,42
June 30, 2015	79883	1584	August 7, 2015	Lease draft, legal fees	3,30
	79884	1585	August 7, 2015	Lease draft, legal fees	7,64
July 31, 2015	80412	1634	October 13, 2015	Condo leases and H&M lease	20,14
August 31, 2015	80854	1635	October 13, 2015	Condo leases and Apple lease	11,49
Grand Total					52,45

No Quote

F4



		August 20th	
		780 - 784 Yonge deposit	Deposit #1 - 1 and 11 Bloor
		250,000.00	500,000.00
		250,000.00	500,000.00
		250,000.00	500,000.00
		250,000.00	500,000.00
		1,000,000.00	2,000,000.00

	770 Yonge deposit #1	Deposit #2 - 1 and 11 Bloor	Deposit #2 - 780-784 Yonge	Deposit #1 - 774 Yonge St	Se
	250,000.00	500,000.00		62,500.00	
	250,000.00	500,000.00		62,500.00	
	250,000.00	500,000.00		62,500.00	
	250,000.00	500,000.00		62,500.00	
	1,000,000.00	6,000,000.00	1,000,000.00	250,000.00	

	Interest Income		Total	
	19-Dec-14	12/31/14		
	1,412,738	46,873	7,220,179.08	23.159%
	1,412,738	46,873	7,220,179.08	23.159%
	1,412,738	46,873	7,220,179.08	23.159%
	1,412,738	46,873	7,220,179.08	23.159%
	496,243		1,398,862.28	4.487% Shortfall
			30,279,578.60	
		896,870	896,869.50	
			-	
			-	
			-	
	(50,414.96)	187,493.56	896,869.50	31,176,448.10

	December 1, 2014 interest payment	December 17, 2014 interest payment	Total Interest	Grand total	
	144,303	82,527	283,911	7,504,089.76	23.224%
	144,303	82,527	283,911	7,504,089.77	23.224%
	144,303	82,527	283,911	7,504,089.76	23.224%
	144,303	82,527	283,911	7,504,089.77	23.224%
				1,398,862.28	4.329%
	577,210	330,109	1,135,643	31,415,221	
			-	896,869.50	
			-	-	
			-	-	
			-	-	
			-	-	
	577,210	330,109	1,135,643	32,312,090.84	100.000%

7,504,089.76

7,504,089.44

(0.32)

46,873.39

4

46,873.71

4

Deposit #1	Deposit #2	VTB	Balance Due on Closing	Land Transfer Tax	TOTAL PURCHASE PRICE INCL. LTT	Revised Statement of Adjustments for Closing		TOTAL ACQUISITION PRICE	22-Jul-14
\$ 1,000,000.00	\$ 4,000,000.00	\$ -	\$ 101,226,830.84	\$ 2,821,200.00	\$ 109,048,030.84		\$ 104,048,030.84	\$ 109,048,030.84	\$
\$ 500,000.00	\$ 2,000,000.00	\$ -	\$ 12,500,000.00	\$ 446,200.00	\$ 15,446,200.00	\$ 46,108.35	\$ 12,992,308.35	\$ 15,492,308.35	\$
\$ 500,000.00		\$ -	\$ 14,500,000.00	\$ 446,200.00	\$ 15,446,200.00	\$ 6,191.35	\$ 14,952,391.35	\$ 15,452,391.35	\$
\$ 1,000,000.00	\$ 1,000,000.00	\$ -	\$ 21,000,000.00	\$ 686,200.00	\$ 23,686,200.00	\$ 62,893.55	\$ 21,749,093.55	\$ 23,749,093.55	\$ 1,000,000.00
\$ 100,000.00	\$ 150,000.00		\$ 4,725,000.00	\$ 145,450.00	\$ 5,120,450.00		\$ 4,870,450.00	\$ 5,120,450.00	
\$ 1,000,000.00	\$ 500,000.00	\$ -	\$ 14,487,426.26	\$ 476,200.00	\$ 16,463,626.26	\$ 3,736.80	\$ 14,967,363.06	\$ 16,467,363.06	
\$ 250,000.00	\$ 500,000.00	\$ -	\$ 14,250,000.00	\$ 579,300.00	\$ 15,579,300.00	\$ 250,000.00	\$ 15,079,300.00	\$ 15,829,300.00	
\$ 650,000.00	\$ 1,909,450.00		\$ 16,215,550.00	\$ 559,450.00	\$ 19,334,450.00	\$ 11,057.58	\$ 16,786,057.58	\$ 19,345,507.58	
		\$ 12,000,000.00				VTB \$	\$ 12,000,000.00		
\$ 5,000,000.00	\$ 10,059,450.00	\$ 12,000,000.00	\$ 198,904,807.10	\$ 6,160,200.00	\$ 220,124,457.10	\$ 379,987.63	\$ 217,444,994.73	\$ 220,504,444.73	\$ 1,000,000.00

	LP Unit Certificates Issued	A1-2
		\$ 1,000,000.00 \$
		\$ 1,000,000.00 \$

	780 - 784 Yonge deposit	D
		250,000.00
		250,000.00
		250,000.00
		250,000.00
		1,000,000.00

	10-Sep-14	19-Sep-14	15-Oct-14	17-Oct-14	20-Oct-14	21-Oct-14	30-Oct-14	18-Nov-14	18-Dec-
\$	4,000,000.00				\$ 104,048,030.84				
\$	2,000,000.00				\$ 12,992,308.35				
		\$ 1,000,000.00							\$ 21,143,

						\$ 500,000.00			
			\$ 250,000.00						
						\$ 650,000.00		\$ 1,909,450.00	

\$	6,000,000.00	\$ 1,000,000.00	\$ 250,000.00	\$ -	\$ 117,040,339.19	\$ 650,000.00	\$ 500,000.00	\$ 1,909,450.00	\$ 21,143,
				\$ 3,197,608.65		\$ 1,225,230.08			\$ 1,8

	A1-6	A1-7	A1-8	A1-9	TBC	TBC	TBC		
\$	6,000,000.00	\$ 1,000,000.00	\$ 250,000.00	\$ 3,197,608.65					
\$	25,552,391.35	\$ 26,552,391.35	\$ 26,802,391.35	\$ 30,000,000.00	\$ 115,067,960.62	\$ 650,000.00	\$ 500,000.00	\$ 1,909,450.00	\$ 1,872,
					\$ 115,067,960.62	\$ 115,717,960.62	\$ 116,217,960.62	\$ 118,127,410.62	\$ 120,000,
									\$ 21,143,
									\$ 21,143,

	Deposit #2 - 1 and 11 Bloor	Deposit #2 - 780-784 Yonge	Deposit #1 - 774 Yonge St	Equity top-up October 17, 2014
	500,000.00		62,500.00	500,000.00
	500,000.00		62,500.00	500,000.00
	500,000.00		62,500.00	500,000.00
	500,000.00		62,500.00	500,000.00

	6,000,000.00	1,000,000.00	250,000.00	3,197,608.65	-	-	-	-
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19-Jan-15	21-Jan-15	17-Feb-15	20-Feb-15	2-Mar-15	12-Mar-15	16-Mar-15	18-Mar-15	April 1, 2015 property tax installment	7-Apr-15	14-Apr-15
-----------	-----------	-----------	-----------	----------	-----------	-----------	-----------	--	----------	-----------

\$ 100,000.00

-	\$	-	\$	-	\$	100,000.00	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
---	----	---	----	---	----	------------	----	---	----	---	----	---	----	---	----	---	----	---	----	---

57,145.24	490,688.27																				
		120,000.00			105,685.24			1,218,485.57	\$	674,077.70	\$	60,667.70		\$	105,682			51,396.92	\$	5,000.00	
				\$	200,000.00																

57,145	490,688	120,000	100,000	305,685.24	1,218,485.57	674,077.70	60,667.70	105,682.00	51,396.92	5,000.00
1,453,557.09	\$ 1,944,245.36	\$ 2,064,245.36	\$ 2,164,245.36	\$ 2,469,930.60	\$ 3,688,416.17	\$ 4,362,493.87	\$ 4,423,161.57	\$ 4,528,843.57	\$ 4,580,240.49	\$ 4,585,240.49

					(25,284)					
					(25,284)					
					(25,284)					
					(25,284)					
					101,138					

57,145	490,688		100,000	305,685.24	1,218,485.57	674,077.70	60,667.70	105,682.00	51,396.92	5,000.00
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57,145.24	490,688.27	-	100,000.00	305,685.24	1,218,485.57	674,077.70	60,667.70	105,682.00	51,396.92	5,000.00
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TOTAL ACQUISITION PRICE	
\$	109,048,030.84
\$	15,492,308.35
\$	15,452,391.35
\$	23,143,856.30
\$	100,000.00
\$	16,467,363.06
\$	15,829,300.00
\$	7,344,707.14
\$	12,000,000.00
\$	214,877,957.04
\$	600,000.00
\$	3,197,608.65
\$	5,538,151.59
\$	211,367.24
\$	120,000.00
\$	200,000.00
\$	10,000,000.00
\$	231,216,108.63
\$	30,000,000.00
\$	30,000,000.00
\$	120,000,000.00
\$	120,000,000.00
\$	50,000,000.00
\$	50,000,000.00
\$	19,664,540.49
\$	19,608,143.57
\$	12,000,000.00
\$	231,608,143.57

Difference between total acquisition price	
\$	-
\$	-
\$	-
\$	605,237.25
\$	-
\$	-
\$	-
\$	800.44
-\$	5,626,487.69

November 3, 2014 interest payment	December 1, 2014 interest payment	December 17, 2014 interest payment	January 2, 2015 interest payment	February 3, 2015 interest payment
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Loan advance - expenses September	Loan advance - expenses October	Total
		7,124,999.99
		7,125,000.00
		7,125,000.00
		7,125,000.01
		1,500,000.00
		30,000,000.00
1,080,375	640,839	7,205,130.15
		(484,931.51)
		-
		-
1,080,375.19	640,838.78	36,720,198.64

19.403%
19.403%
19.403%
19.403%
4.085% Shortfall
-

November 3, 2014 interest payment	December 1, 2014 interest payment	December 17, 2014 interest payment	January 2, 2015 interest payment	February 3, 2015 interest payment
57,081	144,303	82,527	69,041	152,877
57,081	144,303	82,527	69,041	152,877
57,081	144,303	82,527	69,042	152,877
57,081	144,303	82,527	69,041	152,877
228,323	577,210	330,109	276,165	611,507
			71,674	241,757
228,323	-	577,210	347,839	853,264

7,408,911				
\$ 7,504,089.44		\$ 49,873.39		
95,179		35,625		
(85,498)		85,498		
9,680	38,721.52			

Less:
Less:
Less:



May 18, 2015 VTB Interest	June 1, 2015 interest payment for May	July 2nd Interest for June	August 4th Interest for July	August 20 VTB Interest	September 1 Interest Payment for August	October 1 Interest Payment for September	October 9 Interest Payment for CREIT \$50M Interest decrease	Total Interest	Grand total	
	152,877	147,945	152,876.71		152,876.71	147,945.21		1,699,253	8,824,253.16	18.6189
	152,877	147,945	152,876.71		152,876.71	147,945.21		1,699,253	8,824,253.20	18.6189
	152,877	147,945	152,876.71		152,876.71	147,945.21		1,699,254	8,824,254.00	18.6189
	152,877	147,945	152,876.71		152,876.71	147,945.21		1,699,253	8,824,253.23	18.6189
									1,500,000.00	3.1655
	611,507	591,781	611,507		611,507	591,781	-	6,797,014	36,797,014	
								-	7,205,130.15	
	254,795	255,479	276,027		276,027	267,123		2,374,389	1,889,457.67	
212,329		205,479	212,329		212,329	205,479		1,143,835	1,143,835.17	
120,000				120,000				360,000	360,000.00	
332,329	866,302	1,052,739	1,099,863	120,000	1,099,863	1,064,384	-	10,675,238	47,395,436.57	100.0000

30,000,000.00
7,110,443.82
10,284,992.75
7,500,000.00

- 2,784,992.75

#	Approx Area (sq m)	Approx Area (sq ft)	PSA - Vendor	Tenant	Acceptance Date	Status	Purchase Price	Deposit #1 / #2	Deposit Due Date	Due on Closing	Closing Date
								\$ 1,000,000	2 banking days after acceptance of PSA as a refundable deposit - non-refundable in the event of any default by the Purchaser		The transaction shall be completed no later than 5 pm on the day 60 days after the satisfaction of the Seller's condition in paragraph 4 (Seller's Condition) following the date of acceptance (July 28/29). July 28/29 + 60 days = Saturday, October 11, 2014
624.2	6719.05		Frank Stollery Limited	Stollery/Swiss Time	#####	Done	\$ 105,000,000	\$ 4,000,000	The date that is the later of (i) 30 days after the date of mutual acceptance and delivery of the agreement; or (ii) 20 days after the seller waives its condition in section 4; section 4: 21 days following the date of acceptance upon the seller receiving requisite shareholder approval to the sale transaction set out in the agreement. Assuming acceptance date is July 28/29, the second deposit would be due September 10, 2014 (deposit made September 10th, 2014)	\$ 100,000,000	Closing: October 20th, 2014
								\$ 1,000,000	2 banking days after acceptance of PSA as a refundable deposit - non-refundable in the event of any default by the Purchaser		
253.4	2727.66		Frank Stollery (2011) Limited 2243968 Ontario Limited	(old) French Connection	#####	Done	\$ 30,000,000	\$ 4,000,000	50% to Frank Stollery (2011) Limited - September 10, 2014 (later of (i) 30 days from the Date of Acceptance of the 1 Bloor St APS; and (ii) 20 days after the Vendor's waiver under the 1 Bloor Street APS 50% to 2243968 Ontario Limited - August 20, 2014 (waiver of the Title Condition = closing date)	\$ 25,000,000	50% to Frank Stollery (2011) Limited - October 20, 2014 (60 days of the Vendor's Condition in the PSA) 50% to 2243968 Ontario Limited - August 20, 2014
								\$ 1,000,000	By 5pm within 2 days of Effective Date (July 21st) - (Deposit made July 22)		
								\$ 1,000,000	September 19th, 2014 (deposit made Sept 19, 2014)		
535.4	5763.20		R. Perlmán Enterprises Inc. and M Perlmán Enterprises Inc.	Burgundy's Bar and Eatery, Sunrise	#####	Done	\$ 23,000,000	\$ 22,000,000	HSBC Comfort Letter: Purchase Price less first deposit; within 21 days of July 21st = August 11th by 5:00pm --- SENT TO PERLMAN AUGUST 11TH	\$ 21,000,000	Effective Date (July 21st) + Period (60 days) + 90 days = December 18, 2014
								\$ 1,000,000	Upon acceptance of PSA		
375.8	4045.21		Peter Nicholson Holdings Limited	Le Chateau	#####	Done	\$ 16,000,000	\$ 500,000	Thursday, October 30, 2014	\$ 14,500,000	Monday, January 5, 2015
370.4	3987.08		HR Property Holdings Ltd.	Hue's Kitchen	9-Oct-14	Done	\$ 15,000,000	\$ 250,000	Refundable -- 3 business days following full execution (October 9 + 3 days) = October 15, 2014	\$ 14,750,000	21-Apr-15
								\$ 650,000	Upon acceptance of PSA = October 21, 2014		
219.3	2360.60		Charles J. Schwartz (for all Sellers as set out in Schedule "A")	Money Mart	20-Oct-14	Done	\$ 18,775,000	\$ 1,908,450	Tuesday, November 18, 2014	\$ 4,215,550	Tuesday, January 6, 2015
								\$ 100,000.00	upon acceptance of PSA = February 20, 2015		
232	2497.308934		H2000 Investment Group	Tea Shop	20-Feb-15	Done	\$ 4,975,000.00	\$ 150,000.00	within 2 business days upon waiver or satisfaction of the last of the conditions in Section 6 of the PSA	\$ 4,725,000.00	30 days after receipt by the Seller's solicitor of notice of satisfaction of all conditions

2810.5

28100.11862

\$ 212,750,000

\$ 38,759,450

\$ 184,190,550

475.5	5118.41	Allavista Properties Inc.	H&M	\$ 50,000,000	\$ 2,000,000	60 days / due diligence	\$ 48,000,000	90 days (tentative)
486.8	5240.04	Allavista Properties Inc.	Scotiabank	same as above				
310.7	3344.46	Scotia Realty Limited	Scotiabank	\$ 45,000,000				
1,273	13,703			\$ 95,000,000	\$ 2,000,000		\$ 48,000,000	
3,884	41,803			\$ 307,750,000				
259	2787.944026	EMM Financial Corp.						
315	3390.742734	1026406 Ontario Ltd.						
243	2615.715823	Fabish Optical Company Limited	Crown Opticians					
331	3562.970936	3386856 Canada Limited	Cash Money					
565	6081.808396	DAC Investments (Canada) Ltd.	Green Beauty Spa					
		Marilyn & Saul Greenglans, Pearl	Korean Grill House					
		Labo, Gertrude Richmond & Saul						
418	4499.461787	Greenlans						
11,403	122,745							
15,287	164,548							

DEPOSIT #1				DEPOSIT #2			
Purchase Price	Deposit #1	Deposit #1 Due Date	Deposit/Transfer Date	Deposit #2	Deposit #2 Due Date	Deposit/Transfer Date	Other
\$ 105,000,000	\$ 1,000,000	2 banking days after acceptance of PSA as a refundable deposit - non-refundable in the event of any default by the Purchaser	30-Jul-14	\$ 4,000,000	September 10th, 2014	#####	
\$ 15,000,000	\$ 500,000	2 banking days after acceptance of PSA as a refundable deposit - non-refundable in the event of any default by the Purchaser	30-Jul-14	\$ 2,000,000	September 10th, 2014	#####	
\$ 15,000,000	\$ 500,000	2 banking days after acceptance of PSA as a refundable deposit - non-refundable in the event of any default by the Purchaser	30-Jul-14	\$ 2,000,000	August 20th, 2014	20-Aug-14	
Enterprises Inc. \$ 23,000,000	\$ 1,000,000	By 5pm within 2 days of Effective Date (July 21st) - (Deposit made July 22)	22-Jul-14	\$ 1,000,000	September 19th, 2014	Friday, September 19, 2014	\$ 2
\$ 16,000,000	\$ 1,000,000	Upon acceptance of PSA	5-Sep-14	\$ 500,000	-	Thursday, October 30, 2014	
\$ 15,000,000	\$ 250,000	3 days following full execution (October 9 + 3 days) = October 15th, 2014	15-Oct-14	-	-	-	
\$ 18,775,000	\$ 650,000	Upon acceptance of PSA	21-Oct-14	\$ 1,909,450	-	18-Nov-14	\$ 1
\$ 4,975,000	\$ 100,000	Upon acceptance of PSA	20-Feb-15	\$ 150,000	within 2 business days upon waiver or satisfaction of the last of the conditions in Section 6 of the PSA		
\$ 212,750,000	\$ 5,000,000			\$ 11,559,450			\$ 2

421
F2715

Date Paid	Amount	Description
09/29/2014	\$ 600,000.00	Foster + Partner - Fees

F447

Door - Agreement Summary & Org. Chart

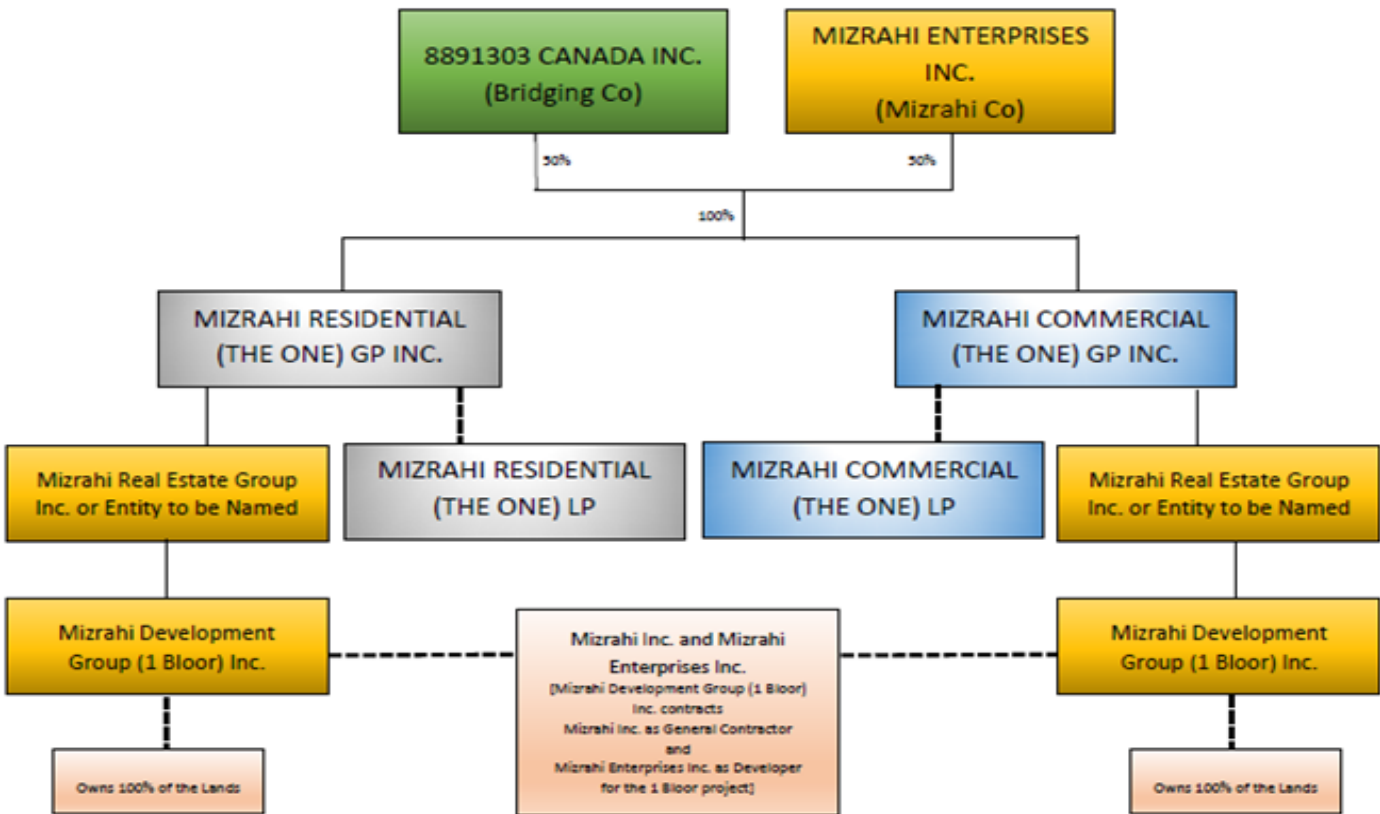
COMMERCIAL AGREEMENTS

Commercial Limited Partnership Agreement	Signed	25-Jul-14
Commercial Subscription Agreement	Signed	25-Jul-14
Commercial Development Management Agreement	Signed	25-Jul-14
Commercial GP Shareholder Agreement	Signed	25-Jul-14

RESIDENTIAL AGREEMENTS

Residential Limited Partnership Agreement	Signed	25-Jul-14
Residential Subscription Agreement	Signed	25-Jul-14
Residential Development Management Agreement	Signed	25-Jul-14
Residential GP Shareholder Agreement	Signed	25-Jul-14

1 BLOOR STRUCTURE



This is Exhibit "Q" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

425
F2719

Message

From: Jenny Coco [JCoco@cocogroup.com]
Sent: 12/30/2020 6:52:13 PM
To: N Sharpe [NSharpe@bridgingfinance.ca]
CC: Rocky Coco [Rcoco@cocogroup.com]; David Sharpe [dsharpe@bridgingfinance.ca]
Subject: RE: Dundonald Mizrahi

Hello Natasha,

The purpose of this email is to respond to your allegations below.

First of all, allow me to remind you, both Sharpe and Coco were lenders of 181 Davenport and remain investors in THE ONE, both Mizrahi Developments.

Secondly, we deny your allegations and any wrongdoing.

Lastly, you have not provided enough information for us to understand, let alone substantively respond to, your allegations. We therefore ask that you please convene a meeting and provide all chronology of your management of the loans, together with all details and decisions made by the CIO and BF Team, acting in the best interest of all parties.

As discussed at the Board Meeting, I shall not be available this afternoon, as today is the 2 year anniversary of my Father's passing.

Regards,

Jenny
Jenny Coco, CEO
Coco Group

----- Original message -----

From: N Sharpe <NSharpe@bridgingfinance.ca>
Date: 2020-12-30 10:04 a.m. (GMT-05:00)
To: Jenny Coco <JCoco@cocogroup.com>
Cc: Rocky Coco <Rcoco@cocogroup.com>, David Sharpe <dsharpe@bridgingfinance.ca>
Subject: Dundonald Mizrahi

****EXTERNAL SENDER****

Jenny,

I have not received any response to my requests regarding a confirmation that you did not act to prevent Sam Mizrahi from making a 15+ million dollar payment to the Funds on the same loan you sold to the Funds.

Without your assistance it is going to be difficult to resolve this. I am open to any suggestions you have regarding how to proceed. For instance is it possible to receive confirmation from any credible party that the below are inaccurate representations and not images of actual correspondence? Or perhaps confirm that this is only one unrepresentative part of a larger discussion which in fact did not involve any action on your part that reduced the payment to the Funds?

F451

426
F2720

I am confident that you would not have done anything inappropriate so can you please provide something that will simply allow us to demonstrate we're all doing the right things regarding governance, and move on.

From: Jenny Cocco
 Sent: Saturday, March 28, 2020 6:48 PM
 To: 'Adam Brown' <adam@berrmabrown.com>; Sam Mizrahi <sam@mizrahi-developments.ca>; Isaka Smokowicz <isaka@berrmabrown.com>
 Subject: RE: Negotiation of alternative solution if we cannot convey 14 Dundonald by the time we are ready for the conditional above-grade permit

Importance: High

Hi Adam, Jessica, Sam:
 First of all, Adam and Jessica, thank you for coordinating the conference call with Sam and I.
 Secondly, in the best interest of the Project, Cocco is prepared to allow Adam / Jessica to proceed with the City of Toronto negotiations as outlined in Adam's email below, assuming 14 Dundonald meets all municipal requirements, and subject to:

- 1) If Cocco and Mizrahi are not able to agree on the property valuation of 14 Dundonald, the property shall be conveyed to the City in escrow by the "Owner" even if the value between Cocco and Mizrahi is not resolved, at no extra cost to the Project.
- 2) Cocco / Mizrahi shall make best efforts to negotiate a settlement of the project prior to conveyance to the City in escrow. If the terms are not agreed upon, Cocco / Mizrahi shall Arbitrate this matter as a priority.
- 3) Cocco shall be kept informed on the status of all outstanding matters and negotiations related to this issue and consulted in advance of any decisions being made, should the City provide alternative options.
- 4) Cocco reserves its rights.

All parties must confirm and accept the above prior to proceeding.
 Thank you,
 Jenny Cocco
 Chair Executive Officer
 <jcocco001.jpg>
 940 Wilson Avenue
 Toronto, ON M3K 1G2
 Phone: 1-416-633-9670
 Fax: 1-416-633-4765
 Email: jccoco@berrmabrown.com

On Mar 31, 2020, at 7:04 PM, Sam Mizrahi <Sam@mizrahi-developments.ca> wrote:

Jenny,

For ease of reference I will address your comments to your sequence below.

1. The value of 14 Dundonald between the Owner of 14 Dundonald and LP/GP of 1 floor project must be at a minimum the cost of the land, in addition to all costs of Bridging Finance associated with its loan, and subject to Bridging Finance's release of its mortgage on 14 Dundonald. This would be in addition to the payment of the carrying costs such as property taxes, maintenance, administration, demolition, environmental, and acquisition costs, and conversion to parkland for the property from the date of purchase to the conveyance date, or the appraised value of the land, whichever costs and/or values are higher. The reason why the higher value amount, is that we do not know at this time the amount that Bridging Finance will calculate for their total fees, interest costs and discharge statement (we have requested it), in addition to the costs the owner of the land has incurred on the property to date vs, the appraised value which we are waiting on from the appraisal company and the owner of 14 Dundonald can't be in a position where it will not be able to transfer the property if they do not have Bridging Finance discharge of their mortgage in accordance with their loan and owing amounts.
2. Let us get it completed, asap, and hopefully no arbitration will be necessary, as #1 above is a fair and equitable business solution.
3. This has always occurred, and Adam Brown's office is doing the same.

2

Sent from my iPhone

Confidentiality Warning: This message and any attachments are solely for use by the intended recipient(s), are confidential, and may be privileged. If you are not the intended recipient, you are hereby notified that any review, re-transmission, conversion to hard copy, copying, circulation or other use of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return e-mail, and delete this message and any attachments from your system. Thank you for your co-operation.

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427

F2721

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This is Exhibit "R" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

Message

From: Sam Mizrahi [sam@mizrahidevelopments.ca]
Sent: 11/19/2016 10:27:58 AM
To: Graham Marr [GMarr@bridgingfinance.ca]
CC: N Sharpe [NSharpe@bridgingfinance.ca]
Subject: 1 Bloor Sales Office Retail and 181 Davenport

Good afternoon Graham, (Draft Thoughts for Discussion)

I trust you are well and enjoying the weekend.

As per our conversations with Natasha and yourself, please find an outline of what I believe would set out the framework to get 1 Bloor's Sales Centre started for an April 2017 opening and sales launch, by having Bridging provide a bridge loan parallel to waiting on the construction financing that would pay out this very same bridge loan from closings of the construction financing. The sales centre would be located on the ground floor retail space of 181 Davenport, for the many reasons discussed, as this would be the best location to provide both the sales and customer service centre as well as finishing selections during the sales and construction cycle.

Lease

Tenant: Mizrahi Inc.

Landlord: 181Davenport Retail Inc.

Term: 10 years

Commencement Date: Jan 1, 2017

GLA: 4,097 sf (approx. – to be measured per BOMA 2010)

Net Rent: \$85psfpa

Permitted Use: Sales Office, Customer Selections, and Administration operated by Tenant providing services to Mizrahi Developments (The One) Inc. ("The One")

Landlord's Work: As-Is

Tenant's Work: Tenant to fully improve and equip the Premises to prepare them for the Permitted Use

Fixturing Period: None

Operating Covenant: 5 years from the date of opening (to occur within 180 days after Commencement Date)

Termination Right: Either party may terminate after the 5th anniversary of the Commencement Date on 180 days' notice

Additional Rent: Fully Net -Tenant to pay all Realty Taxes attributable to the Commercial Component,

Plus Operating Costs fixed @ \$3psf for year 1, escalated by 3% annually

Lease Form: Landlord's standard, to be executed on or before Dec 15.

Both parties to be represented by Daoust Vukovich LLP ("DV"). Both parties to waive conflict.

Sales Office Services

Per a separate agreement, Mizrahi Inc. will provide sales services to The One in connection with the promotion and sale of residential units at One Bloor Street West

The One will pay to Mizrahi Inc. all costs of operating the Sales Office, including rent, personnel, marketing and advertising and all other expenses, monthly in advance based on budgeted costs subject to reconciliation and adjustment at the end of each fiscal period of The One

The One will also pay to Mizrahi Inc. all costs of constructing the Sales Office, upon maturity of the Loan (costs to include all interest accrued on the Loan to the payment date)

Upon Mizrahi Inc. entering into the Lease, The One will pay to Mizrahi Inc. the full costs of the sales centre budget and furniture budget representing \$2.5 Million, in addition to first and last months rents and security deposit.

Both parties to be represented by DV. Both parties to waive conflict.

Loan

Bridging Finance Inc. will lend to Mizrahi Inc. the sum of \$2.5M on or before December 15, 2016

Interest will accrue at an annual rate of 12%, payable upon maturity

430

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Maturity: all principal and interest is due on the date of the first draw by The One the construction loan at One Bloor West ("Due Date"). At the option of The One, Due Date can be extended to the date when The One takes its second draw. Interest will continue to accrue to the date of payment.

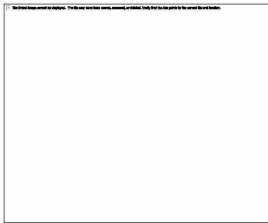
Security Documents to include Leasehold Mortgage, Promissory Note and property-specific GSA and related PPSA registration in the amount of \$2.5 Million all standing behind and postponed and standstill to borrowers conventional first mortgage of no more than \$5.4 Million.

Borrower to be represented by DV. Lender to arrange separate counsel. Lender to waive any conflict arising out of DV's previous and ongoing representation of The One or otherwise. Borrower to pay legal fees of lender and borrower. All fees to be funded out of loan.

In reference to the current Bridging loan to 181 Davenport, we would have a separate agreement, as discussed, that would cover the delta shortfall of the current loan at the end of the project of 181 once calculated through another loan that would have repayments by partial payments on the sales commissions and marketing and advertising payments/budget that Mizrahi Inc, would be receiving from The One, and as per the Altus Budget to repay the shortfall and retire the outstanding debt shortfall of the 181 amounts.

Kindly let me know your thoughts and if I missed anything, and lets get together to discuss further at your earliest opportunity. Thanks in advance and have a great weekend.

Sincerely,



Sam Mizrahi

President

126 Hazelton Avenue

Toronto, Ontario M5R 2E5

T. 416.922.4200 ext. 4210

C. 416.818.5288

F. 1.866.300.0219

Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

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F456

This is Exhibit "S" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

432
F2726

Message

From: Sam Mizrahi [sam@mizrahidevelopments.ca]
Sent: 11/9/2017 3:08:00 PM
To: Graham Marr [GMarr@bridgingfinance.ca]
CC: Jeff Halman [Jhalman@bashllp.com]; N Sharpe [NSharpe@bridgingfinance.ca]
Subject: Re: Draft amendment

Also Graham in regards to section 10, it will reduce the amount owing to Bridging when I transfer the unit and interest rate and is in everyone's best interest for me to replace it with the bank financing term sheet I provided you in our meeting for up to \$4.2 Million which would come to you, these proceeds would reduce my loan amount to you and I am only paying 5.4% vs. 12%.

Sincerely,



Sam Mizrahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T. 416.922.4200 ext. 4210
C. 416.818.5288
F. 1.866.300.0219
Sam@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

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On Nov 9, 2017, at 2:57 PM, Sam Mizrahi <Sam@MizrahiDevelopments.ca> wrote:

Sales Commission is 4.89% on \$1 Billion

So, we have \$48.9 Million plus hst

So at 50%, I would have \$24.45 Million available.

Sincerely,



Sam Mizrahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T. 416.922.4200 ext. 4210
C. 416.818.5288

F458

433
F2727

F. 1.866.300.0219

Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

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On Nov 9, 2017, at 2:44 PM, Graham Marr <GMarr@bridgingfinance.ca> wrote:

Sam,

Just so I'm clear on the commissions point, can you please give me your rough calculation using expected total residential sales of \$1B to the Project.

Thanks

Graham Marr, CPA, CA, CFA

Managing Director and Portfolio Manager | **Bridging Finance Inc.**

Suite 2925, 77 King West

Toronto | ON | M5K 1K7

T: (416) 777-1794

T: (403) 910-0697

C: (416)-906-0395

gmarr@bridgingfinance.ca

Bridging Finance Inc., Co-Manager of

Sprott Bridging Income Fund LP and

Sprott Bridging Income RSP Fund

From: Sam Mizrahi [<mailto:sam@mizrahidevelopments.ca>]

Sent: Thursday, November 09, 2017 2:40 PM

To: Graham Marr <GMarr@bridgingfinance.ca>

Cc: Jeff Halman <jhalman@bashllp.com>

Subject: Re: Draft amendment

Hi Graham,

Thanks for your email. I have 3 comments. Please find them below.

Can you please provide the breakdown for the Nov 1 current \$39,976,188.61 amount owing and what they consist of different principal balances i.e. 181, vs. 14 Dundonald, vs 1 Bloor Sales Gallery. Thanks.

Section 10: Require language "That cannot be unreasonably or arbitrarily withheld" in regards to consent

Section 13: We can only as advised from day one ensure that 50% of the sales commissions, as we still have third party brokers and agents that are required to be paid, which is why it was always 50% and not 100% on Sales Commissions only.

Sincerely,

F459

434
F2728**Sam Mizrahi***President*

125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T. 416.922.4200 ext. 4210
C. 416.818.5288
F. 1.866.300.0219

Sam@MizrahiDevelopments.cawww.MizrahiDevelopments.ca

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On Nov 9, 2017, at 1:48 PM, Graham Marr <GMarr@bridgingfinance.ca> wrote:

Phil, can you pls send Sam a redline from our prior amendment? thanks

Graham Marr, CPA, CA, CFA
Senior Managing Director and Portfolio Manager Bridging Finance Inc.
Suite 2925, 77 King West
Toronto|ON|M5K 1K7
T: (416) 777-1794
T: (403) 910-0697
C: (416)-906-0395
gmarr@bridgingfinance.ca

Bridging Finance Inc., Co-Manager of
Sprott Bridging Income Fund LP and
Sprott Bridging Income RSP Fund

On Thu, Nov 9, 2017 at 1:34 PM -0500, "Sam Mizrahi" <sam@mizrahidevelopments.ca> wrote:

Thank you.

Sincerely,

**Sam Mizrahi***President*

[125 Hazelton Avenue](#)
[Toronto, Ontario M5R 2E4](#)
T. [416.922.4200 ext. 4210](#)
C. [416.818.5288](#)
F. [1.866.300.0219](#)

Sam@MizrahiDevelopments.cawww.MizrahiDevelopments.ca

F460

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On Nov 9, 2017, at 11:59 AM, Philip L. Taylor <Philip@chaitons.com> wrote:

Please disregard the prior attachment. The correct document is attached.

Thanks,

Philip L. Taylor

Partner | Chaitons LLP | Tel: 416.218.1125

From: Graham Marr [<mailto:GMarr@bridgingfinance.ca>]**Sent:** November-09-17 11:54 AM**To:** Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>**Cc:** N Sharpe <NSharpe@bridgingfinance.ca>; Philip L. Taylor <Philip@chaitons.com>**Subject:** Draft amendment

Sam, please find attached a draft amendment for your review in respect of the incremental financing request.

Which counsel will you be using for review?

Thanks

Graham Marr, CPA, CA, CFA

Managing Director and Portfolio Manager | **Bridging Finance Inc.**

Suite 2925, 77 King West

Toronto | ON | M5K 1K7

T: (416) 777-1794

T: (403) 910-0697

C: (416)-906-0395

gmarr@bridgingfinance.ca

Bridging Finance Inc., Co-Manager of
Sprott Bridging Income Fund LP and
Sprott Bridging Income RSP Fund

<Amending Letter.doc>

F461

This is Exhibit "T" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.

(hereinafter referred to as the "Owner")

OF THE FIRST PART

- and -

2495159 ONTARIO INC.

(hereinafter referred to the "Numbered Company")

OF THE SECOND PART

- and -

CITY OF TORONTO

(hereinafter referred to as the "City")

OF THE THIRD PART

WHEREAS the Owner is the registered owner in fee simple of certain lands and premises in the City of Toronto, in the Province of Ontario, known municipally in the year 2019 as 1 and 11 Bloor Street West and 768, 770-772, 774-776, 778 and 780-784 Yonge Street and legally described in Schedule "A-1" of this Agreement (collectively, herein said lands being the "Site");

AND WHEREAS the Site was the subject of an application by the Owner for amendments to the former City of Toronto Zoning By-law No. 438-86, as amended, and to the City of Toronto Zoning By-law No. 569-2013, as amended, (collectively herein referred to as the "Zoning By-laws") which proposed to permit an increase to the height and density of development beyond the height and density otherwise permitted by the Zoning By-laws for the Site;

AND WHEREAS Council for the City (herein referred to as "City Council") failed to make a decision on the application and the Owner appealed to the Ontario Municipal Board, now Local Planning Appeal Tribunal (the "LPAT" or the "Tribunal"), pursuant to subsection 34(11) of the *Planning Act*;

AND WHEREAS City Council at its meeting of July 12, 13, 14 and 15, 2016 accepted the Owner's offer to settle the Owner's appeal subject to the instructions of City Council;

AND WHEREAS subsection 37(1) of the *Planning Act* provides that the council of a local municipality may, in a by-law passed under section 34 of the *Planning Act*, authorize increases in the height and density of development otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law;

AND WHEREAS subsection 37(2) of the *Planning Act* requires that a by-law under

section 34 of the *Planning Act* which authorizes increases in height and density pursuant to subsection 37(1) of the *Planning Act* may not be enacted unless the municipality has an official plan in effect that contains provisions relating to the authorization of increases in height and density of development;

AND WHEREAS the City of Toronto Official Plan contains provisions relating to the authorization of increases in height and density of development;

AND WHEREAS subsection 37(3) of the *Planning Act* provides that where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with such facilities, services or matters;

AND WHEREAS the Owner and the City executed, delivered an agreement made as of February 24, 2020 pursuant to section 37(3) of the *Planning Act* to secure the provision of certain facilities, services and matters with respect to the Site (herein referred to as the "**Original Agreement**");

AND WHEREAS the Original Agreement, pursuant to section 37(4) of the *Planning Act* was registered on February 26, 2020 as Instrument No. AT5373895 in the Land Registry Office for the City of Toronto (No. 80);

AND WHEREAS following the execution and delivery of the Original Agreement by the Owner and the City the LPAT issued an order, dated February 18, 2020 as further revised by an order dated February 26, 2020, approving the form of the Amending By-laws within the Original Agreement;

AND WHEREAS following the execution, delivery and registration of the Original Agreement, City Council adopted Item MM22.29 at its meeting on June 29 and 30, 2020 directing that the Off-site Parkland be financially secured and conveyed to the City on a timetable and improved in a manner contrary to the Original Agreement and the Amending By-laws as attached to the Original Agreement;

AND WHEREAS the City required the Numbered Company to enter into the Original Agreement;

AND WHEREAS to the Parties may agree to enter into this agreement (herein referred to as the "**Agreement**") and this Agreement may be registered by the City against the Site and the Off-site Parkland, and the City is entitled to enforce the provisions of this Agreement as applicable against the Owner and the Numbered Company on a joint and several basis subject to the Registry Act and the Land Titles Act against any and all subsequent owners of the Site and the Off-site Parkland;

NOW THEREFORE in consideration of the sum of two dollars (\$2.00), the receipt and sufficiency of which is hereby acknowledged, and for other good and valuable consideration, the Owner and the City agree to and with each other as follows:

1 DEFINITIONS AND SCHEDULES

- 1.1 For the purposes of this Agreement, the following words and terms shall have the following meanings:

and any appeal(s) from a decision or order in respect of any of these made to a court;

- (d) **"Approved Park Completion Certificate"** has the meaning identified in subsection 13.26 of this Agreement;
- (e) **"Approved Park Design Plans"** has the meaning identified in subsection 13.17;
- (f) **"Architectural Features"** has the meaning identified in subsection 8.1 of this Agreement;
- (g) **"Balmuto Street Traffic Control Signals"** has the meaning identified in subsection 5.1 of this Agreement;
- (h) **"Balmuto Street Traffic Installation"** has the meaning identified in subsection 5.2 of this Agreement;
- (i) **"Base Park Improvements"** means:
 - (i) Demolition, removal and disposal of all existing materials, buildings, foundations and associated servicing;
 - (ii) grading inclusive of 300mm depth topsoil supply and placement. Where lands have been environmentally risk assessed in accordance with Ministry of the Environment, Parks and Conservation requirements and Provincial regulations, the required depth profile of the environmental soil / soft cap will be 1.5 metres of engineered fill compacted to 95% standard Proctor density and certified by the Owner's consulting engineer. In the case of a risk-assessment, all materials brought on the Off-site Parkland shall comply with the site-specific standards outlined in the certificate of property use issued by the Ministry of the Environment, Parks and Conservation. In the case where no risk assessment of the Off-site Parkland was required, all materials brought on the Off-site Parkland shall comply with the Ontario Regulation 153/04, Table 3 RPI standards;
 - (iii) Sodding #1 nursery grade or equivalent value of other approved park development;
 - (iv) Fencing, where deemed necessary to the satisfaction of the General Manager, PFR;

- (v) Sanitary and storm service connections with manholes at streetline;
 - (vi) Water and electrical service connections (minimum water: 50mm to the street line including backflow preventers, shut off valves, water metre and chamber; electrical connection to the street line and electrical panel in a lockable cabinet (100 Amp service));
 - (vii) Street trees along all public road allowances abutting City-owned parkland;
 - (viii) Standard park sign (separate certified cheque required);
 - (ix) evergreen trees or shrubs planted along the boundary of the Off-site Parkland and the lands municipally known in the year 2019 as 16 Dundonald Street;
 - (x) three hose bibs; and
 - (xi) a replacement sidewalk with a width of 2.1 metres and a length of 10.973 metres along the frontage of the Off-site Parkland constructed using unit pavers matching the same pattern for sidewalks within James Canning Park.
- (j) **"Building Code Act, 1992"** means *Building Code Act, 1992*, S.O. 1992, c. 23;
- (k) **"Building Permit"** means a permit to construct all or part of building issued by the Chief Building Official pursuant to section 8 of the *Building Code Act, 1992* and, unless otherwise specified by this Agreement, includes a conditional building permit and any permit for excavation or shoring, a permit to construct the foundation of a building located below grade, an Above Grade Building Permit, and a permit for the demolition of a building;
- (l) **"Cash Contribution"** has the meaning identified in subsection 2.1 of this Agreement;
- (m) **"Certificate of Approval for Environmental Compliance"** means an approval given under the authority of Part II.1 of the *Environmental Protection Act*;
- (n) **"Chief Financial Officer and Treasurer"** means the City's Chief Financial Officer and Treasurer and shall include his or her designate;
- (o) **"Chief Planner"** means the City's Chief Planner and Executive Director, City

- (s) "**Condominium Act**" means the *Condominium Act, 1998*, S.O. 1998, c.19;
- (t) "**Condominium Registration**" means registration of a declaration and a description in accordance with the *Condominium Act*;
- (u) "**Construction Act**" means the *Construction Act*, R.S.O. 1990, c. C. 30;
- (v) "**Construction Price Index**" means the Statistics Canada Non-Residential Construction Price Index for the Toronto Census Metropolitan area, reported quarterly by Statistics Canada in Building Construction Price Indexes Table 18-10-0135-01, or its successor;
- (w) "**Consulting Engineer**" shall have the meaning identified in subsection 7.2 of this Agreement;
- (x) "**Conveyance Date**" shall have the meaning identified in subsection 13.4 of this Agreement;
- (y) "**Date of Final Approval of the Amending By-laws**" means the first day upon which all of the provisions of the Amending By-laws have actually come into force and in effect, with all applicable appeal periods having lapsed with no appeals nor rehearing requests to the Tribunal, and/or Applications to Court having been launched with respect thereto or with any such appeals or rehearing requests to the Tribunal and/or Applications to Court having been finally determined in favour of the Amending By-laws so that a Building Permit(s) would be issued by the Chief Building Official, permitting the construction contemplated by the Amending By-laws to the heights and densities as permitted thereunder, upon the Owner obtaining all requisite approvals, submitting the appropriate applications for a Building Permit(s), and paying the requisite application fees;
- (z) "**Development**" means the development within the Site described in the Amending By-laws, as may be varied from time to time;
- (aa) "**Development Charges Act**" means the *Development Charges Act, 1997*, S.O. 1997, c. 27;
- (bb) "**Development Charges**" mean those charges under the City's Development Charges By-law, being City of Toronto By-law No. 515-2018;

- (cc) **"Development Review Process"** means the Site Plan Application and Site Plan Approval process as set out under section 114 of the *City of Toronto Act, 2006*;
- (dd) **"Environmental Protection Act"** means the *Environmental Protection Act, R.S.O. 1990, c. E.19*;
- (ee) **"Executive Director, ECS"** means the City's Chief Engineer and Executive Director of Engineering and Construction Services and shall include his or her designate;
- (ff) **"Final Confirmation Date"** means the second (2nd) business day, other than a Saturday, Sunday or public holiday in Ontario following the later of:
- (i) the Date of Final Approval of the Amending By-laws, and
 - (ii) such other date as may be agreed to by the Parties hereto, provided that the occurrence of the Final Confirmation Date in accordance with the foregoing shall be expressly conditional upon such Amending By-laws being approved, in force, and/or in effect in accordance with this section on the Final Confirmation Date;
- (gg) **"Final Disposition"** means any of the following events:
- (i) the entry of an order of the LPAT finally disposing of the Amending By-laws which rejects the Amending By-laws or results in certain amendments to the Amending By-laws,
 - (ii) the entry of an order of the LPAT which follows a rehearing by the LPAT finally disposing of the Amending By-laws or certain parts thereof which rejects the Amending By-laws or results in certain amendments to the Amending By-laws, and
 - (iii) the entry of an order of the Court which finally disposes of an Application to Court and rejects the Amending By-laws or results in certain amendments to the Amending By-laws;
- (hh) **"Final Park Acceptance Certificate"** has the meaning identified in subsection 13.33 of this Agreement;
- (ii) **"Final Statement of Approval"** means written confirmation from the Chief

- (ll) "**General Manager, Solid Waste Management Services**" means City's General Manager, Solid Waste Management Services and shall include his or her designate;
- (mm) "**Land Titles Act**" means the *Land Titles Act*, R.S.O. 1990, c. L.5;
- (nn) "**Landscape Architect**" means the firm of consulting landscape architects retained by the Owner to complete the Base Park Improvements;
- (oo) "**Letter of Credit**" means an irrevocable unconditional standby letter of credit from a Canadian Chartered Bank acceptable to the Chief Financial Officer and Treasurer in the form attached hereto as Schedule "C", with such alterations, if any, in language (not affecting the substance thereof) as are acceptable to the Chief Financial Officer and Treasurer and with the necessary particulars entered thereon;
- (pp) "**Maintenance Guarantee Period**" has the meaning identified in subsection 7.33 of this Agreement;
- (qq) "**More Homes, More Choice Act, 2019**" means the *More Homes, More Choice Act, 2019*, S.O. 2019, c. 9;
- (rr) "**Notice of Termination**" has the meaning identified in subsection 26.3 of this Agreement;
- (ss) "**Notice of Park Acceptance**" has the meaning identified in subsection 13.26 of this Agreement;
- (tt) "**Off-site Parkland**" means the lands municipally known in the year 2019 as 14 Dundonald Street, City of Toronto, and legally described in Schedule "A-2" attached to this Agreement;
- (uu) "**Ownership Group**" means the Owner and the Numbered Company;
- (vv) "**Park Acceptance**" has the meaning identified in subsection 13.23 of this Agreement;
- (ww) "**Park Completion Certificate**" means a completion certificate signed and sealed by the Landscape Architect in respect of the Base Park Improvements;

- (xx) **"Park List of Deficiencies"** has the meaning identified in subsection 13.26 of this Agreement;
- (yy) **"Parties"** means the Owner and the City and **"Party"** means any one of them;
- (zz) **"Pedestrian Clearway"** has the meaning identified in subsection 4.1 of this Agreement;
- (aaa) **"Pedestrian Clearway Easement"** has the meaning identified in subsection 4.4 of this Agreement;
- (bbb) **"Pedestrian Path Connection"** has the meaning identified in subsection 2.4 of this Agreement;
- (ccc) **"Pedestrian Path Connection Easement"** has the meaning identified in subsection 12.1(e) of this Agreement;
- (ddd) **"Pet Amenity Area"** has the meaning identified in subsection 9.1 of this Agreement;
- (eee) **"Planning Act"** means the *Planning Act*, R.S.O. 1990, c. P.13;
- (fff) **"POPS Area"** has the meaning identified in subsection 3.1 of this Agreement;
- (ggg) **"POPS Easement"** has the meaning identified in subsection 3.6 of this Agreement;
- (hhh) **"Site"** means the lands legally described in Schedule "A" attached hereto;
- (iii) **"Site Plan Agreement"** means an agreement or agreement(s) between the Owner and the City authorized by section 114 of the *City of Toronto Act, 2006*;
- (jjj) **"Site Plan Application"** means an application filed to the City in accordance with section 114 of the *City of Toronto Act, 2006*;
- (kkk) **"Site Plan Approval"** means issuance of a Final Statement of Approval;
- (lll) **"Site Plan Appeal"** has the meaning identified in subsection 27.1 of this Agreement;
- (mmm) **"Storm Sewer"** has the meaning identified in subsection 7.1 of this Agreement;

(qqq) "**Unwinding Date**" has the meaning identified in subsection 26.2 of this Agreement; and

(rrr) "**Ward Councillor**" means the City councillor for the ward in which the Site is located.

All other definitions or words and phrases not listed in this subsection 1.1 shall have the meaning as identified in this Agreement.

1.2 The schedules attached hereto are incorporated into this Agreement by reference and are deemed to be a part hereof. The schedules attached hereto are as follows:

Schedule "A-1"	Legal Description of the Site;
Schedule "A-2"	Legal Description of the Off-site Parkland;
Schedule "B-1"	Proposed Amendment to City of Toronto Zoning By-law 569-2013;
Schedule "B-2"	Proposed Amendment to Former City of Toronto Zoning By-law 438-86;
Schedule "C"	Form of Letter of Credit;
Schedule "D-1"	Title Opinion For Registration Of This Agreement;
Schedule "D-2"	Title Opinion For Registration Of Conveyances;
Schedule "E"	List of Drawings and Reports for Storm Sewer; and
Schedule "F"	Preliminary Cost Estimate For Storm Sewer.

2 CASH CONTRIBUTIONS TO PUBLIC SERVICES, FACILITIES OR MATTERS

2.1 Prior to the issuance of the first Building Permit for a part or all of the Site, the Owner shall pay to the City the sum of TWENTY-ONE MILLION NINE HUNDRED THOUSAND DOLLARS (\$21,900,000.00) in Canadian funds (herein referred to as the "**Cash Contribution**") and the Cash Contribution shall be used by the City for the purpose of community benefits in accordance with the terms of this Agreement on the proportions set out below:

- (a) 10% directed to new or existing affordable housing facilities to the satisfaction of the Chief Planner;
- (b) 10% directed to new or existing cultural and community facilities to the satisfaction of the Chief Planner, in consultation with the Ward Councillor; and

(c) 80% to be directed to any future publicly accessible underground pedestrian tunnel and related connections through buildings to be added as a part of the existing pedestrian pathway network in the vicinity of the Site as more particularly described in subsection 2.3 of this Agreement (herein referred to as the "**Pedestrian Path Connection Contribution**"), local streetscape improvements including Yonge Street Revitalization, and local park improvements, to the satisfaction of the Chief Planner, in consultation with the Ward Councillor.

2.2 If, upon the expiry of three (3) years from the Date of Final Approval of the Amending By-laws and thereafter, the Cash Contribution has not been used by the City for the intended purpose(s) set out in subsection 2.1 of this Agreement, any portion of the Cash Contribution may be redirected for another purpose at the discretion of the Chief Planner, in consultation with the Ward Councillor, provided that the purpose is identified in the Toronto Official Plan and will benefit the community in the vicinity of the Site.

2.3 Beginning immediately upon the day the LPAT issues an Order approving the Development pursuant to the proceedings assigned LPAT File No. PL160524 (Case No. PL160431) and thereafter, the Owner shall use its best efforts to secure an agreement or agreements with the registered owner of the land known in the year 2019 as 2 Bloor Street West, City of Toronto and the registered owners of the lands abutting the Site to the west municipally known in the year 2019 as 15 Bloor Street West to provide a publically accessible underground pedestrian tunnel within the below grade portion of Bloor Street West between the Site and the lands municipally known in the year 2019 as 2 Bloor Street West, including all pedestrian connections from the underground pedestrian tunnel into the respective buildings, and underground pedestrian tunnel connections between the concourse level of the Development, being the first level of the Development located below grade, on the Site and the lands abutting the Site to the west municipally known in the year 2019 as 15 Bloor Street West, including all pedestrian connections from the underground pedestrian tunnel into the respective buildings (herein referred to as the "**Pedestrian Path Connection**") ultimately to facilitate the eventual construction of a below grade pedestrian entrance to the subway station at the intersection of Yonge Street and Bloor Street West, to the satisfaction of the Chief Planner, in consultation with the City Solicitor and the Ward Councillor. The Parties agree that, in the event the cost of Pedestrian Path Connection is greater than ONE HUNDRED PERCENT (100%) of the Pedestrian Path Connection, all additional costs for the Pedestrian Path Connection shall not be the responsibility of the Owner.

public prior to the earlier of the first commercial use or the first residential use of any part of a building erected on the Site and Condominium Registration of all or any part of the Site, to the satisfaction of the Chief Planner in consultations with the City Solicitor.

3.2 The Owner agrees the POPS Area shall remain open and accessible to the general public, including the City, its officials, employees and agents, at all times of the day and night, 365 days of the year, subject to temporary closure as set out below, such that the general public has the right to use the POPS Area, provided that such public access is revocable at any time and access to the POPS Area may be refused or a person may be required to vacate the POPS Area in the case of any person who:

- (a) unreasonably interferes with or restricts, or attempts to unreasonably interfere with or restrict, the ability of other members of the public, or lawful users, including occupants of the Development, to access, use or enjoy part or all of the POPS Area;
- (b) carries on, or attempts to carry on, any illegal or unlawful activity on or within the POPS Area;
- (c) acts in a manner unreasonably inconsistent with the intended use of the POPS Area;
- (d) injures or damages (or attempts to injure or damage) any person, any real and/or personal property, and/or property rights, including any portion of the Development adjacent to the POPS Area;
- (e) obstructs, injures or attempts to obstruct or injure, any person(s) using the POPS Area or any portion thereof;
- (f) harms or destroys, or attempts to harm or destroy, any part of the POPS Area or any property rights associated therewith, and/or any property of any person(s) entitled to use the POPS Area;
- (g) commits or attempts to commit any criminal or quasi-criminal offence or is in breach of any by-law of the City.

3.3 The Owner and the City agree that the general public's access to the POPS Area may be restricted or refused as necessary in the event of an emergency or to permit maintenance, repairs, or reconstruction of the POPS Area. The Owner shall have the right at all

reasonable times to enter upon and within the POPS Area for purpose of maintenance and repair of the POPS Area or abutting lands and structures or appurtenances therein, including lands, structures and appurtenances below the POPS Area, provided the Owner in exercising such rights of access, shall not unreasonably interfere with the POPS Area and shall exercise all reasonable care in conducting its operations and shall restore the POPS Area to the same or an improved condition, as existed immediately prior to such entry to the satisfaction of the Chief Planner.

3.4 Prior to the first residential occupancy of any part of the Site, the Owner shall install and maintain, at its sole expense, one signage plaque in a visible and centralized location, generally in accordance with the City template for privately owned publicly-accessible space signage, and which is placed generally in accordance with the parameters established in the applicable Urban Design Guidelines as endorsed by City Council at its meeting on July 9, 2014, through the adoption of Item PG34.14, or on terms otherwise satisfactory to the Chief Planner.

3.5 The Owner shall ensure the POPS Area is:

- (a) illuminated to a standard acceptable to the Chief Planner and in accordance with approved plans and drawings pursuant to the Development Review Process;
- (b) kept clear of snow and ice, rubbish, run off, and other obstructions;
- (c) constructed in a manner acceptable to the Chief Planner; and
- (d) thereafter repaired and maintained by the Owner to a standard as required by the Chief Planner as determined pursuant to the Development Review Process

at the sole cost and expense of the Owner, to the satisfaction of the Chief Planner.

POPS Easement

3.6 Prior to Site Plan Approval for any part or all of the Site, the Owner shall register a grant of easement in perpetuity to the City for nominal consideration over, upon, above, and through the entirety of the POPS Area for the purpose of publicly accessible open space use by the general public and the City, its officials, employees and agents, including all necessary rights of support (herein referred to as the "**POPS Easement**"), to the satisfaction of the City Solicitor. The POPS Easement shall be free and clear of all physical encumbrances and obstructions upon, below, and above the surface of the POPS Area save and except for any physical encumbrances and obstructions that may be permitted by, and at the sole discretion of, the Chief Planner pursuant to the Development Review Process. The POPS Easement shall allow for any necessary as-built adjustments

officials, officers, employees, agents, their successors and assigns, or any of them may sustain, suffer or be put to resulting from or arising out of:

- (a) the failure of the Owner to repair or maintain the POPS Area in accordance with the terms of this Agreement;
- (b) the failure of the Owner to design, construct, and maintain the lands and structures supporting the POPS Area; and
- (c) any loss, damage or injury (including death resulting from injury) to any person or property, howsoever caused directly or indirectly, resulting from or sustained by reason of any act or omission of the Owner or any person for whom it is in law responsible in connection with any of the provisions set out in this Agreement with respect to the POPS Area and the POPS Easement.

Insurance

3.8 The Owner shall take out and maintain, at its sole cost and expense, commercial general liability insurance with respect to the POPS Area and the POPS Easement acceptable as to form, limits and conditions to the appropriate City official, for a limit of not less than TEN MILLION DOLLARS (\$10,000,000.00) per occurrence (such limit to be increased from time to time to reflect an amount which would be maintained by a prudent owner as determined by the appropriate City official) covering possible damages, losses, claims and expenses for or in connection with any personal injury, death or property damage that might be incurred on or about the POPS Area. The insurance policy shall include the City as an additional insured and shall contain a cross-liability and severability of interest clause and include contractual liability coverage. The liability insurance policy shall provide that any breach of a condition of the policy by an insured shall not affect protection given by the policy to any other insured. The liability insurance policy shall contain a clause providing that the insurer will not cancel or refuse to renew the said insurance without first giving the City thirty (30) days prior written notice thereof. The Owner shall supply the appropriate City official with satisfactory evidence of such insurance upon request by the City, and a certificate of insurance shall be remitted to the Chief Planner no later than thirty (30) days following its issuance and evidence of continuance if available shall be remitted to the City at least thirty (30) days prior to the expiration of any insurance policy. The Owner shall provide to the City a copy of the insurance policy upon request.

4 PEDESTRIAN CLEARWAY

Pedestrian Clearway

- 4.1 The Owner shall, at its sole cost and expense, construct, provide and thereafter repair and maintain a pedestrian walkway on the Site between the face of the proposed building and the sidewalks abutting the Site on the Bloor Street West and Yonge Street frontages (herein referred to as the "**Pedestrian Clearway**"), with the final length, width, location, configuration and design of the Pedestrian Clearway to be to the satisfaction of the Chief Planner pursuant to the Development Review Process which shall include a Site Plan Agreement between the Owner and the City to secure design details for the Pedestrian Clearway, to the satisfaction of the Chief Planner. The Pedestrian Clearway shall be completed by the Owner and open to the general public prior to the earlier of the first commercial use or the first residential use of any part of a building erected on the Site, to the satisfaction of the Chief Planner.
- 4.2 The Owner shall have the right at all reasonable times to enter upon the Pedestrian Clearway for the purpose of maintenance and repair of the pedestrian sidewalk, provided the Owner in exercising such right of access, shall not unreasonably interfere with the Pedestrian Clearway Easement and shall exercise all reasonable care in conducting its operations and shall restore the Pedestrian Clearway to the same or an improved condition, as existed immediately prior to such entry.
- 4.3 Prior to effecting any maintenance or repairs which would necessitate the closure of the Pedestrian Clearway, the Owner shall obtain the prior written consent of the General Manager, Transportation Services. Notwithstanding any other terms or provisions of the Pedestrian Clearway Easement and this Agreement, at any time and from time to time, the Owner may interfere with or interrupt the use of the Pedestrian Clearway Easement without notice in instances of emergency provided obtaining prior written consent of the General Manager, Transportation Services is not practical.
- 4.4 The Owner shall ensure the Pedestrian Clearway is:
- (a) illuminated to a standard acceptable to the Chief Planner and in accordance with approved plans and drawings pursuant to the Development Review Process;
 - (b) kept clear of snow and ice, rubbish, run off, and other obstructions;
 - (c) constructed in a manner acceptable to the Chief Planner; and
 - (d) thereafter repaired and maintained by the Owner to a standard as required by the

encumbrances and obstructions upon, below, and above the surface of the Pedestrian Clearway save and except for any physical encumbrances and obstructions that may be permitted by, and at the sole discretion of, the Chief Planner pursuant to the Development Review Process. The Pedestrian Clearway Easement shall allow for any necessary as-built adjustments satisfactory to the Chief Planner, in writing.

Indemnity

- 4.6 Without limiting and in addition to the Owner's obligations as set out in Section 16 of this Agreement, the Owner shall, from time to time and all times hereafter fully indemnify and save harmless the City, its elected officials, officers, employees, agents, their successors and assigns, or any of them, from and against all actions, causes of action, suits, claims and other proceedings which may be brought against or made upon the City, its elected officials, officers, employees, agents, their successors and assigns, or any of them, and from and against all loss, liability, judgment, costs, charges, demands, damages or expenses which the City, its elected officials, officers, employees, agents, their successors and assigns, or any of them may sustain, suffer or be put to resulting from or arising out of:
- (a) the failure of the Owner to repair and maintain the Pedestrian Clearway in accordance with the terms of this Agreement;
 - (b) the failure of the Owner to design, construct, and maintain the lands and structures supporting the Pedestrian Clearway; and
 - (c) any loss, damage or injury (including death resulting from injury) to any person or property, howsoever caused directly or indirectly, resulting from or sustained by reason of any act or omission of the Owner or any person for whom it is in law responsible in connection with any of the provisions set out in this Agreement with respect to the Pedestrian Clearway or the Pedestrian Clearway Easement.

Insurance

- 4.7 The Owner shall take out and maintain, at its sole expense, commercial general liability insurance with respect to the Pedestrian Clearway and the Pedestrian Clearway Easement acceptable as to form, limits and conditions to the appropriate City official, for a limit of not less than TEN MILLION DOLLARS (\$10,000,000.00) per occurrence (such limit to be increased from time to time to reflect an amount which would be maintained by a prudent owner as determined by the appropriate City official) covering possible damages, losses, claims and expenses for or in connection

with any personal injury, death or property damage that might be incurred on or about the Pedestrian Clearway. The insurance policy shall include the City as an additional insured and shall contain a cross-liability and severability of interest clause and include contractual liability coverage. The liability insurance policy shall provide that any breach of a condition of the policy by an insured shall not affect protection given by the policy to any other insured. The liability insurance policy shall contain a clause providing that the insurer will not cancel or refuse to renew the said insurance without first giving the City thirty (30) days prior written notice thereof. The Owner shall supply the City with satisfactory evidence of such insurance upon request by the City, and a certificate of insurance shall be remitted to the Chief Planner no later than thirty (30) days following issuance and evidence of continuance if available shall be remitted to the City at least thirty (30) days prior to the expiration of any insurance policy. The Owner shall provide to the City a copy of the insurance policy upon request.

5 BALMUTO STREET TRAFFIC CONTROL SIGNALS

- 5.1 The Owner agrees to install traffic control signals and all related infrastructure, and all related pavement markings, all related road signage, and construct any minor changes to existing curbs as necessary at the intersection of Bloor Street West and Balmuto Street to facilitate the installation of the traffic control signals and all related infrastructure (herein all such works collectively referred to as the "**Balmuto Street Traffic Control Signals**") in accordance with the terms of this Agreement.

Street Traffic Control Signals Design

- 5.2 Prior to Site Plan Approval for any part or all of the Site, the Owner shall provide, at its sole cost and expense, a detailed design and a cost estimate for the total costs and expenses for the installation of the Balmuto Street Traffic Control Signals, to the satisfaction of the General Manager, Transportation Services.

Financial Security

- 5.3 Prior to Site Plan Approval for any part or all of the Site, the Owner shall deliver Financial Security to the City in the amount of FOUR HUNDRED THOUSAND (\$400,000) dollars in Canadian funds to financially secure the total costs and expenses for the installation of the Balmuto Street Traffic Control Signals, to the satisfaction of the General Manager, Transportation Services. The Owner acknowledges and agrees the amount of the Financial Security required by this subsection 5.3 shall be exclusive of all design costs incurred by the Owner.

- 5.4 The amount held as Financial Security for the Balmuto Street Traffic Control Signals may, at the discretion of General Manager, Transportation Services, be reduced on completion of the construction/installation of all or any portion of Balmuto Street Traffic Control

Owner agrees to submit to the City all such documentation as is necessary to verify the amount of the holdbacks required to be retained as well as any further documentation which may be required by the City; and

- (c) ten percent (10%) of the value of workmanship and materials for a minimum period of two (2) years from the date the installation of the Balmuto Street Traffic Control Signals is completed and accepted in writing by the Executive Director, ECS; however,

in no event shall the amount of the reduced Financial Security required by this Section 5 be less than twenty percent (20%), of the final approved cost estimate for the Balmuto Street Traffic Control Signals, which the Owner acknowledges and agrees has not yet been established to the satisfaction of the General Manager, Transportation Services at the time of this Agreement and, of that twenty percent (20%), ten percent (10%) is to guarantee workmanship and ten percent (10%) is to guarantee performance of the Owner's construction lien obligations.

Installation of Street Traffic Control Signals Design

5.6 Prior to the earlier of

- (a) Condominium Registration of a part or all of the Site,
- (b) the first residential or commercial use of the Site, and
- (c) July 15, 2023

the Owner shall install the Balmuto Street Traffic Control Signals, to the satisfaction of the Executive Director, ECS and the General Manager, Transportation Services and, in any event, the Owner shall not commence work for the installation of the Balmuto Street Traffic Control Signals prior to requesting and receiving written permission to commence construction from the General Manager, Transportation Services.

5.7 Prior to the commencement of work to install the Balmuto Street Traffic Control Signals and in addition to the written permission of the General Manager, Transportation Services as set out in subsection 5.6 of this Agreement, the Owner shall, at its sole cost and expense, make an application for permits for construction and street occupation and provide a construction management plan describing how the work for the installation of the Balmuto Street Traffic Control Signals will be implemented and coordinated, to the satisfaction of the General Manager, Transportation Services.

- 5.8 During the installation of the Balmuto Street Traffic Control Signals the Owner shall ensure full time inspection for the work, to the satisfaction of the General Manager, Transportation Services and the Owner shall be solely responsible for the payment of all inspection fees required by the General Manager, Transportation Services. The Owner shall provide a minimum forty-eight (48) hours' advance notice to the General Manager, Transportation Services for the purpose of scheduling an inspection of the work for the installation of the Balmuto Street Traffic Control Signals, to the satisfaction of the General Manager, Transportation Services.

Maintenance and Operating Costs

- 5.9 Prior to Site Plan Approval for any part or all of the Site, the Owner shall provide the City with a certified cheque in the amount of THIRTY THOUSAND DOLLARS (\$30,000.00) in Canadian funds for the purpose of the maintenance and operating costs of the Balmuto Street Traffic Control Signals. The Owner acknowledges and agrees the certified cheque to be provided by the Owner pursuant to this subsection 5.9 is an amount sufficient to pay the City's maintenance and operating costs for the Balmuto Street Traffic Control Signals for a period of five (5) years to begin immediately upon the day following the expiry of the two (2) year period referred to in subsection 5.6(c) of this Agreement. Notwithstanding the provision of the Owner's certified cheque required by this subsection 5.9, the Owner agrees that the maintenance and operating costs referred to in this subsection 9 do not include costs associated with faulty or incomplete installation work which shall remain the sole responsibility of the Owner.

Liability Insurance

- 5.10 The Owner shall effect, maintain, or cause to be maintained and kept in force a Commercial General Liability Insurance policy applicable to its obligations to install the Balmuto Street Traffic Control Signals which is in a form that is satisfactory to the appropriate City Official and which issued by an insurance company licenced to transact business in the Province of Ontario and the Owner shall, prior to the General Manager, Transportation Services providing permission to install the Balmuto Street Traffic Control Signals pursuant to subsection 5.6 of this Agreement, submit to the General Manager, Transportation Services a certificate of insurance using the City's current standard certificate of insurance form evidencing coverage, to the satisfaction of the General Manager, Transportation Services.
- 5.11 The insurance policy referred to in subsection 5.10 of this Agreement shall provide for the following:
- (a) a minimum limit of such policy shall be TEN MILLION DOLLARS (\$10,000,000.00) per occurrence exclusive of interest and costs;

The Owner shall submit a renewal certificate using the City's current standard Certificate of Insurance Form prior to the expiration of the insurance policy to be provided pursuant to subsection 5.10 of this Agreement without notice or demand by the City. If the Owner fails to pay the renewal premium, the Financial Security to be provided by the Owner pursuant to this Section 5 and held by the City pursuant to this Agreement may be drawn on to cover the costs of same. In the event that the City elects to draw on the Financial Security required by this Section 5 to pay the renewal premium, the Owner will be required to resubmit the Financial Security for the Balmuto Street Traffic Control Signals in an amount satisfactory to the City to guarantee completion of the installation of the Balmuto Street Traffic Control Signals required under the terms of this Agreement.

- 5.14 The Owner further agrees to supply a Certificate of Insurance in a form and amount satisfactory to any other applicable governmental authority or to any other person whose lands or services are being worked upon, traversed or affected by the Balmuto Street Traffic Control Signals installation work provided for herein. The policy shall indemnify the applicable governmental authorities or person, as the case may be, from any loss arising from claims for damages, injury or otherwise in connection with the Storm Sewer work done by or on behalf of the Owner.
- 5.15 The Owner shall provide "as-built" drawings in hard copy and digital form respectively for the Balmuto Street Traffic Control Signals, to the satisfaction of the General Manager, Transportation Services prior to the City's acceptance of the Balmuto Street Traffic Control Signals by the City.

Acceptance and Assumption

- 5.16 The Executive Director, ECS may consider acceptance of the Balmuto Street Traffic Control Signals upon receipt of "as-built" drawings in hard copy and digital form showing the final plan and profile locations of the Balmuto Street Traffic Control Signals and written certification from the Owner's engineer that the Balmuto Street Traffic Control Signals have been fully and finally constructed or carried out in accordance with the accepted engineering design drawings required by subsection 5.2 of this Agreement, City Standards and Specifications, and good engineering practices.
- 5.17 The Executive Director, ECS, in consultation with the General Manager, Transportation Services, shall, if satisfied with the Balmuto Street Traffic Control Signals, assume responsibility for the Balmuto Street Traffic Control Signals. Provided that all matters related to the Balmuto Street Traffic Control Signals have been completed to the satisfaction of the Executive Director, ECS, all outstanding payments and invoices have been made and the City is not aware of any claims against it in connection with the Balmuto Street Traffic Control Signals to be provided in accordance with this Agreement or matters related hereto, the Executive Director, ECS shall authorize the release of the

Financial Security provided to secure the installation of the Balmuto Street Traffic Control Signals.

- 5.18 Upon assumption by the City of the Balmuto Street Traffic Control Signals, the ownership of the Balmuto Street Traffic Control Signals shall vest in the City, and the Owner shall have no claims or rights thereto.

Construction Act

- 5.19 The Owner agrees to comply with the provisions of the *Construction Act* including, but not limited to, ensuring that holdbacks are retained in accordance with Part IV of that Act with respect to the supply of services or materials for the Balmuto Street Traffic Control Signals.
- 5.20 If any lien is preserved or written notice of lien given pursuant to the *Construction Act* for the supply of services or materials in connection with the construction, installation or maintenance of any portion of the Balmuto Street Traffic Control Signals Sewer located on a public street or highway or any lands owned by the City or in which the City has an interest, the Owner forthwith shall give written notice to the City of such document, process or claim.
- 5.21 Without limiting the Owner's obligations and the City's rights under Section 16 of this Agreement the Owner shall indemnify, defend and save the City harmless, from and against any and all claims, actions or demands made against the City in connection with the *Construction Act* and all costs incurred by the City as a result thereof. In the event that any action, cause of action, claim or other legal document or process or other alleged claim is commenced against or imposed upon the City, the City shall, forthwith, give notice to the Owner of such document, process or claim. Upon the receipt of such notice from the City, the Owner, at its own expense and to the satisfaction of the City, shall appeal, contest, defend or settle such legal document, process or claim on behalf of the City and reasonably notify the City on a periodic basis of the progress of the matter. The Owner acknowledges and agrees that the City reserves the right to elect at any time to conduct its own appeal, contestation, defence or settlement negotiations at the Owner's expense after giving notice of same to the Owner.
- 5.22 If any lien is preserved or written notice of lien given pursuant to the *Construction Act* for the supply of services or materials in connection with the construction, installation or maintenance of any portion of the Balmuto Street Traffic Control Signals located on a public street or highway or any lands owned by the City or in which the City has an interest, the Owner shall be considered to be in default in accordance with the terms of this Agreement, until all such claims for lien, together with any associated certificates of action, are discharged or vacated or such written notices of lien are withdrawn or a Court declaration is obtained that the written notices of lien are no longer binding or that the related liens have expired.

including any damages incurred by reason of the Owner's failure to comply with any provision of this Agreement, save and except to the extent that any such loss, injury, damage or claim arises by virtue of the negligence or willful misconduct of the City or any of their employees, agents, representatives or any other person for whom the City is responsible for at law.

- 5.25 Without limiting and in addition to the Owner's obligations and the City's rights as set out in Section 16 of this Agreement, in the event that any action, cause of action, claim or other legal document or process or other alleged claim is commenced against or imposed upon the City, the City shall, forthwith, give notice to the Owner of such document, process or claim. Upon the receipt of such notice from the City, the Owner, at its own expense and to the satisfaction of the City, shall appeal, contest, defend or settle such legal document, process or claim on behalf of the City and shall reasonably notify the City on a periodic basis of the progress of the matter. The Owner acknowledges and agrees that the City reserves the right to elect at any time to conduct its own appeal, contestation, defence or settlement negotiations at the Owner's expense after giving notice of same to the Owner.
- 5.26 Without limiting and in addition to the Owner's obligations and the city's rights as set out in Section 16 of this Agreement, the Owner will pay to the City on demand any loss, costs, injury, damages and expenses which may be sustained, incurred or paid by the City in consequence of the matters governed by the indemnity and defence provisions of this Agreement, provided that on default of such payment all such mentioned loss, costs, injury, damages and expenses and all such moneys so paid or payable may be deducted from the Financial Security required to be provided by this Section 5 or from moneys payable by the City to the Owner on any account whatsoever or may be recovered from the Owner in a court of competent jurisdiction as moneys paid at its request.
- 5.27 The Owner agrees to take all precautions necessary to protect the public against injury, including without limitation City-owned lands to be used for the purpose of the installation of the Balmuto Street Traffic Control Signals, and when necessary maintain illuminated danger signals at night and at such other times and places as may be required to ensure public safety, to the satisfaction of the Executive Director, ECS.

General Provisions

- 5.28 The Owner acknowledges and agrees with the City that:
- (a) Qualitative or Quantitative Tests

The Executive Director, ECS may have qualitative or quantitative tests made of any materials which have been, or are proposed to be used in the construction of

the Balmuto Street Traffic Control Signals required by this Agreement and the cost of such tests shall be paid by the Owner no later than fourteen (14) days of the account being rendered by the City;

(b) Relocation of Existing Services

The Owner shall pay the cost of relocating any existing municipal infrastructure caused by the installation of the Balmuto Street Traffic Control Signals within fourteen (14) days of the account for same being rendered by the City;

(c) Specifications

Unless otherwise specified, and notwithstanding and despite anything to the contrary in this Agreement, any Balmuto Street Traffic Control Signals installation work required to be done under this Agreement by the Owner shall be according to the standards and specifications of the City as may be modified from time to time and Provincial standards as may be required by the General Manager, Transportation Services (herein referred to as the "**City Standards and Specifications**");

(d) Damages to Municipal Infrastructure

The Owner shall at its sole cost and own expense, restore all existing municipal infrastructure that may be damaged due to activities related to the installation of the Balmuto Street Traffic Control Signals, to the satisfaction of the Executive Director, ECS; and

(e) Interest

Interest shall be payable by the Owner to the City on all sums of money payable under this Section 5 which are not paid on the due dates. The due date of any sum of money shall be thirty (30) days after the date of the invoice. The interest rate shall be prime interest rate prevailing on the due date of the invoice and the amount of the interest shall be determined by the Chief Financial Officer and Treasurer whose decision in this matter shall be final.

6 INTENTIONALLY DELETED

7 STORM SEWER

Scope of Work

7.1 The Owner agrees to construct and complete at its sole cost and expense and in a good

Consulting Engineer

- 7.2 The Owner agrees to retain a professional engineer, competent in the municipal engineering field (herein referred to as the "**Consulting Engineer**") to carry out all the necessary engineering requirements for the Development and the Storm Sewer in accordance with the Performance Standards for Professional Engineers Providing Land Development Services, as amended from time to time, as prepared by the Professional Engineers Ontario until the Storm Sewer work provided for in this Section 7 is completed and acceptable to the Executive Director, ECS. The Consulting Engineer shall serve as the Owner's representative in all matters related to the provision and installation of the Storm Sewer and shall be the primary engineering contact with the City.
- 7.3 The Owner agrees to retain the Consulting Engineer to perform, without limiting the generality of the foregoing, the following services:
- (a) prepare designs of all works to be constructed, including overland flow routes and other storm water management concepts;
 - (b) ensure soil investigation is carried out when soil conditions warrant and to submit the reports to the Owner and the City;
 - (c) prepare and submit to the City all required drawings, cost estimates and reports;
 - (d) prepare and administer where required all necessary contract(s);
 - (e) obtain necessary approvals in conjunction with the City or any external authority having jurisdiction as may be necessary;
 - (f) arrange and document a pre-construction meeting to be attended by the City and such further meetings as may be required by the Executive Director, ECS;
 - (g) provide and confirm the field layout of the Storm Sewer construction and reconstruction and the Development of the Site;
 - (h) provide full time on-site inspection and prepare/ submit daily inspection reports. Inspection reports shall be completed, to the satisfaction of the Executive Director, ECS and shall be submitted to the Executive Director, ECS on a weekly basis;

- (i) inspect compliance with the City specifications, and certify that the Storm Sewer has been constructed and/or installed in accordance with standards, specifications and designs accepted by the City;
 - (j) inspect all deficient construction works and prepare performance rectification lists for the Storm Sewer;
 - (k) follow-up to ensure that all Storm Sewer rectifications are satisfactorily completed prior to said works being accepted by the Executive Director, ECS;
 - (l) maintain all records of construction and, upon completion, provide to the Executive Director, ECS a complete set of "as-built" drawings showing the final plan and profile locations of the Storm Sewer, including connections to the street line. The as-built drawings shall be in hard-copy and in digital format acceptable to the Executive Director, ECS; and
 - (m) provide co-ordination and scheduling to comply with the timing provisions of Section 7 of this Agreement and its requirements.
- 7.4 The Owner agrees to provide the City with a letter in a form acceptable to the Executive Director, ECS indicating there is a hiring agreement or contract between it and the Consulting Engineer before commencement of construction of the Storm Sewer. The said agreement or contract shall include the services to be provided by the Consulting Engineer, in accordance with this Section 7.
- 7.5 The agreement or contract referred to in subsection 7.4 of this Agreement shall provide that the Executive Director, ECS may inspect or cause to be inspected the construction of the Storm Sewer and that the Executive Director, ECS has the authority to require the Owner to cease work in the event that:
- (a) safety is compromised;
 - (b) work is not being performed in accordance with good engineering practices;
 - (c) an adjustment to the design is required to suit conditions not known at the time of review of the engineering drawings; or
 - (d) the work is being performed without full-time consultant inspection.
- 7.6 The Owner acknowledges and agrees that should circumstances warrant the City to require the Owner to cease work in respect of the Storm Sewer, any loss of profits or costs

7;

- (d) the Owner has deposited with the City proof of insurance as set out in this Section 7;
- (e) the Owner has deposited with the City proof of Worker Safety and Insurance Board Clearance Certificate;
- (f) the requirements set out in Schedule "E" of this Agreement to be completed prior to release of construction of the Storm Sewer have been satisfied; and,
- (g) the Owner has obtained a roadway occupancy permit for works required upon below, above and within roads or other permits as may be required to the satisfaction of the Executive Director, ECS.

7.8 Upon confirmation that all of the conditions in subsection 7.7 of this Agreement have been met by the Owner to the satisfaction of the Executive Director, ECS, the Executive Director, ECS may issue to the Owner written permission to commence construction of the Storm Sewer.

Liability Insurance

- 7.9 The Owner will effect, maintain or cause to be maintained, and kept in force, a Commercial General Liability insurance policy applicable to its obligations to construct the Storm Sewer which is in a form that is satisfactory to the appropriate City official and which is written with an insurance company licensed to transact business in the Province of Ontario. Prior to release for construction of the Storm Sewer as set out in subsection 7.7 of this Agreement, the Owner shall submit to the Executive Director, ECS a Certificate of Insurance using the City's current standard Certificate of Insurance Form evidencing the coverage required pursuant to this Section 7, to the satisfaction of the Executive Director, ECS.
- 7.10 The insurance policy referred to in subsection 7.9 of this Agreement shall provide for the following:
- (a) a minimum limit of such policy shall be Ten Million Dollars (\$10,000,000.00) per occurrence exclusive of interest and costs;
 - (b) inclusion of the City as an additional insured;
 - (c) coverage with respect Cross-Liability and Severability of Interests; Employer's Liability and Contingent Employer's Liability, Non-Owned Automobile Liability;

and any other provisions applicable to the obligations to be carried out in connection with this Agreement; and

- (d) thirty (30) days prior written notice of cancellation or material change.
- 7.11 The insurance policy referred to in subsection 7.9 of this Agreement shall be maintained in force until the completion of the Maintenance Guarantee Period and the City assumes responsibility for the Storm Sewer.
- 7.12 The Owner shall submit a renewal certificate using the City's current standard Certificate of Insurance Form prior to the expiration of the insurance policy to be provided pursuant to subsection 7.9 of this Agreement without notice or demand by the City. If the Owner fails to pay the renewal premium, the Financial Security to be provided by the Owner pursuant to this Section 7 and held by the City pursuant to this Agreement may be drawn on to cover the costs of same. In the event that the City elects to draw on the Financial Security required by this Section 7 to pay the renewal premium, the Owner will be required to resubmit the Financial Security for the Storm Sewer in an amount satisfactory to the City to guarantee completion of the Storm Sewer constructed under the terms of this Agreement.
- 7.13 The Owner further agrees to supply a Certificate of Insurance in a form and amount satisfactory to any other applicable governmental authority or to any other person whose lands or services are being worked upon, traversed or affected by the Storm Sewer work provided for herein. The policy shall indemnify the applicable governmental authorities or person, as the case may be, from any loss arising from claims for damages, injury or otherwise in connection with the Storm Sewer work done by or on behalf of the Owner.

Inspection Work and Construction Obligations

- 7.14 When and where determined by the Executive Director, ECS, the Storm Sewer shall be constructed and installed under the observation of inspectors employed by the City at the sole cost and expense of the Owner. The Owner shall be solely responsible for the payment of all City inspection fees, to the satisfaction of the Executive Director, ECS. Following release for construction of the Storm Sewer in accordance with subsection 7.7 of this agreement, the Owner agrees to ensure that the Consulting Engineer notifies the Executive Director, ECS in writing of the proposed date of commencement of construction prior to commencing construction.
- 7.15 The Owner agrees that the Executive Director, ECS shall have the authority to stop the construction of all or part of the Storm Sewer in the event City inspections determine that adjustment to the design is required to suit actual conditions not known at the time of review of the engineering drawings and such changes shall be made by the Owner at no cost to the City.

existing City streets during the period of construction of the Storm Sewer and the Development. Permanent barricades shall be erected as necessary at locations designated by the Executive Director, ECS prior to construction and shall be maintained at the Owner's sole cost and expense until acceptance of the Storm Sewer or as required by the Executive Director, ECS.

Indemnification

- 7.19 Without limiting and in addition to the Owner's obligations and the City's rights as set out in Section 16 of this Agreement, the Owner shall indemnify and save the City, harmless from and against any and all loss, injury or damage or claim for loss, injury or damage in connection with installation of the Storm Sewer done by or on behalf of the Owner or the use including design, construction, maintenance and use of the Storm Sewer prior to its acceptance by the City, including any damages incurred by reason of the Owner's failure to comply with any provision of this Agreement, save and except to the extent that any such loss, injury, damage or claim arises by virtue of the negligence or willful misconduct of the City or any of their employees, agents, representatives or any other person for whom the City is responsible for at law.
- 7.20 Without limiting and in addition to the Owner's obligations and the City's rights as set out in Section 16 of this Agreement, in the event that any action, cause of action, claim or other legal document or process or other alleged claim is commenced against or imposed upon the City, the City shall, forthwith, give notice to the Owner of such document, process or claim. Upon the receipt of such notice from the City, the Owner, at its own expense and to the satisfaction of the City, shall appeal, contest, defend or settle such legal document, process or claim on behalf of the City and shall reasonably notify the City on a periodic basis of the progress of the matter. The Owner acknowledges and agrees that the City reserves the right to elect at any time to conduct its own appeal, contestation, defence or settlement negotiations at the Owner's expense after giving notice of same to the Owner.
- 7.21 Without limiting and in addition to the Owner's obligations and the city's rights as set out in Section 16 of this Agreement, the Owner will pay to the City on demand any loss, costs, injury, damages and expenses which may be sustained, incurred or paid by the City in consequence of the matters governed by the indemnity and defence provisions of this Agreement, provided that on default of such payment all such mentioned loss, costs, injury, damages and expenses and all such moneys so paid or payable may be deducted from the Financial Security required to be provided by this Section 7 or from moneys payable by the City to the Owner on any account whatsoever or may be recovered from the Owner in a court of competent jurisdiction as moneys paid at its request.

7.22 The Owner agrees to take all precautions necessary to protect the public against injury on the Site and other lands to be developed or used for construction purposes, including without limitation City-owned lands to be used for the purpose of the construction of the Storm Sewer, and when necessary maintain illuminated danger signals at night and at such other times and places as may be required to ensure public safety, to the satisfaction of the Executive Director, ECS.

Financial Security

7.23 Prior to the earlier of Release for Construction of the Storm Sewer under subsection 7.7 of this Agreement and the issuance of the first Above Grade Building Permit for a part or all of the Site, the Owner shall provide the City with Financial Security to guarantee the satisfactory performance and completion of the Storm Sewer as shown and described in the list of drawings and reports in Schedule "E" attached hereto and all obligations required pursuant to Section 7 of this Agreement, including:

- (a) the provision of "as-built" drawings required under subsection 7.3 of this Agreement;
- (b) any claims that may be claimed against holdback as provided under the *Construction Act* in respect of work done or improvements made to lands dedicated as public streets, highways or made to other public lands; and,
- (c) workmanship and materials for a period of two years from the date the Storm Sewer is accepted in writing by the Executive Director, ECS.

7.24 The Financial Security required by this Section 7 shall be in the form of a certified cheque or a Letter of Credit or any combination thereof and shall be in an amount to be determined by the Executive Director, ECS, whose decision shall be final but in any event the amount of the Financial Security shall be no less than one hundred and twenty percent (120%) of the preliminary cost estimate attached hereto as Schedule "F".

7.25 The Owner acknowledges and agrees the Financial Security required by this Section 7 submitted to the City in the form of a certified cheque will be placed in a non-interest bearing account.

7.26 The Owner agrees that the Financial Security, as may be reduced in accordance with this Section 7, will be maintained in full force and effect until the expiry of the Maintenance Guarantee Period and the City assumes responsibility for the Storm Sewer pursuant to subsections 7.32 to 7.37, inclusive.

7.27 At the request of the Owner and with the approval of the Executive Director, ECS in his sole discretion, the Maintenance Guarantee Period may be established for stages of the

7.29 The amount of the Financial Security required by this Section 7 remaining on deposit following a reduction shall be sufficient to guarantee:

- (a) 100% of the estimated cost to complete the Storm Sewer outstanding at that time;
- (b) the provision of engineering services and other professional services required by subsections 7.2 to 7.5, inclusive of this Agreement and which are necessary to complete the Storm Sewer outstanding at that time;
- (c) the value of the holdbacks required to be retained by the Owner, or any other proper payer, under Part IV of the *Construction Act* with regard to the construction or installation of any portion of the Storm Sewer located on a public street or highway or any lands owned by the City or in which the City has an interest. The Owner agrees to submit to the City all such documentation as is necessary to verify the amount of the holdbacks required to be retained as well as any further documentation which may be required by the City; and
- (d) ten percent (10%) of the value of workmanship and materials for a minimum period of two (2) years from the date the Storm Sewer is completed and accepted in writing by the Executive Director, ECS; however,

in no event shall the amount of the reduced Financial Security be less than twenty percent (20%), of the final approved cost estimate for the Storm Sewer which the owner acknowledges and agrees has not been established to the satisfaction of the Executive Director, ECS at the time of this Agreement, and which shall be to the satisfaction of the Executive Director, ECS in their sole discretion, prior to the earlier of Release for Construction of services and Site Plan Approval for the Site and, of that twenty percent (20%), ten percent (10%) is to guarantee workmanship and ten percent (10%) is to guarantee performance of the Owner's construction lien obligations.

7.30 The Owner may be entitled to more than one reduction of the Financial Security for the Storm Sewer prior to the City assuming responsibility for the Storm Sewer provided that all the provisions of this Section 7 are complied with, to the satisfaction of the Executive Director, ECS.

7.31 Notwithstanding the provisions of this Section 7, the Owner acknowledges and agrees that no reduction in Financial Security for the Storm Sewer will be considered by the Executive Director, ECS or any other decision-maker if the Owner is in default pursuant to this Agreement.

Time Limit for Work, Acceptance and Maintenance Guarantee

- 7.32 The Owner shall complete the Storm Sewer required under this Agreement within two (2) years from the date this Agreement, except as may be specifically stated otherwise for in Schedule "E" attached hereto.
- 7.33 The Owner shall, at its sole cost and expense, warrant and guarantee the workmanship and materials of the Storm Sewer for a minimum period of two (2) years from the date that the Storm Sewer is accepted by the Executive Director, ECS (herein referred to as the "**Maintenance Guarantee Period**").
- 7.34 Upon completion of the Maintenance Guarantee Period and prior to assumption by the City of the Storm Sewer, the Owner shall provide the Executive Director, ECS with the supporting material for an administrative amendment relating to a change in ownership of the Certificate of Approval for Environmental Compliance issued for the Storm Sewer constructed pursuant to this Agreement, as follows:
- (a) A signed letter from the Owner (Certificate of Approval holder) to the Ministry of the Environment, Conservation and Parks, requesting a change in the name/address/ownership of the business indicating the date the change is to take effect;
 - (b) A copy of the Certificate(s) of Approval requiring the name/address/ownership change; and ,
 - (c) A signed letter from the Owner authorizing the transfer of ownership of the Certificate of Approval to the City.
- 7.35 The Executive Director, ECS may consider acceptance of the Storm Sewer upon receipt of "as-built" drawings in hard copy and digital form showing the final plan and profile locations of the Storm Sewer and written certification from the Owner's Consulting Engineer that the Storm Sewer has been fully and finally constructed or carried out in accordance with the accepted engineering drawings, City Standards and Specifications and good engineering practices.
- 7.36 Following completion of the Maintenance Guarantee Period and upon receipt of those items identified in subsections 7.34 and 7.35 above, the Executive Director, ECS, if satisfied with the Storm Sewer, shall, on behalf of the City, assume responsibility for the Storm Sewer. Provided that all matters related to the Storm Sewer have been completed to the satisfaction of the Executive Director, ECS, all outstanding payments and invoices have been made and the City is not aware of any claims against it in connection with the Storm Sewer to be provided in accordance with this Agreement or matters related hereto, the Executive Director, ECS shall authorize the release of the Financial Security.

improperly performing the Storm Sewer work;

- (b) the Owner is not completing the Storm Sewer in accordance with the accepted engineering drawings in Schedule "E" attached hereto, subject to the terms of this Agreement;
- (c) the Owner is not completing Storm Sewer work under this Agreement within the specified time agreed upon;
- (d) the Owner is neglecting or has abandoned the Storm Sewer work before completion;
- (e) the Owner is unreasonably delaying the Storm Sewer work with the result that the conditions and covenants of this Agreement are being violated;
- (f) the Owner is failing to complete the Storm Sewer work or has carried out faulty work, or is carrying out the work in a careless manner, or proceeding in bad faith with respect to any of the Storm Sewer work in this Agreement;
- (g) the Owner is neglecting or refusing to renew or to again perform such work as may have been rejected by the Executive Director, ECS as being defective or unsuitable; and/or
- (h) the Owner is proceeding or acting in any other manner which, in the opinion of the Executive Director, ECS, causes a default in the performance of the terms of this Agreement in respect of the Storm Sewer;

then, in any such case, the Executive Director, ECS shall notify the Owner of such default or neglect hereof and shall set out the deficiencies to be remedied.

7.39 If notification of default provided pursuant to subsection 7.38 of this Agreement is without effect, and the Owner is not proceeding to remedy or carry out the matters in default within the time specified in the notice then the Executive Director, ECS may immediately draw upon the Financial Security for the Storm Sewer to purchase such materials, tools and machinery and to employ such workers as are required for the proper completion of the Storm Sewer at the sole cost and expense of the Owner. The Owner acknowledges that the City has the right, in the case of a default by the Owner to carry out the terms of this Agreement, to enter upon the Site in order to comply with the provisions of this Agreement.

7.40 Where, in the opinion of the Executive Director, ECS, a state of emergency exists concerning the Storm Sewer or Development, any required work may be done by the City

to rectify the situation at the Owner's sole cost and expense without prior notice to the Owner. The City agrees to notify the Owner forthwith in writing of the steps being carried out. The cost and expense of such emergency work shall be calculated by the Executive Director, ECS whose decision shall be final and conclusive.

- 7.41 The authority of the Executive Director, ECS under this Section 7 shall include the right of entry onto the property by the Executive Director, ECS or by any designated employees, agents or servants, to carry out the works under this Section 7. Such entry by the City shall be as an agent for the Owner and shall not be deemed, for any purposes whatsoever, as an acceptance of the Storm Sewer or the Storm Sewer work by the City.
- 7.42 It is understood and agreed that the total costs for all work done by the City under the authority of this Section 7 exclusive of emergency work, shall include a management fee of twenty per cent (20%) of all labour, material and machine time charges incurred to complete the work, and further, a fee of thirty per cent (30%) of the charges incurred for the dislocation and inconvenience caused to the City as a result of such default on the part of the Owner. It is understood and agreed that the aforementioned costs and fees as expressed in percentages are liquidated damages and are not to be deemed to be a penalty.
- 7.43 It is hereby declared and agreed that the assumption by the Owner of the obligations imposed by this Section 7 is one of the considerations without which the City would not have executed this Agreement.

General Provisions

7.44 The Owner acknowledges and agrees with the City that:

(a) **Qualitative or Quantitative Tests**

The Executive Director, ECS may have qualitative or quantitative tests made of any materials which have been, or are proposed to be used in the construction of the Storm Sewer required by this Agreement and the cost of such tests shall be paid by the Owner no later than fourteen (14) days of the account being rendered by the City;

(b) **Relocation of Existing Services**

The Owner shall pay the cost of relocating any existing municipal infrastructure caused by the Development within fourteen (14) days of the account for same being rendered by the City;

(c) **Specifications**

(e) Siltation Control

The Owner shall, at its expense, install and maintain all siltation control devices as required by the Executive Director, ECS at all times during construction of the Storm Sewer and the Development;

(f) Damages to Municipal Infrastructure

The Owner shall at its sole cost and own expense, restore all existing municipal infrastructure that may be damaged due to activities related to the Development to the satisfaction of the Executive Director, ECS;

(g) Interest

Interest shall be payable by the Owner to the City on all sums of money payable under this Section 7 which are not paid on the due dates. The due date of any sum of money shall be thirty (30) days after the date of the invoice. The interest rate shall be prime interest rate prevailing on the due date of the invoice and the amount of the interest shall be determined by the Chief Financial Officer and Treasurer whose decision in this matter shall be final; and

(h) Soil Investigation Reports

The Owner shall provide soil investigation reports from a competent soils engineer if soil conditions warrant in the opinion and where recommended by the Consulting Engineer; and

(i) Right to Enter

The City may enter onto any part of the Site or Land, public street or lighting subject to the construction of the Storm Sewer including below grade at any time, to inspect the Storm Sewer but such inspection will not constitute the City's acceptance of the Storm Sewer or any part of the Storm Sewer.

Construction Act

7.45 The Owner agrees to comply with the provisions of the *Construction Act* including, but not limited to, ensuring that holdbacks are retained in accordance with Part IV of that Act with respect to the supply of services or materials for the Storm Sewer.

7.46 If any lien is preserved or written notice of lien given pursuant to the *Construction Act* for the supply of services or materials in connection with the construction, installation or maintenance of any portion of the Storm Sewer located on a public street or highway or

any lands owned by the City or in which the City has an interest, the Owner forthwith shall give written notice to the City of such document, process or claim.

7.47 Without limiting the Owner's obligations and the City's rights under Section 16 of this Agreement the Owner shall indemnify, defend and save the City harmless, from and against any and all claims, actions or demands made against the City in connection with the *Construction Act* and all costs incurred by the City as a result thereof. In the event that any action, cause of action, claim or other legal document or process or other alleged claim is commenced against or imposed upon the City, the City shall, forthwith, give notice to the Owner of such document, process or claim. Upon the receipt of such notice from the City, the Owner, at its own expense and to the satisfaction of the City, shall appeal, contest, defend or settle such legal document, process or claim on behalf of the City and reasonably notify the City on a periodic basis of the progress of the matter. The Owner acknowledges and agrees that the City reserves the right to elect at any time to conduct its own appeal, contestation, defence or settlement negotiations at the Owner's expense after giving notice of same to the Owner.

7.48 If any lien is preserved or written notice of lien given pursuant to the *Construction Act* for the supply of services or materials in connection with the construction, installation or maintenance of any portion of the Storm Sewer located on a public street or highway or any lands owned by the City or in which the City has an interest, the Owner shall be considered to be in default in accordance with the terms of this Agreement, until all such claims for lien, together with any associated certificates of action, are discharged or vacated or such written notices of lien are withdrawn or a Court declaration is obtained that the written notices of lien are no longer binding or that the related liens have expired.

7.49 The Owner acknowledges and agrees that no reduction in Financial Security for the Storm Sewer will be considered if the Owner is in default of the provisions of this Section 7.

8 ARCHITECTURAL FEATURES

8.1 Pursuant to the Development Review Process for the Site but in any event prior to the Site Plan Approval for the Site, the Owner shall cause the preparation of and submit plans and drawings to the satisfaction of the Chief Planner identifying the architectural features of the tower component of the Development on the Site, including the expression of the mega columns, diagonal hangers and retail level articulation and cladding and the Owner shall enter into a Site Plan Agreement with the City to secure same to the satisfaction of the Chief Planner in consultation with the City Solicitor.

9 PET AMENITY AREA

9.1 Pursuant to the Development Review Process for the Site but in any event prior to Site Plan Approval for the Site the Owner shall, at its sole cost and expense, cause the

The Owner shall construct and maintain the Development in accordance with Tier 2 performance measures of the Toronto Green Standard.

11 OPERATIONS MANAGEMENT PLAN

11.1 Pursuant to the Development Review Process of the Site but in any event prior to Site Plan Approval for the Site, the Owner shall provide and thereafter implement a plan which addresses the management of all vehicular parking spaces on the Site as a part of the Development, the valet service for the Development on the Site, the manoeuvring of vehicles within the Site as a part of the Development, and a master plan for the loading dock on the Site as a part of the Development, all to the satisfaction of the General Manager, Transportation Services and the Executive Director, ECS.

11.2 The City acknowledges and agrees that at the request of the local community groups the Development will be served by private solid waste collection service and as such the Owner shall not be required to construct the Development to the City's solid waste collection standards related to the entry and exit of City solid waste collection service trucks from the Site. Nothing in this subsection 11.2 shall prevent the City from any future exemptions for the Development on the Site which may facilitate the City's election to provide solid waste collection and recycling service for the Development. Prior to Site Plan Approval for any or all of the Site, the Owner shall provide a waste management plan, to the satisfaction of the Executive Director, ECS in consultation with General Manager, Solid Waste Management Services.

12 PEDESTRIAN PATH CONNECTION

12.1 If the Pedestrian Path Connection Contribution is used by the City for the Pedestrian Path Connection then the Owner shall, no later than three hundred and sixty-five days (365) after receiving written notice from the City of its intention to use the Pedestrian Path Connection Contribution for the Pedestrian Path Connection:

- (a) continue to use its best efforts to secure an agreement or agreements with the registered owner of the lands municipally known in the year 2019 as 2 Bloor Street West, City of Toronto and the registered owners of the lands abutting the Site to the west municipally known in the year 2019 as 15 Bloor Street West to provide the Pedestrian Path Connection, to the satisfaction of the Chief Planner and the City Solicitor;
- (b) submit a detailed engineering design for the Pedestrian Path Connection, to the satisfaction of the Chief Planner, the General Manager, Transportation Services, and the Executive Director, ECS;

- (c) submit an application to the Right-of-Way Management Section of Transportation Services and enter into a tunnel agreement with the City in respect of Pedestrian Path Connection, all to the satisfaction of the General Manager, Transportation Services and the Executive Director, ECS, and City Solicitor;
- (d) enter into a license agreement with the City permitting the encroachment of the Pedestrian Path Connection and make all payments of consideration and fees thereunder, to the satisfaction of the City Solicitor, in consultation with the Director, Real Estate Services; and
- (e) register a grant of easement in perpetuity to the City for nominal consideration through the portion of the PATH Connection located within the Site for the purpose of pedestrian use by the general public and the City, its officials, employees and agents, including all necessary rights of support (herein referred to as the "Pedestrian Path Connection Easement"), to the satisfaction of the City Solicitor. The Pedestrian Path Connection Easement shall be free and clear of all physical encumbrances and obstructions save and except for any physical encumbrances and obstructions that may be permitted by, and at the sole discretion of, the Chief Planner pursuant to the Development Review Process,

all at no expense to the City.

12.2 The Owner acknowledges and agrees that, if the City exercises its option and provides notice as set out in subsection 12.1 of this Agreement, the Owner shall not be entitled to any set-off, reimbursement or cost-recovery from the City for costs incurred by the Owner which are necessary to facilitate the Pedestrian Path Connection including, but not limited to,

- (a) the Owner's provision of the knock-out panels as a part of the Development on the Site as required by this Agreement and the Development Review Process,
- (b) the Owner's engineering and design fees for the Pedestrian Path Connection,
- (c) the Owner's head office, administration, overhead and legal costs,
- (d) the Owner's costs associated with the provision of any insurance for the Pedestrian Path Connection,
- (e) the fair market value of pedestrian access rights through the Pedestrian Path Connection, and

- 13.2 The Owner acknowledges and agrees the required parkland dedication for the Development as required pursuant to section 42 of the *Planning Act* and the Toronto Municipal Code is equal to the monetary value of two hundred and forty-five (245) square metres of the Site.
- 13.3 Subject to the terms of this Agreement, the Ownership Group agrees to provide, and the City agrees to accept, the Numbered Company's conveyance of the Off-site Parkland to the City as a partial fulfillment of the required parkland dedication in respect of the Development. The Numbered Company warrants and represents that at the time of this Agreement the Numbered Company has the power of disposition of the Off-site Parkland.
- 13.4 Immediately following the satisfaction of the Ownership Group's obligations described in subsection 13.7 of this Agreement, but in any event no later than the earlier of
- (1) the registration of a condominium for all or a part of the Site;
 - (2) the first occupancy of all or a part of the Site; and
 - (3) October 29, 2020, unless otherwise extended in writing by and at the sole discretion of the General Manager, Parks, Forestry and Recreation to a later date,
- (the earliest of said events herein referred to as the "**Conveyance Date**") the Numbered Company shall, for nominal consideration, convey to the City the Off-site Parkland in fee simple and deliver to the City the vacant possession of the Off-site Parkland, free and clear of all physical obstructions and encumbrances above, upon, and below the surface of the Off-site Parkland consistent with the list of works described at subsection 1.1(i)(i) of this Agreement, unless otherwise permitted in writing by the General Manager, PFR or as otherwise permitted by this Agreement, and free and clear of all title encumbrances in accordance with this Agreement, to the satisfaction of the City Solicitor.
- 13.5 Prior to the issuance of the first Above Grade Building Permit for all or a part of the Site, the Ownership Group shall deliver a Letter of Credit to the City in an amount equivalent to one hundred percent (100%) of the monetary value to the Off-site Parkland on the day before the day the first Above Grade Building Permit is issued for all or a part of the Site to secure the Numbered Company's conveyance of the Off-site Parkland to the City in accordance with this Agreement, to the satisfaction of the General Manager, PFR. The Ownership Group acknowledges and agrees that the monetary value of the required Letter of Credit shall be determined by the Director, Real Estate Services. If, prior to the registration of the conveyance of the Off-site Parkland to the City as contemplated under this Agreement, the LPAT determines pursuant to its authority under section 42 of the *Planning Act* that the value of the Off-site Parkland is greater than the value of the Letter

of Credit as determined by the Director, Real Estate Services, the Ownership Group shall provide the City with a replacement Letter of Credit in an amount equivalent to the value of the Off-site Parkland as determined by the LPAT no later than 15 days following the issuance of the LPAT's written decision. In the event that the Numbered Company does not convey the Off-site Parkland to the City on or prior to the Conveyance Date, then at any time after the Conveyance Date the City shall be entitled to draw down from the Letter of Credit or the replacement Letter of Credit, as the case may be, at the sole discretion of the General Manager, PFR and, upon doing so, the Numbered Company shall be released from its obligation to convey the Off-site Parkland to the City and the Ownership Group agrees that it shall not bring any claims or actions against the City in respect of any costs incurred by the Ownership Group in respect of the Off-site Parkland. Notwithstanding and despite the City's right to draw down from the Letter of Credit or the replacement Letter of Credit, the City is under no obligation to draw down from the Letter of Credit or the replacement Letter of Credit after the Conveyance Date. If the Numbered Company conveys the fee simple interest in the Off-site Parkland to the City prior to the City drawing down on the Letter of Credit or replacement Letter of Credit, as the case may be, then the City shall return the Letter of Credit or replacement Letter of Credit to the Owner upon the certification of the conveyance by the Land Registry Office.

- 13.6 If, on the day before the day the first Above Grade Building Permit is issued for all or a part of the Site, the monetary value of the Off-site Parkland is less than one hundred percent (100%) of the monetary value of the parkland dedication required for the Development as described in subsection 13.2 of this Agreement, then prior to the issuance of said Above Grade Building Permit the Ownership Group shall make a cash payment to the City in Canadian funds in the amount of the difference between the monetary value of the parkland dedication requirement for the Development as set out in subsection 13.2 of this Agreement and the monetary value of the Off-site Parkland, said cash payment to be made in partial fulfillment of the required parkland dedication as set out in subsection 13.2 of this Agreement, to the satisfaction of the General Manager, PFR. The Ownership Group acknowledges and agrees that for the purpose of this subsection 13.6 the monetary value of the required parkland dedication for the Development and the monetary value of the Off-site Parkland shall be determined by the Director, Real Estate Services whose decision shall be final unless paid under protest and appealed to the LPAT.

Environmental Compliance

- 13.7 Prior to the registration of the conveyance in fee simple of the Off-site Parkland from the Numbered Company to the City and subject to subsection 22.2 of this Agreement, the Ownership Group shall complete an environmental assessment of the Off-site Parkland, to the satisfaction of the Executive Director, ECS in consultation with the General Manger, PFR and shall:

- (b) Pay all costs associated with the City retaining a third-party peer reviewer including all administrative costs to the City (7%), and submit an initial deposit of \$8,000.00 towards the cost of the peer review in the form of a certified cheque, to the Executive Director, ECS, and submit further deposits when requested to cover all costs of retaining a third-party peer reviewer in respect to each conveyance;
- (c) Submit, to the satisfaction of the City's third-party peer reviewer and the Executive Director, ECS, all environmental site assessment reports prepared in accordance with Ontario Regulation 153/04, describing the current conditions of the off-site parkland and the proposed remedial action plan based on the site condition standards approach;
- (d) At the completion of the site assessment/remediation process, submit a Statement from the Qualified Person based on the submitted environmental documents, to the Executive Director, ECS for peer review and concurrence, which states:
 - (i) In the opinion of the Qualified Person:
 - (1) It is either likely or unlikely that there is off-site contamination resulting from past land uses on the off-site parkland that has migrated onto adjacent City lands that would exceed the applicable Site Condition Standards; and
 - (2) To the extent that the opinion in subsection d(i)(1) is that past migration is likely, it is either possible or unlikely that such off-site contamination on adjacent City lands poses an adverse effect to the environment or human health.
 - (ii) The Off-site Parkland meets either:
 - (1) the applicable Ministry of the Environment, Parks and Conservation Generic Site Condition Standards (Tables 1, 2, 3, 6, 7, 8 and 9; subject to applicable exemptions as stated in Ontario Regulation 153/04) for the most environmentally sensitive adjacent land use; or
 - (2) the Property Specific Standards as approved by the Ministry of the Environment, Parks and Conservation for a Risk Assessment/Risk Management Plan which was conducted in accordance with the conditions set out herein.

- (e) The Qualified Person's statement, referenced in subsections (a) and (d) above, will include a Reliance Letter that is dated and signed by the applicant's Qualified Person, as defined in Ontario Regulation 153/04, confirming that both the City and the City's third-party peer reviewer can rely on the environmental documentation submitted, consistent with Ontario Regulation 153/04 requirements, and the Qualified Person's opinion as to the conditions of the Off-site Parkland; all environmental documentation consistent with Ontario Regulation 153/04 requirements and opinions shall be submitted with reliance extended to the City and its third-party peer reviewer and any limitation on liability and indemnification is to be consistent with Ontario Regulation 153/04 insurance requirements or such greater amount specified by the Executive Director, ECS.

- (f) For conveyance of the Off-site Parkland requiring a Record of Site Condition:
 - (i) File the Record of Site Condition on the Ontario Environmental Site Registry; and

 - (ii) Submit the Ministry of the Environment, Parks and Conservation's Letter of Acknowledgement of Filing of the Record of Site Condition or letter or acceptance of filing of the Record of Site Condition confirming that the Record of Site Condition has been prepared and filed in accordance with Ontario Regulation 153/04, to the satisfaction of the Executive Director, ECS.

Park Improvements

13.8 The Ownership Group shall, at its sole cost and expense, complete all Base Park Improvements to the Off-site Parkland no later than three hundred and sixty-five (365) days after the issuance of the first Above Grade Building Permit for a part or all of the Site, to the satisfaction of the General Manager, PFR. Unforeseen delays resulting in the late completion of the Base Park Improvements to the Off-site Parkland may be taken into consideration and the date for completion of the Base Park Improvements may be extended at the sole discretion of the General Manager, PFR. Notwithstanding and despite this subsection 13.8, the Ownership Group agrees that in the event the first Above Grade Building Permit is issued for any part or all of the Site prior to the Conveyance Date then the works described in subsection 1.1(i)(i) of this Agreement shall be completed prior to the Conveyance Date.

13.9 Prior to the issuance of the first Above Grade Building Permit for any part or all of the Site, the Ownership Group shall submit a cost estimate and any necessary plans for the Base Park Improvements, to the satisfaction of the General Manager, PFR.

- of the Off-site Parkland to the City, prior to commencing any such work the Ownership Group must enter into a Park Access Agreement (PAA) with the City, to the satisfaction of the General Manager, PFR.
- 13.12 Prior to conveyance of the Off-site Parkland Dedication, the Ownership Group shall install and thereafter maintain temporary fencing along the boundary of the Off-site Parkland, to the satisfaction of the General Manager, PFR, until such time as the Base Park Improvements are completed by the Owner, to the satisfaction of the General Manager, PFR.
- 13.13 The Ownership Group shall ensure, at all times, that the grading and drainage for the Off-site Parkland is compatible with the grades of the adjacent lands, to the satisfaction of the General Manager, PFR.
- 13.14 The Ownership Group shall, prior to bringing any fill and topsoil onto the Off-site Parkland, provide the General Manager, PFR with documentation from a qualified environmental engineer that said fill and topsoil brought meets all applicable laws, regulations and guidelines for use in a public park, to the satisfaction of the General Manager, PFR.
- 13.15 The Ownership Group covenants and agrees that it shall not provide improvements to the Off-site Parkland above Base Park Improvements and the Ownership Group agrees it shall not be eligible for nor shall it request from the City a credit against the Parks and Recreation component of Development Charges payable for the Development in the event, notwithstanding and despite its covenant contained in this subsection 13.15, the Ownership Group provides improvements to the Off-site Parkland above Base Park Improvements.
- 13.16 Upon completion of the construction and installation of the Base Park Improvements the Ownership Group shall guarantee all work and associated materials to the satisfaction of the General Manager, PFR. The Ownership Group shall provide certification from their Landscape Architect certifying that all Base Park Improvements have been completed in accordance with the approved drawings.
- 13.17 All design and tender drawings as well as construction documents shall be submitted for review and approved by the General Manager, PFR before any agreement is entered into by the owner for the construction of the Base Park Improvements. The said tender and construction documents as approved by the General Manager, PFR shall thereafter constitute the "**Approved Park Design Plans**".
- 13.18 The Ownership Group shall, prior to issuance of a tender to construct the Base Park Improvements, provide the General Manager, PFR with:

- (a) Copies of all relevant project documentation including documentation released to proposed contractors or subcontractors in respect of the Base Park Improvements and the results of responses received;
 - (b) All plans and drawings, to be submitted to any contractor retained by the Owner; and
 - (c) A description of the proposed products and materials.
- 13.19 The Ownership Group shall not commence the construction of the proposed Base Park Improvements without first having given reasonable prior written notice that it intends to do so to the General Manager, PFR.
- 13.20 The General Manager, PFR will be given access to and opportunity to participate in all construction meetings and the Ownership Group will notify the General Manager, PFR of all meetings and any critical or emergency meetings (with a minimum two (2) business days' notice, where feasible, so the City can arrange to attend).
- 13.21 The General Manager, PFR shall be entitled, at any reasonable time, from time to time, without giving prior notice, to enter upon the lands to inspect the construction of the Base Park Improvements, including progress and quality of work, and all contracts for the construction of the Base Park Improvements shall make appropriate provision for the same.
- 13.22 The Owner and the City acknowledge and agree that:
- (a) All proposed changes to the construction contract(s), including change orders, are required to be submitted for prior approval to the General Manager, PFR for review in a reasonably prompt and timely manner; and
 - (b) The General Manager, PFR reserves the right to have changes removed at the Owner's cost, in the event they are made without the prior approval of General Manager, PFR
- 13.23 The Ownership Group shall complete the Base Park Improvements in accordance with the materials described in subsection 13.17 and with the terms of this Agreement to the satisfaction of the General Manager, PFR. Following completion of the Base Park Improvements the Ownership Group shall contact the General Manager, PFR to initiate inspections by City Staff and consideration by the General Manager, PFR of acceptance of the Off-site Parkland by the City (herein referred to as "**Park Acceptance**").
- 13.24 Prior to Park Acceptance by the City, the Ownership Group shall, to the satisfaction of the

Improvements to the City by the Owner as required by this Agreement;

- (d) Cause the Landscape Architect to provide the General Manager, PFR with a Park Completion Certificate verifying the Base Park Improvements have been completed in accordance with the materials described in subsection 13.17 of this Agreement and the date of such completion, accompanied by the documentation and materials referenced in subsection 13.25 of this Agreement;
- (e) Provide documentation from a qualified environmental engineer certifying that any fill or topsoil brought onto the lands comprising the Off-site Parkland met all applicable laws, regulations and guidelines for use in a public park; and
- (f) Have satisfied the environmental obligations set out in this Agreement; and
- (g) Provide any other materials or documents as may be deemed relevant and necessary by the General Manager, PFR.

13.25 The Landscape Architect shall append the following to the Park Completion Certificate to the satisfaction of the General Manager, PFR:

- (a) A description of the Base Park Improvements and a statement as to the date of completion;
- (b) Confirmation that the final payment has been issued with respect to the Base Park Improvements;
- (c) All documentation and certificates relating to the *Construction Act*, confirming that there are no liens registered against the Off-site Parkland;
- (d) All requisite compliance letters, certificates, inspection and test results, including environmental compliance contemplated herein;
- (e) All licenses or permits for equipment or systems;
- (f) All owner's and maintenance manuals for any and all equipment, machinery, devices and appurtenances;
- (g) A complete set of as-built drawings in hard copy (two (2) full size bond and one (1) set 11x17 format) and digital format (CD or USB, in the latest version of AutoCAD, and as PDFs) which include but are not limited to specifications, locations of all hidden services, and all deviations from the design drawings, shop drawings, inspection reports, minutes of meetings, site instructions, change orders, invoices,

certificates, progress images, warranties, close out documentation, compliance letters (for any play structures and safety surfaces), manuals, etc. The files are to be organized in folders, including a file index and submitted;

- (h) Certified grading plans,
- (i) All warranties, certificates or documents for all equipment, machinery, devices and systems as transferred to the City;
- (j) Spare or replacement parts, special tools and other such items as may be provided by the manufacturer;
- (k) A statement as to the actual total cost of the Base Park Improvements as constructed; and
- (l) Such other types of information or materials relating to the Base Park Improvements as may be relevant.

13.26 Within a reasonable time of receipt of the Park Completion Certificate from the Landscape Architect, the General Manager, PFR shall forward to the Ownership Group and the Landscape Architect either:

- (a) A notice of acceptance of the Park Completion Certificate (herein referred to as a "**Notice of Park Acceptance**") in which case the Park Completion Certificate shall be deemed to be approved (and hereinafter, the approved Park Completion Certificate shall be referred to as the "**Approved Park Completion Certificate**"); or
- (b) A list of deficiencies (herein referred to as a "**Park List of Deficiencies**").

13.27 Upon receipt of a Park List of Deficiencies, the Ownership Group:

- (a) Shall promptly remedy any defects or deficiencies contained therein; and
- (b) Upon completion, cause the Landscape Architect to issue a replacement Park Completion Certificate and accompanying materials as applicable.

13.28 Upon receipt of a replacement Park Completion Certificate from the Landscape Architect pursuant to subsection 13.27 above, the General Manager, PFR shall, if satisfied, issue a Notice of Park Acceptance and the replacement Park Completion Certificate shall be deemed to be the Approved Park Completion Certificate.

or demands.

- 13.30 Upon issuance of the Notice of Park Acceptance, the General Manager, PFR, may reduce the Letter of Credit for the Base Park Improvements held pursuant to this Section 13, retaining an amount equivalent to twenty percent (20%) of the original amount of each of the Base Park Improvements Letter of Credit to guarantee quality of work and materials for two (2) years.
- 13.31 The Ownership Group shall correct or cause to be corrected at its own expense and to the satisfaction of the General Manager, PFR any defects or deficiencies, that are not the result of lack of maintenance or improper maintenance by the City in any portion of the Base Park Improvements appearing within a period of two (2) years after the Park Completion Certificate has been given together with any damage to any other portions of the Park Improvements resulting from any such corrections (herein referred to as the "**Park Warranty Period**").
- 13.32 If the General Manager, PFR deems at any time during such Park Warranty Period that any of Base Park Improvements are defective or unsuitable, the General Manager, PFR may, following thirty (30) days' notice having been provided to the Ownership Group in writing, may give the Ownership Group an opportunity to remedy defective or unsuitable work, or draw on the Letter of Credit provided by the Owner in this Section 13, and apply such monies to pay for part or all of the costs to correct such deficiencies or to do such maintenance as may be necessary, including the City's management fee equal to twenty percent (20%) of the total cost of the required work. It is understood that the cost of workers employed to do such work, whether or not such workers are normally employed by the City, may be paid for by drawing on the said Letter of Credit.
- 13.33 Not later than thirty (30) days prior to expiry of the Park Warranty Period for the Park Improvements, the Ownership Group shall arrange with the General Manager, PFR for a final inspection of that portion of the Park Improvements and shall deliver a final acceptance certificate (herein referred to as the "**Final Park Acceptance Certificate**") from the Landscape Architect in a form satisfactory to the General Manager, PFR certifying there are no defects or deficiencies in such Base Park Improvements referred to therein and upon receipt of such Final Park Acceptance Certificate and provided that the General Manager, PFR is satisfied that there are no outstanding defects or deficiencies, the General Manager, PFR shall so advise the Ownership Group in writing and the Park Warranty Period shall expire for such Park Improvements upon the expiry of the Park Warranty Period at which time the Park is fully assumed by the City.
- 13.34 If the Ownership Group fails to arrange the final inspection of any Base Park Improvements with the General Manager, PFR within the time frame provided for in this

Section 13, the Park Warranty Period and Ownership Group's warranty respecting such Base Park Improvements shall be deemed to be extended until the date of such final inspection, certificate delivery and acceptance thereof.

- 13.35 Notwithstanding any other provision of this Agreement, if at any time the General Manager, PFR in his or her sole discretion is dissatisfied with the progress of the Ownership Group in implementing the Base Park Improvements process, the General Manager, PFR may, following thirty (30) days' notice having been provided to the Ownership Group in writing giving the Ownership Group an opportunity to address the concerns of the General Manager, PFR, in its unfettered discretion draw on the Letter of Credit provided by the Ownership Group under this Section 13 and apply such monies to pay for part or all of the costs to complete the implementation of the park improvement process, including the City's management fee equal to twenty percent (20%) of the total cost of the required work. It is understood that the cost of workers employed to do such work, whether or not such workers are normally employed by the City, may be paid for by drawing on said Letter of Credit.
- 13.36 Upon the expiry of the Parkland Warranty Period, the outstanding amount to the Letter of Credit originally provided by the Ownership Group for Base Park Improvements pursuant to this Section 13 shall be released by the General Manager, PFR to the Ownership Group provided that all deficiencies have been rectified to the satisfaction of the General Manager, PFR.
- 13.37 Concurrently with the execution of this Agreement among the Owner, the Numbered Company, and the City, the Numbered Company shall register a Section 118 Restriction on title to the Off-site Parkland, in a form and with priority to the satisfaction of the City Solicitor, pursuant to the *Land Titles Act*, restricting any transfer or charge of the Off-site Parkland without the prior written consent of the General Manager, PFR.
- 13.38 Prior to providing consent to a charge or transfer of the Off-site Parkland, the General Manager, PFR shall require:
- (a) a transferee to enter into and register against the Off-site Parkland or such portion thereof as the General Manager, PFR and City Solicitor agree is appropriate, a direct agreement with the City to assume all obligations of the Numbered Company relating to the Off-site Parkland, in a form and with priority to the satisfaction of the City Solicitor; and
 - (b) a chargee to enter into and register against the title to the Off-site Parkland a direct agreement with the City, in a form and with priority to the satisfaction of the City Solicitor, providing that in the event the chargee takes possession of or transfers the Off-site Parkland or any portion thereof the chargee shall assume all

submit plans and drawings to the satisfaction of the Chief Planner, identifying knock-out panels in a number, location, and dimension along the concourse level and in the underground parking garage levels of the Development on the Site, to the satisfaction of the Chief Planner, for the purpose of future vehicular connections and ramps, located within Parcel 1 as shown on Diagram 3 within Schedule "B-1" attached hereto and within Parcel 1 as shown on Map 2 within Schedule "B-2" attached, to the satisfaction of the Chief Planner.

- 15.2 Pursuant to the Development Review Process for the Site but in any event prior to Site Plan Approval for any part or all of the Site, the Owner shall cause the preparation of and submit, plans and drawings, to the satisfaction of the Chief Planner, identifying knock-out panels in a number, location, and dimension along the concourse level of the Development, to the satisfaction of the Chief Planner, for the purpose of facilitating connections to the Pedestrian Path Connection, and the Owner shall enter into a Site Plan Agreement with the City to secure the provision of same, to the satisfaction of the Chief Planner in consultation with the City Solicitor.

16 INDEMNITY

- 16.1 The Owner will well and truly save, defend and keep harmless and fully indemnify the City and each of its elected officials, officers, employees and agents of, from and against all manner of actions, suits, claims, executions and demands which may be brought against or made upon the City, its elected officials, officers, employees and agents or any of them and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the City, its elected officials, officers, employees and agents, or any of them, by reason of, or on account of, or in consequence of the fulfillment by the Owner of its obligations under this Agreement including the default or breach by the Owner of its obligations under this Agreement or by reason of any negligence or willful default of the Owner, its officers, employees, agents or persons acting under its direction in connection with the Owner's obligations hereunder. The Owner will pay to the City and to each such elected official, officer, employee or agent on demand any loss, costs, damages and expenses which may be sustained, incurred or paid by the City or by any of its elected officials, officers and agents in consequence of any such action, suit, claim, lien, execution or demand and any monies paid or payable by the City or any of its elected officials, officers, employees or agents in settlement of or in discharge or on account thereof. Such indemnity shall include, but not be limited to, any loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the City as a result of the environmental remediation in respect of the Site, or failure to perform the same, including any arising from or in any way connected with any contaminant left on or below the Site, created as a result of the Development. The Owner releases the City and each of its elected officials, officers, employees and agents of, from and against all manner

of actions, suits, claims, executions and demands which could be brought against or made upon the City, its elected officials, officers, employees and agents or any of them and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the Owner by reason of, or on account of, or in consequence of the fulfillment of their respective obligations or exercise of their respective powers under this Agreement, provided, however, that such release shall not apply to any loss, costs, charges, damages, liens and expenses incurred by the Owner arising from the gross negligence and/or willful misconduct of the City, its officers, employees, agents or persons for whom it is responsible in law. Any amounts owing to the City pursuant to the obligation of the Owner to indemnify the City pursuant to the terms of this Agreement may be collected by the City, in addition to any other remedies it may have, as taxes with all such amounts to be payable as directed by City Council pursuant to section 386 of the *City of Toronto Act, 2006*.

- 16.2 The Numbered Company will well and truly save, defend and keep harmless and fully indemnify the City and each of its elected officials, officers, employees and agents of, from and against all manner of actions, suits, claims, executions and demands which may be brought against or made upon the City, its elected officials, officers, employees and agents or any of them and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the City, its elected officials, officers, employees and agents, or any of them, by reason of, or on account of, or in consequence of the fulfilment by the Numbered Company of its obligations under this Agreement including the default or breach by the Numbered Company of its obligations under this Agreement or by reason of any negligence or willful default of the Owner, its officers, employees, agents or persons acting under its direction in connection with the Numbered Company's obligations hereunder. The Numbered Company will pay to the City and to each such elected official, officer, employee or agent on demand any loss, costs, damages and expenses which may be sustained, incurred or paid by the City or by any of its elected officials, officers and agents in consequence of any such action, suit, claim, lien, execution or demand and any monies paid or payable by the City or any of its elected officials, officers, employees or agents in settlement of or in discharge or on account thereof. Such indemnity shall include, but not be limited to, any loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the City as a result of the environmental remediation in respect of the Off-site Parkland, or failure to perform the same, including any arising from or in any way connected with any contaminant left on or below the Off-site Parkland, created as a result of the Development. The Numbered Company releases the City and each of its elected officials, officers, employees and agents of, from and against all manner of actions, suits, claims, executions and demands which could be brought against or made upon the City, its elected officials, officers, employees and agents or any of them and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the

- 16.3 If the City is made a party to any action, suit or proceeding, in respect of a claim to which the Owner's obligation to indemnify the City under the provisions of this Section 16 extends, the City shall inform the Owner fully of such claims and the Owner may defend such action, suit or proceedings in the name of the City and the City shall afford the Owner every reasonable cooperation in the defense of such action, suit or proceeding, and the Owner may, in such event, elect to pay and satisfy any such claim.
- 16.4 If the City is made a party to any action, suit or proceeding, in respect of a claim to which the Numbered Company's obligation to indemnify the City under the provisions of this Section 16 extends, the City shall inform the Numbered Company fully of such claims and the Numbered Company may defend such action, suit or proceedings in the name of the City and the City shall afford the Numbered Company every reasonable cooperation in the defense of such action, suit or proceeding, and the Numbered Company may, in such event, elect to pay and satisfy any such claim.
- 16.5 The obligations of the Owner and the Numbered Company to defend and release the City under the provisions of this Agreement shall survive any termination or release in whole or in part of this Agreement, notwithstanding anything in this Agreement to the contrary.
- 16.6 The Owner shall take all precautions reasonably necessary to protect the public against injury on the Site and other lands external to the Site to be developed or serviced pursuant to the terms thereof and, when necessary, maintain illuminated danger signals at night and at such other times and places as public safety may require, including when the City undertakes works for its own services, facilities and infrastructure at or in the vicinity of the Site.
- 16.7 The Numbered Company shall take all precautions reasonably necessary to protect the public against injury on the Off-site Parkland and other lands external to the Off-site Parkland to be developed or serviced pursuant to the terms thereof and, when necessary, maintain illuminated danger signals at night and at such other times and places as public safety may require, including when the City undertakes works for its own services, facilities and infrastructure at or in the vicinity of the Off-site Parkland.

17 SPECIFIC PERFORMANCE

- 17.1 The Ownership Group acknowledges and agrees that any breach of this Agreement by the Ownership Group would not be adequately compensated by payment of damages and, accordingly, the Owner and the Numbered Company admit that specific performance is an appropriate form of remedy in the event of default by the Ownership Group.

18 BUILDING OFFICIAL MAY REFRAIN FROM ISSUANCE OF BUILDING PERMIT

- 18.1 The Ownership Group acknowledges and agrees that despite the *Building Code Act, 1992* or any other statute of the Province of Ontario, the Chief Building Official shall not issue, or be required to issue, nor shall the Ownership Group demand or be entitled to receive, any Building Permit while the Owner is in default of its obligations under this Agreement.
- 18.2 The Ownership Group acknowledges and agrees that the provisions of this Section 18 may be pleaded by the City as an estoppel against a plaintiff/defendant by counterclaim in any proceedings of any nature or kind whatsoever against the Chief Building Official or the City or any of its employees or officials, as a result of the non-issuance or revocation of a Building Permit.
- 18.3 The Ownership Group agrees that wherever the provisions of this Agreement permit the City to refuse to process or issue a Building Permit such provisions shall apply equally to the Chief Building Official.

19 TAXES

- 19.1 The Ownership Group acknowledges and agrees to pay, and shall fully indemnify the City in respect of any taxes, including those levied under the *Excise Tax Act*, associated with the benefit to the City of any facility, service, matter or thing referenced in this Agreement and provided to the City for the benefit of the City by the Ownership Group, including any service, matter or thing required under section 114 of the *City of Toronto Act, 2006* provided:
- (a) such indemnity shall be net of any rebate available to the City; and
 - (b) the Ownership Group may defend against the imposition of such taxes in the name of the City provided that the Owner may, in such event, elect to pay and satisfy any such claim for taxes in which event the City shall inform the Owner fully of such claim for taxes and shall offer the Owner every co-operation in the defense of said claim for taxes.

20 FACILITIES, WORKS AND MATTERS/ENFORCEMENT

- 20.1 The Ownership Group agrees that certain facilities, works, matters and payments required by this Agreement shall be provided and maintained by the Ownership Group at its sole risk and expense and to the satisfaction of the City. In addition, the Ownership Group agrees, that upon failure by it to do any act that is required by this Agreement, the City may, in addition to any other remedy under this Agreement, enter upon the Site or the Off-site Parkland if necessary and do the said act at the Ownership Group's expense and collect the cost in like manner as municipal taxes as provided for in section 386 of the *City*

21 **REGISTRATION OF THIS AGREEMENT, TITLE & POSTPONEMENTS**

The Owner and the Site

- 21.1 The Owner warrants that at the date of execution of this Agreement it is the registered and beneficial owner in fee simple of the Site, being the lands described in Schedule "A-1".
- 21.2 The Owner hereby agrees that at the request of the City Solicitor and at its sole cost and expense that this Agreement or a notice thereof shall be registered on title to the Site, to the satisfaction of the City Solicitor.
- 21.3 The Owner shall do such things and obtain such discharges, releases or postponements of any interest in or encumbrance of the Site as are required at the sole discretion and to the satisfaction of the City Solicitor to ensure that this Agreement, once registered, shall have priority over any interest, other than the Owner's fee simple interest and such encumbrances as may be included in the Owner's solicitor's opinion to be provided in the form of the Title Opinion For The Registration Of This Agreement in accordance with the terms of this Agreement.
- 21.4 Prior to the registration of this Agreement against the title to the Site, the Owner shall, at its sole cost and expense, provide to the City Solicitor a title opinion from the Owner's solicitors, being solicitors in good standing and licensed to practice in the Province of Ontario, addressed to the City Solicitor and substantially in the form of the Title Opinion For The Registration Of This Agreement, with such modifications as may be acceptable to the City Solicitor in her sole and unfettered discretion, opining that
- (a) the Owner is the registered owner in fee simple of the Site;
 - (b) this Agreement shall have priority over any interest other than encumbrances which may be permitted by the City Solicitor, in her sole and unfettered discretion, and
 - (c) with respect to the encumbrances which may be permitted by the City Solicitor in her sole discretion the Owner's solicitor is of the opinion that there are no liens, charges, mortgages or other security interests or options to purchase, leases or options to lease, or similar rights contained therein, or restrictions which could result in the exercise of rights and remedies by the holders thereof such that the City could not enforce the provisions of this Agreement, against the said holders and the party or parties in possession or control of the Development or operation of the Site, or which could prevent or hinder the City from exercising the rights set

out in any transfer or grant of easement, as the case may be, required by this Agreement.

The Numbered Company and the Off-site Parkland

- 21.5 The Numbered Company warrants that at the date of execution of this Agreement it is the registered and beneficial owner in fee simple of the Off-site Parkland, being the lands described in Schedule "A-2".
- 21.6 The Numbered Company hereby agrees that at the request of the City Solicitor and at its sole cost and expense that this Agreement or a notice thereof shall be registered on title to the Off-site Parkland, to the satisfaction of the City Solicitor.
- 21.7 The Numbered Company shall do such things and obtain such discharges, releases or postponements of any interest in or encumbrance of the Off-site Parkland as are required at the sole discretion and to the satisfaction of the City Solicitor to ensure that this Agreement, once registered, shall have priority over any interest, other than the Numbered Company's fee simple interest and such encumbrances as may be included in the Numbered Company's solicitor's opinion to be provided in the form of the Title Opinion For The Registration Of This Agreement in accordance with the terms of this Agreement.
- 21.8 Prior to the registration of this Agreement against the title to the Off-site Parkland, the Numbered Company shall, at its sole cost and expense, provide to the City Solicitor a title opinion from the Numbered Company's solicitors, being solicitors in good standing and licensed to practice in the Province of Ontario, addressed to the City Solicitor and substantially in the form of the Title Opinion For The Registration Of This Agreement, with such modifications as may be acceptable to the City Solicitor in her sole and unfettered discretion, opining that
- (a) the Numbered Company is the registered owner in fee simple of the Off-site Parkland;
 - (b) this Agreement shall have priority over any interest other than encumbrances which may be permitted by the City Solicitor, in her sole and unfettered discretion, and
 - (c) with respect to the encumbrances which may be permitted by the City Solicitor in her sole discretion the solicitor is of the opinion that there are no liens, charges, mortgages or other security interests or options to purchase, leases or options to lease, or similar rights contained therein, or restrictions which could result in the exercise of rights and remedies by the holders thereof such that the City could not enforce the provisions of this Agreement, against the said holders and the party or parties in possession or control of the Off-site Parkland or operation of the Off-site

Easement:

- (a) the legal description of land to be conveyed, including the description of dominant and servient lands subject to an easement shall be to the satisfaction of the City Solicitor, in her sole and unfettered discretion;
- (b) all registration documents relating to the land to be conveyed including all survey(s) and or reference plan(s) shall be in a form and content acceptable to the City Solicitor, in consultation with the Chief Planner prior to their registration and deposit in the Land Registry Office; and
- (c) the Ownership Group shall be responsible for all costs relating to each registration of a conveyance of land required by this Agreement, including but not limited to the cost of preparing any survey(s) and/or reference plan(s) for the registration of the conveyance of the Off-site Parkland in fee simple, the registration of the grant of the POPS Easement, and the registration of the grant of Pedestrian Clearway Easement.

22.2 In respect of the conveyance of the fee simple interest in the Off-site Parkland by the Numbered Company to the City, notwithstanding and despite anything in the contrary in this Agreement, the Parties agree that, prior to the registration of said conveyance, the Ownership Group shall comply with all City policies and standards which apply regarding the City's acquisition of lands as a condition of development approval in effect on the day said conveyance is registered, to the satisfaction of the appropriate City official.

22.3 In respect of the construction of the Storm Sewer, the Owner shall be responsible at its sole cost and expense for compliance with the City's Fair Wage Policy and Labour Trades Contractual Obligations in the Construction Industry, as same may be amended from time to time. Prior to entering into any contract for work in relation to such improvements (or work), the Owner shall forward information on the proposed contract as required by the City's Fair Wage Office, for review and written approval, which shall not be unreasonably withheld.

22.4 In respect of the Base Park Improvements to the Off-site Parkland the Ownership Group shall be responsible at its sole cost and expense for compliance with the City's Fair Wage Policy and Labour Trades Contractual Obligations in the Construction Industry, as same may be amended from time to time. Prior to entering into any contract for work in relation to such improvements (or work), the Owner shall forward information on the proposed contract as required by the City's Fair Wage Office, for review and written approval, which shall not be unreasonably withheld.

- 22.5 The Ownership Group shall do such things and obtain such discharges, releases or postponements of any interest in or encumbrance of the Off-site Parkland as are required to the satisfaction of the City Solicitor to ensure upon the conveyance of the Numbered Company's fee simple interest in the Off-site Parkland to the City that the City's fee simple interest in the Off-site Parkland shall have priority over any interest, other than such encumbrances as may be included in the Numbered Company's solicitor's opinion to be provided in the form of the Title Opinion For The Registration Of Conveyances in accordance with the terms of this Agreement.
- 22.6 The Owner shall do such things and obtain such discharges, releases or postponements of any interest in or encumbrance of the Site as are required to the satisfaction of the City Solicitor to ensure that all grants of easements required under this Agreement, once registered, shall have priority over any interest, other than the Owner's fee simple interest and such encumbrances as may be included in the Owner's solicitor's opinion to be provided in the form of the Title Opinion For The Registration Of Conveyances in accordance with the terms of this Agreement.
- 22.7 The Ownership Group shall, in respect of and prior to the registration of each conveyance from the Owner to the City as required by this Agreement including, but not limited to, the conveyance of the Off-site Parkland in fee simple, the conveyance of the POPS Easement, and the conveyance of the Pedestrian Clearway Easement, provide to the City Solicitor a title opinion from Owner's solicitors, being solicitors in good standing in the Province of Ontario, addressed to the City Solicitor and substantially in the form of the Title Opinion For The Registration of Conveyances, with such modifications as may be acceptable to the City Solicitor in her sole and unfettered discretion, opining that the Owner is the registered owner in fee simple of the real property to be conveyed to the City and that none of the encumbrances against the real property to be conveyed that are not being postponed, discharged or otherwise released, contain rights or remedies that could preclude, defeat, adversely affect or interfere with the rights and fee simple interest of the City in the Off-site Parkland or the easement interest in the POPS Area and the Pedestrian Clearway or the use and enjoyment of the said easement interests.
- 22.8 The Ownership Group shall be responsible at its sole cost and expense for paying any and all sales tax, harmonized sales tax and/or land transfer tax payable for all conveyances of land required by this Agreement (which includes payment of provincial and municipal land transfer tax), if any. Notwithstanding the payment of all applicable tax payable as provided above and without limiting the Ownership Group's obligations and the City's rights as set out in Section 16, the Ownership Group shall indemnify and save harmless the City from any and all liabilities, damages, costs, claims, suits or actions made or brought against, suffered by or imposed on the City or its property arising out of, or in respect of liability for tax payable for the conveyances of land required under this

the amount of such Letter of Credit or certified cheque is subject to increases as described in this Section 23, the amounts of each such Letter of Credit or certified cheque shall be increased up to the date of provision of such Letter of Credit or certified cheque to the City.

- 23.2 If the amount secured by a Letter of Credit or a certified cheque is subject to increases as described in this Section 23 then the Ownership Group agrees to provide the City with either an amended Letter of Credit for the total indexed amount or with a supplementary Letter(s) of Credit or certified cheque(s) for any difference between the face value of the original Letter of Credit or certified cheque provided to the City and the increased amount then outstanding and owing to the City. The supplementary Letter of Credit or certified cheque will be provided to the City within twenty (20) days following the issuance of a written demand for payment sent to the Ownership Group by a City official. Any provisions related to the release of the original Letter(s) of Credit or certified cheque(s) to the Ownership Group shall apply *mutatis mutandis* to any replacement or supplementary Letter(s) of Credit or certified cheque(s) provided.
- 23.3 The Ownership Group acknowledges and agrees any Financial Security received by the City in the form of a certified cheque will be placed in a non-interest bearing account.

24 DEVELOPMENT CHARGES

- 24.1 The Parties acknowledge and agree that none of the facilities, works, services, matters or funds to be provided by the Owner to the City under the terms of the Agreement shall constitute Development Charges or a Development Charges credit pursuant to any by-law enacted by the City pursuant to the *Development Charges Act* or any successor legislation. The Ownership Group further acknowledges that it will be required to make all applicable Development Charge payments in accordance with the provisions of any by-law enacted by the City pursuant to the *Development Charges Act*. The amount of the Development Charges shall be based on the rates in place on the effective date of this Agreement.
- 24.2 The Owner agrees to ensure that the persons who first purchase all or any part of the Site are informed at the time of transfer, of all the Development Charges related to the Development.
- 24.3 Any outstanding balance respecting a Development Charge as calculated is to be paid in full on the date a Building Permit is issued in relation to a building or structure on land to which a Development Charge applies and shall be calculated at the rate in effect on the date the Building Permit is issued in accordance with the Development Charges By-law.

24.4 Any payments, conveyances or contributions made to the City pursuant to this Agreement are separate and distinct from any other payment the Owner may be liable for pursuant to the *Planning Act*, as it read on the day before Subsection 12(3) of Schedule 12 to the *More Homes, More Choice Act, 2019* came into force; the *City of Toronto Act, 2006* or other applicable legislation, including but not limited to the aforesaid Development Charges pursuant to the *Development Charges Act, 1997*. The Owner further acknowledges that the Owner may be required to make such other payments or pay such other charges as may be applicable in addition to the contributions made pursuant to this Agreement.

25 GENERAL COVENANTS

25.1 The Parties hereto covenant and agree that at all times and from time to time hereafter upon every reasonable written request to do so, they shall make, execute, deliver or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required for more effectively implementing and carrying out the true intent and meaning of this Agreement.

25.2 Notwithstanding any other provisions of this Agreement, the Parties hereto agree with each other that none of the provisions of this Agreement is intended to operate, nor shall have the effect of operating in any way to fetter either the City Council, which authorized the execution of this Agreement, or any of its successors in the exercise of any of City Council's legislative, quasi-judicial powers or discretionary powers. Without limiting the generality of the foregoing, such powers include the power to pass, amend or repeal by-laws, to adopt, amend or rescind Official Plan Amendments, or any discretionary power that the City has under law to approve or withhold approval to permit any demolition, relocation, construction, alteration, re-modeling or any other things or act which may materially affect any building, structure or part thereof that is subject to this Agreement;

25.3 The Parties hereto agree that the covenants, rights, duties, provisos, conditions and obligations herein contained shall ensure to the benefit of and be binding upon the City and its successors and assigns and that the City and its successors and assigns shall be entitled to enforce the provisions of this Agreement which are covenants, duties or obligations of the Owner and the Numbered Company and their successors and assigns, including all subsequent owners of the Site or any part thereof and all subsequent owners of the Off-site Parkland or any part thereof, and that each registered owner of the Site, or any part of the Site from time to time and that each registered owner of the Off-site Parkland, or any part of the Off-site Parkland from time to time, shall be jointly and severally liable for the covenants and obligations of the Owner and the Numbered Company.

25.4 The Owner agrees that the covenants, rights, duties, provisos, conditions and obligations herein contained, as they apply to the Owner, shall enure to the benefit of and be binding

and assigns, including a future condominium corporation and including all subsequent owners of all or any portion of the Site on a joint and several basis.

- 25.7 The Numbered Company agrees that the covenants, easements, restrictions, rights, duties, provisos, conditions and obligations herein contained, as they apply to the Numbered Company, shall run with the Off-site Parkland and shall enure to the benefit of and be binding upon the Numbered Company and its successors and assigns, including a future condominium corporation and including all subsequent owners of all or any portion of the Off-site Parkland on a joint and several basis.
- 25.8 Notwithstanding anything in this Agreement to the contrary, in the event that the City retains ownership of any part of the Site or the Off-site Parkland or acquires any part of the Site or Off-site Parkland or holds an easement over any part of the Site, the City shall not be bound by this Agreement as an owner.
- 25.9 The Owner agrees that any document relating to the conveyance of the Off-site Parkland and any of the lands included in the Site shall not contain any provision that the person or corporation acquiring the said lands is not required to comply with the terms and provision of this Agreement, or that is contrary to the provisions hereof.
- 25.10 Any notices to be given under this Agreement shall be delivered to the Parties at their respective addresses, which are as follows:

To the City:

City of Toronto
2nd Floor, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: City Clerk
Fax: (416) 392-6990

With Copy to:

City of Toronto Legal Services Division
Station 1260 - 26th Floor, Metro Hall
55 John Street
Toronto, ON M5V 3C6

Attention: City Solicitor
Fax: (416) 338-7703

And Copy to:

City of Toronto Engineering and Construction Services
Director of Engineering Review
City of Toronto
Metro Hall, 16th floor
55 John Street
Toronto ON M5V 3C6

Attention: Chief Engineer and Executive Director
Fax: 416-392-4426

To the Owner:

President

Mizrahi Development Group (The One) Inc.
125 Hazelton Avenue
Toronto, ON M5R 2E4

Attention: Sam Mizrahi, President
Email: sam@mizrahidevelopments.ca
Fax: 1(866) 300-0219

To the Numbered Company: 2495159 Ontario Inc.
189 Forest Hill Road
Toronto, ON M5P 2N3

Attention: Sam Mizrahi, President
Email: sam@mizrahidevelopments.ca
Fax: 1(866) 300-0219

- 25.11 The Parties agree to immediately notify each other, in writing, of any changes of address, email address or facsimile number.
- 25.12 Notice given pursuant to subsection 25.10 of this Agreement will be given by personally delivery, prepaid registered mail, by facsimile transmission or by email transmission. Notice will be deemed to have been received by a Party on the date of personal delivery and email transmission, on the third day after its mailing by prepaid registered mail or on the next business day (excluding Saturdays, Sundays and statutory holidays) following the date of facsimile transmission (provided confirmation of transmission is produced at the time of such transmission to the intended party).
- 25.13 In the event of any interruption in the postal service, notice shall be given to any Party at its respective address as set out herein by personal delivery, email transmission or facsimile transmission in the manner as set out herein.
- 25.14 No waiver or modification of the terms of this Agreement shall be valid unless in writing and signed by the City.
- 25.15 This Agreement may be amended from time to time without the consent or agreement of the owners of any units located within any condominium corporation registered against any or all of the Site and the Owner agrees that any such amendment shall not relieve or release any such owner of a condominium unit from the provisions of this Agreement.
- 25.16 The Parties acknowledge that it is possible that the City and subsequent owners may wish to modify this Agreement insofar as it relates to a component of the Site without the consent of each of the other owners of the remainder of the Site or portions thereof and to that end the Owner agrees that this Agreement may be amended by the City and a subsequent owner in respect of any one component of the Site without the consent or agreement of the owner of any other component of the Site.
- 25.17 It is the intent of this Agreement except where stated otherwise that the City shall not incur

Numbered Company to enter into this Agreement nor question the legality of any portion hereof. The Parties hereto and their respective successors, assigns and sub-lessees are and shall be estopped from challenging the jurisdiction of the other Party to enter into this Agreement in any proceeding before a court of competent jurisdiction.

- 25.20 If this Agreement as a whole is determined by a court of competent jurisdiction to be illegal or beyond the power and jurisdiction of the City, and appeals from such decision have been exhausted, the Owner, the Numbered Company, and the City agree that the Amending By-law may be repealed by the City, and both the Owner and the Numbered Company acknowledge and agree not to oppose or question or cause to be opposed or questioned the said repeal and the termination provisions of this Agreement shall apply *mutatis mutandis*.
- 25.21 If any individual provision(s) of this Agreement is or are determined by a court of competent jurisdiction to be illegal or beyond the power, jurisdiction, or capacity of any party bound hereby, such provision shall be severed from this Agreement if the Owner, the Numbered Company, and the City agree, and the remainder of the Agreement shall continue in full force and effect, *mutatis mutandis*, and, in such case, the Owner, the Numbered Company, and the City agree to negotiate in good faith to amend the Agreement in order to implement the intentions as set out herein. If the Owner, the Numbered Company, and the City cannot agree that such provision or provisions shall be severed, or if this Agreement is found not to have jurisdiction or authority to restrain the issuance of a Building Permit or to restrain occupancy in accordance with the terms of this Agreement, City Council may repeal or amend the Amending By-laws with the object of restoring the City's zoning by-law provisions applicable to the Site to the state they were in on the day immediately prior to the date of the approval of the Amending By-laws, and the Owner and the Numbered Company acknowledge and agree not to oppose or question or cause to be opposed or questioned the repeal of the Amending By-laws.
- 25.22 The failure of the City at any time to require performance by the Owner or the Numbered Company of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall any such waiver be taken or held to be a waiver of the performance of the same or any other obligation hereunder at any later time.
- 25.23 Time shall be of the essence in this Agreement.
- 25.24 This Agreement shall commence on the date of execution and delivery hereof by the Parties.
- 25.25 Notwithstanding anything in this Agreement to the contrary, if the Owner, the Numbered Company, or the City are *bona fide* delayed in or prevented from performing any obligation arising under this Agreement by reason of strikes or other labour disturbances, civil

disturbance, material or labour shortage, restrictive government laws, including but not limited to the issuance of required permits, regulations or directives, acts of public enemy, war, terrorism, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion or other act of God, then the performance of such obligation is excused for so long as such cause exists, and the party so delayed shall be and is entitled, without being in breach of this Agreement, to carry out such obligations within the appropriate time period after the cessation of such cause.

25.26 Nothing in subsection 25.25 of this Agreement shall operate to excuse the Ownership Group from the prompt payment of cash, or the delivery of Letters of Credit in accordance with the terms of this Agreement.

25.27 The Ownership Group agrees that upon failure by them to do any act that is required by this Agreement, the City may, notify the Ownership Group and, in addition to any other remedy under this Agreement, enter upon the Site or the Off-site Parkland, as applicable, if necessary and do the said act at the Ownership Group's expense, as the case may be, and collect the cost in like manner as municipal taxes as provided for in section 386 of the *City of Toronto Act, 2006*.

26 COMPLETION AND UNWINDING

26.1 Subject to subsections 26.2 to 26.8 and to subsections 25.4 and 25.5 hereof, this Agreement shall be effective, enure to the benefit of and be binding upon the Parties hereto, and their respective heirs, executors, administrators, successors and assigns on and after the date of this Agreement. On the Final Confirmation Date, the City and/or the Owner shall give notice in writing to the other Party that the Final Confirmation Date has occurred, and upon either Party hereto giving such notice, Sections 26.2 to 26.8 hereof shall have no further effect.

26.2 The date of unwinding of this Agreement, should such occur (hereinafter referred to as the "**Unwinding Date**"), shall be the earlier to occur of:

- (a) the date of Final Disposition of the Amending By-laws if the Final Disposition rejects the Amending By-laws; and
- (b) the date of expiry of the sixty (60) day period specified in a Notice of Termination, which is given pursuant to Sections 26.3, 26.4 or 26.5 hereof.

26.3 On the occurrence of a Final Disposition of the Amending By-laws which results in the Amending By-laws coming into force or effect with modification(s) or amendment(s) thereto, then sixty (60) days written notice of termination (herein referred to as a "**Notice of Termination**") may be given by either the City or the Owner to the other. Unless the City and the Owner otherwise agree, the Unwinding Date shall occur on the expiry of the

passing or adopting one of the aforesaid amendment(s) or modification(s) the City forthwith shall give notice thereof to the Owner. Unless the City and the Owner otherwise agree, the Unwinding Date shall occur on the expiry of the sixty (60) day period specified in such Notice of Termination. If a Notice of Termination is not given in accordance with this Section, the modification(s) or amendment(s) shall be deemed to be one of the Permitted Amendments for the purposes of this Agreement.

- 26.5 If the Final Confirmation Date has not occurred on or before December 1, 2020 then written Notice of Termination may be given by either the City or the Owner to the other. Unless on or prior to the expiry of sixty (60) days after the date on which such Notice of Termination was given to such other Party, either the Date of Final Approval of the Amending By-laws occurs or the City and the Owner hereto otherwise agree the Unwinding Date shall occur on the expiry of such sixty (60) day period.
- 26.6 On or after the occurrence of the Unwinding Date, the Owner may expunge registration of this Agreement by appropriate means according to the requirements of the land registry system pertaining to the affected property and the City shall cooperate with all requests of the Owner, acting reasonably, in such respect, including the execution of releases and quit claims in suitable form for registration.
- 26.7 Without fettering City Council, in any way, in the exercise of its discretionary powers, on or after the occurrence of the Unwinding Date, City Council may repeal or amend the Amending By-laws with the object of restoring the Zoning By-law provisions applicable to the Lands to the state they were in on the day immediately prior to the date of the passing of the Amending By-laws. In respect of any repealing or Amending By-laws which is passed pursuant to this Section either on or after the occurrence of the Unwinding Date, the Owner covenants and agrees that it will not object to the passing, approval, or coming into force and effect of such rescinding By-law.
- 26.8 On the occurrence of the Unwinding Date, the Chief Financial Officer and Treasurer shall return any cash or Financial Security deposited by the Owner pursuant to this Agreement, as well as any interest or investment income produced therein or therefrom which have been received by the City in respect thereof.

27 SITE PLAN APPEAL

- 27.1 The Parties acknowledge and agree that as of the date of this Agreement the Owner has withdrawn its appeal to the LPAT in respect of the Site Plan Application for the Site (being Application No. 15 128257 STE 27 SA; LPAT File No. PL160431) (herein referred to as the "Site Plan Appeal").

28 THE ORIGINAL AGREEMENT

28.1 This Agreement amends, restates, and replaces in its entirety the Original Agreement. The City agrees with the Owner and the Numbered Company that upon the execution and delivery of this Agreement by the Parties, the registration of this Agreement against title to the Site and the Off-site Parkland in accordance with the terms of this Agreement, and the LPAT issuing an Order approving the Amending By-laws attached to this Agreement, the City shall execute and deliver such documents as may be required for the deletion of the Original Agreement from title to the Site.

29 INTERPRETATION

- 29.1 The Parties agree that the recitals in this Agreement are true both in substance and in fact.
- 29.2 The headings in the body of this Agreement have been inserted for convenience of reference only and do not form part of the Agreement.
- 29.3 This Agreement shall be construed by substituting the plural for the singular, and vice versa, as may be required by the context.
- 29.4 This Agreement shall be construed with all changes in number and gender as may be required by the context.
- 29.5 Reference to an official of the City in this Agreement is deemed to include a reference to the official of the City who performs the duties of the referenced official from time to time.
- 29.6 Whenever the provisions of this Agreement require an approval or consent of any official of the City, the approval or consent may alternatively be given by the City Council or such other official as the City Council may direct or is otherwise empowered to act.
- 29.7 Reference to a statute, regulation, or other law, City by-law, City policy, City standard, or City guideline in this Agreement shall be deemed to include a reference to the statute, regulation, or other law, City by-law, City policy, City standard, or City guideline as amended, re-enacted, replaced, consolidated or substituted from time to time.

file format acceptable to the City. Such electronic signature shall be deemed to be an original signature for the purpose of this Agreement with the same legal effect as an original signature.


IN WITNESS WHEREOF the Parties have hereunto executed this Agreement to by the hands of their proper signing officers duly authorized in that behalf.

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.


Name: **Sam Mizrahi** President
Title:

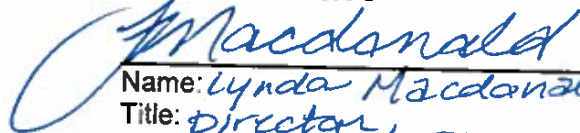
I/We have the authority to bind the corporation.

2495159 ONTARIO INC.


Name: **Sam Mizrahi** President
Title:

I/We have the authority to bind the corporation.

CITY OF TORONTO


Name: *Lynda Macdonald*
Title: *Director
Community Planning*

I/We have the authority to bind the corporation.

Schedule "A-1"

Legal Description of the Site

FIRSTLY

PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP145729 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; CITY OF TORONTO, BEING PIN 21109-0154 (LT)

768 YONGE STREET, TORONTO, ONTARIO

SECONDLY

PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP93304 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; CITY OF TORONTO, BEING PIN 21109-0155 (LT)

770-772 YONGE STREET, TORONTO, ONTARIO

THIRDLY

PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 64R16532; SUBJECT TO AN EASEMENT AS IN AT5101384; CITY OF TORONTO, BEING PIN 21109-0156 (LT)

774-776 YONGE STREET, TORONTO, ONTARIO

FOURTHLY

PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 63R658; SUBJECT TO AN EASEMENT AS IN AT5101384; CITY OF TORONTO, BEING PIN 21109-0157 (LT)

778 YONGE STREET, TORONTO, ONTARIO

FIFTHLY

PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CA703847; SUBJECT TO AN EASEMENT AS IN AT5101384; CITY OF TORONTO, BEING PIN 21109-0158 (LT)

780-784 YONGE STREET, TORONTO, ONTARIO

SIXTHLY

PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CT277770. T/W EASEMENT AS IN CT277770; SUBJECT TO AN EASEMENT AS IN AT5101384; CITY OF TORONTO, BEING PIN 21109-0160 (LT)

11 BLOOR STREET WEST, TORONTO, ONTARIO

SEVENTHLY

FIRSTLY: PT PARK LT 9 CON 1 FTB TWP OF YORK, AS IN EP142034 AND SECONDLY: PT

Schedule "B-1"

**Proposed Amendment to
Former City of Toronto Zoning By-law 569-2013**

CITY OF TORONTO

BY-LAW No. XXX- 2019(LPAT)

To amend Zoning By-law No. 569-2013, as amended, with respect to the lands municipally known in the year 2019 as 760-762 Yonge Street, 768-784 Yonge Street and 1-11 Bloor Street West.

Whereas the Local Planning Appeal Tribunal, pursuant to its Order issued on _____, 2019, in Tribunal File No. PL160431, determined to amend By-law No. 569-2013, as amended, with respect to the lands known municipally as 760-762 Yonge Street, 768-784 Yonge Street and 1-11 Bloor Street West; and

Whereas authority is given to the Local Planning Appeal Tribunal under Section 34 of the Planning Act, R.S.O. 1990, c. P.13, as amended; and

Whereas the Official Plan for the City of Toronto contains provisions relating to the authorization of increases in height and density of development; and

Whereas pursuant to Section 37 of the *Planning Act*, a by-law under Section 34 of the *Planning Act*, may authorize increases in the height and density of development beyond those otherwise permitted by the by-law and that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law; and

Whereas subsection 37(3) of the *Planning Act* provides that where an owner of land elects to provide facilities, services and matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services and matters; and

Whereas the owner of the aforesaid lands has elected to provide the facilities, services and matters hereinafter set out; and

Whereas the increase in height and density permitted beyond that otherwise permitted on the aforesaid lands by By-law No. 569-2013, as amended, is permitted in return for the provision of the facilities, services and matters set out in this By-law which is secured by one or more agreements between the owner of the land and the City of Toronto;

By-law No. 569-2013, as amended, is further amended by the Local Planning Appeal Tribunal as follows:

1. The lands subject to this By-law are outlined by heavy black lines on Diagram 1 attached to this By-law;
2. The words highlighted in bold type in this By-law have the meaning provided in Zoning By-law No. 569-2013, Chapter 800 Definitions;
3. Zoning By-law No. 569-2013, as amended, is further amended by amending the zone label on the Zoning By-law Map in Section 990.10 respecting the lands outlined by heavy black lines to CR 7.8 (c4.5; r7.8) SS1 (x62) and CR 3.0 (c2.0; r3.0) SS1 (x62), as shown on Diagram 2 attached to this By-law;
4. Zoning By-law No. 569-2013, as amended, is further amended by adding Article 900.11.10 Exception Number 62 so that it reads:

of 115.8 metres in the year 2019 and the elevation of the highest point of the **building or structure**;

- (C) Despite Regulation 40.10.40.10(1), no portion of a **building or structure** erected on the lands may exceed the **height** in metres specified by the numbers following the symbol "HT" on Diagram 3 of By-law XXX-2019.
- (D) Despite (C) above, and regulations 40.5.40.10(3) to (7), the following building elements are permitted to project above the heights shown on Diagram 3 of By-law###-2019:
- i. window washing equipment, **building** maintenance units, trellises, canopies and outdoor amenity **structures** – a maximum vertical projection of 5.3 metres;
1.2
 - ii. main entrance canopies – a maximum vertical projection of 14.0 metres above the height within any area not having a height limit shown on Diagram 3;
1.3
 - iii. parapets, railings, guard rails and lightning rods – a maximum vertical projection of 1.8 metres;
 - iv. wind protection screens, stairs, and stair and elevator enclosures and terrace dividers – a maximum vertical projection of 3.0 metres;
 - v. roof drainage – a maximum vertical projection of 0.5 metres;
 - vi. architectural features, pillars, columns, piers, beams, hybrid exoskeleton **structures** and hybrid exoskeleton cladding – a maximum vertical projection of 16.5 metres above the height within the area identified as HT 292.5 as shown on Diagram 3 of By-law XXX-2019; and
 - vii. hard and **soft landscaping** and public art;
- (E) Regulation 600.10.10 with respect to Building Setbacks does not apply;
- (F) Despite Claus 5.10.40.70, and regulations 40.10.40.70(1) and 40.10.40.80(1), the required minimum **building setbacks** and above ground separation distance between **main walls** are as shown on Diagram 3 of By-law XXX-2019 ;
- (G) Despite (D) above, the minimum **building setbacks** of the ground floor of a **building or structure** on Parcel 1 will be shown on Diagram 4 of By-law XXX-2019;
- (H) Despite (D) above, the minimum **building setbacks** of the tower floor plates of a **building or structure** on Parcel 1 between the heights of 69.0 metres and 75.0 metres, 132.0 metres and 138.0 metres, 196.0 metres and 202.0 metres, 265.0 metres and 271.0 metres, will be as shown on Diagram 5 of By-law XXX-2019;
- (I) Despite (D) above and regulations 40.10.40.60(2) to (9), the following encroachments are permitted to encroach into the required minimum **building setbacks** and above ground separation distance between **main walls** on Diagram 3 of By-law XXX-2019:

- i. awnings and canopies – a maximum of 6.6 metres;
 - ii. doors, revolving doors, signage, roof drains, gutters, flashing, tie-ins to adjacent **buildings**, cornices, ornamental elements, parapets, architectural flutes, ornamental louvers, piers, pillars, beams, hybrid exoskeleton **structures**, hybrid exoskeleton cladding, window sills, light fixtures, art and landscape features and site servicing features – a maximum of 1.2 metres;
- (J) Balconies are not permitted to encroach into the required minimum **building setbacks** and above ground separation distance between **main walls** shown on Diagram 3 of By-law XXX-2019;
- (K) Despite Regulation 40.10.40.40(1) the total **gross floor area** of all **buildings** and **structures** on Parcel 1 and Parcel 2 as shown on Diagram 3 of By-law XXX-2019, must not exceed 80,000 square metres, provided:
 - i. residential uses symbolized by the letter 'r', permitted by Regulations 40.10.20.10(1)(B) and 40.10.20.20(1)(B), must not exceed 62,500 square metres;
 - ii. non-residential uses symbolized by the letter 'c', permitted by Regulations 40.10.20.10(1)(A) and 40.10.20.20(1)(A), must not exceed 18,000 square metres excluding **public parking**;
 - iii. For the purposes of this By-law, in addition to Section 40.5.40.40(1), the calculation of **gross floor area** also excludes the floor area associated with mechanical rooms and indoor **amenity space**;
- (L) a minimum of 10 percent of the total number of **dwelling units** must:
 - i. have a minimum area of 79.0 square metres; and
 - ii. contain at least two bedrooms;
- (M) Despite Regulation 40.10.40.50(1), **amenity space** must be provided at a minimum rate of 3.5 square metres for each **dwelling unit**, of which:
 - i. at least 1.7 square metres for each **dwelling unit** is indoor **amenity space**;
 - ii. at least 40.0 square metres is outdoor **amenity space** in a location adjoining or directly accessible to the indoor **amenity space**; and
 - iii. no more than 25% of the outdoor component may be a **green roof**;
- (N) Despite 40.10.40.50(2), no outdoor **amenity space** is required for non-residential uses;
- (O) Despite Regulation 200.5.10.1(1) and Table 200.5.10.1, a minimum of 296 **parking spaces** must be provided and maintained as follows:
 - i. **parking spaces** may be shared between residents, residential

metres, a minimum length of 5.6 metres and a minimum vertical clearance of 2.1 metres and may be located below-ground, and would satisfy the requirements of regulation 200.15.10;

- (P) Despite Section 200.5.1.10(2)(A)(iv), a maximum of 33 **parking spaces** may be obstructed on one side and have the following dimensions:
 - i. a minimum width of 2.6 metres
 - ii. a minimum length of 5.6 metres; and
 - iii. a minimum vertical clearance of 2.1 metres;
- (Q) Despite regulation 200.5.1.10(2)(A), a maximum of 3 small car **parking spaces** may be provided and accessed by a **drive aisle** with a minimum width of 5.4 metres, each having a dimension of a minimum width of 3.2 metres, a minimum length of 5.1 metres and a minimum vertical clearance of 2.0 metres;
- (R) Despite Regulation 200.5.1.10(5) a maximum of 78 **parking spaces** that are required in order to satisfy the residential parking requirements, as set out in section (K) above, may be provided as 39 **tandem parking spaces**, of which, 35 **tandem parking spaces** may be provided in **stacked parking spaces**;
- (S) Despite the dimensions outlined in Regulation 200.5.1.10(2), **stacked parking spaces** can have:
 - i. a minimum width of 2.6 metres
 - ii. a minimum length of 5.6 metres; and
 - iii. a minimum vertical clearance of 1.5 metres;
 - iv. **stacked parking spaces** mechanisms and equipment located within these dimensions;
- (T) Despite Regulations 220.5.10.1(1) to (9), the following minimum number of **loading spaces** must be provided and maintained on the lands:
 - i. one Type "G" **loading space**;
 - ii. one Type "B" **loading space**; and
 - iii. three Type "C" **loading spaces**;
- (U) Despite Regulation 230.5.1.10(9), long-term **bicycle parking spaces** and short-term **bicycle parking spaces** can be located below ground and in **stacked bicycle parking spaces**;
- (V) Despite the dimensions set out in Regulations 230.5.1.10(4) and (5), **stacked bicycle parking spaces** provided on the lands shall have the following dimensions:
 - i. a minimum width of 0.6 metres
 - ii. a minimum length of 1.8 metres; and

- iii. a minimum vertical clearance of 1.2 metres;

Prevailing By-law and Prevailing Sections

(A) Section 12(2) 259 of former City of Toronto By-law 438-86

5. Despite any severance, partition or division of lands, the provisions of this By-law apply to the whole of the lands as if no severance, partition or division occurred

6. Section 37 Provisions

- (a) Pursuant to Section 37 of the Planning Act, and subject to compliance with this By-law, the increase in height and density of the development is permitted beyond that otherwise permitted on the lands shown on Diagram 2 in return for the provision by the owner, at the owner's expense of the facilities, services and matters set out in Schedule A hereof and which are secured by one or more agreements pursuant to Section 37(3) of the Planning Act that are in a form and registered on title to the lands save and except for Parcel 2 as shown on Diagram 3, to the satisfaction of the City Solicitor.
- (b) Where Schedule A of this By-law requires the owner to provide certain facilities, services or matters prior to the issuance of a building permit, the issuance of such permit shall be dependent on satisfaction of the same.
- (c) The owner shall not use, or permit the use of, a building or structure erected with an increase in height and density pursuant to this By-law unless all provisions of Schedule A are satisfied.

PURSUANT TO DECISION/ORDER OF THE LOCAL PLANNING APPEAL TRIBUNAL ISSUED ON _____, 2019 IN TRIBUNAL CASE NO. PL160431.

shown on Diagram 3, with conditions providing for indexing escalation of both the financial contributions and letters of credit, development charges, indemnity, insurance, GST, HST, termination and unwinding, and registration and priority of agreement:

1. Prior to the issuance of the first Building Permit for a part or all of the lands, the Owner shall pay to the City the sum of TWENTY-ONE MILLION NINE HUNDRED THOUSAND DOLLARS (\$21,900,000.00) in Canadian funds (herein referred to as the "Cash Contribution") and the Cash Contribution shall be indexed in accordance with the terms of the Section 37 Agreement and used by the City for the purpose of community benefits in accordance with the terms of the Section Agreement on the proportions set out below:
 - (a) 10% directed to new or existing affordable housing facilities to the satisfaction of the Chief Planner & Executive Director, City Planning;
 - (b) 10% directed to new or existing cultural and community facilities to the satisfaction of the Chief Planner & Executive Director, City Planning, in consultation with the Ward Councillor; and
 - (c) 80% to be directed to any future publicly accessible underground pedestrian tunnel and related connections through buildings to be added as a part of the existing pedestrian pathway network in the vicinity of the lands as more particularly described in the Section 37 Agreement, local streetscape improvements including Yonge Street Revitalization, and local park improvements, to the satisfaction of the Chief Planner & Executive Director, City Planning, in consultation with the Ward Councillor.
2. Prior to the earlier of Release for Construction of a storm sewer which will service the development on the lands as described in the Section 37 Agreement and the issuance of the first Above Grade Building Permit for a part or all of the lands, the Owner shall provide the City with financial security indexed in accordance with the Section 37 Agreement to guarantee the satisfactory performance and completion of said storm sewer in an amount and form to the satisfaction of the Chief Engineer & Executive Director, Engineering and Construction Services.
3. Prior to the issuance of the first Above Grade Building Permit for a part or all of the lands, the Owner shall deliver to the City financial security in an amount equivalent to one hundred percent (100%) of the monetary value of the lands municipally known in the year 2019 as 14 Dundonald Street, to the satisfaction of the General Manager, Parks, Forestry and Recreation in consultation with the Director, Real Estate Services, to secure the Owner's conveyance in fee simple of 14 Dundonald Street to the City for the purpose of public parkland, free and clear of all physical obstructions and encumbrances above, upon, and below the surface of said lands including, but not limited to, above and below grade buildings, structures, foundations, utilities and services, all paved areas and associated base and foundation material, unless otherwise permitted in writing by the General Manager, Parks, Forestry & Recreation, and in accordance with terms and conditions of the amended and restated Section 37 Agreement.
4. Prior to the issuance of the first Above Grade Building Permit for any part or all of the lands, the owner shall submit a cost estimate and all plans for base park improvements to 14 Dundonald Street, to the satisfaction of the General Manager, Parks, Forestry & Recreation.
5. Prior to the issuance of the first Above Grade Building Permit for a part or all of the lands, the Owner shall deliver to the City financial security satisfactory to the General Manager, Parks, Forestry and Recreation in an amount equivalent to one hundred and twenty percent (120%) of the monetary value of base park improvements to 14 Dundonald Street,

as required by the amended and restated Section 37 Agreement, to secure the Owner's delivery of said base park improvements to the satisfaction of the General Manager, Parks, Forestry & Recreation.

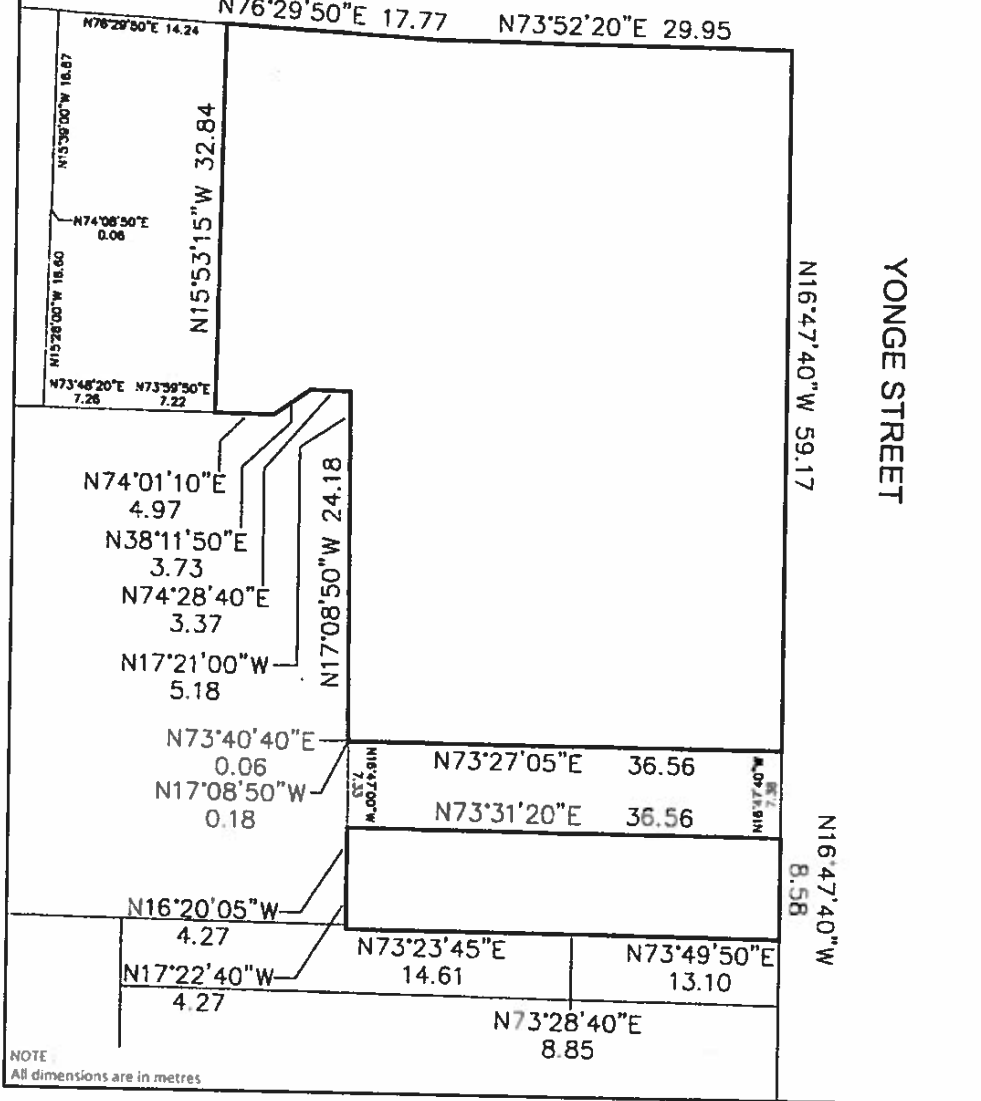
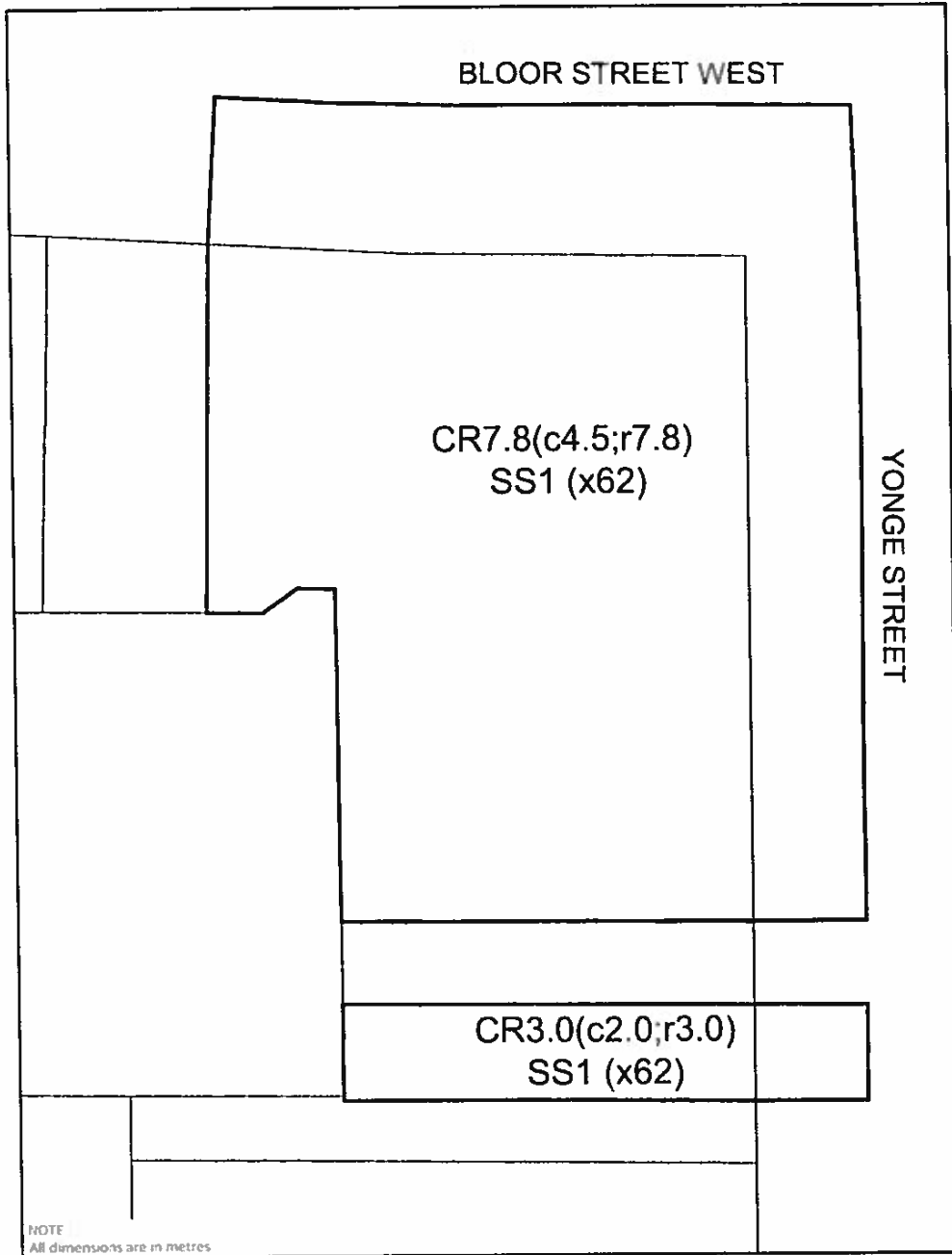


Diagram 1



Not to Scale



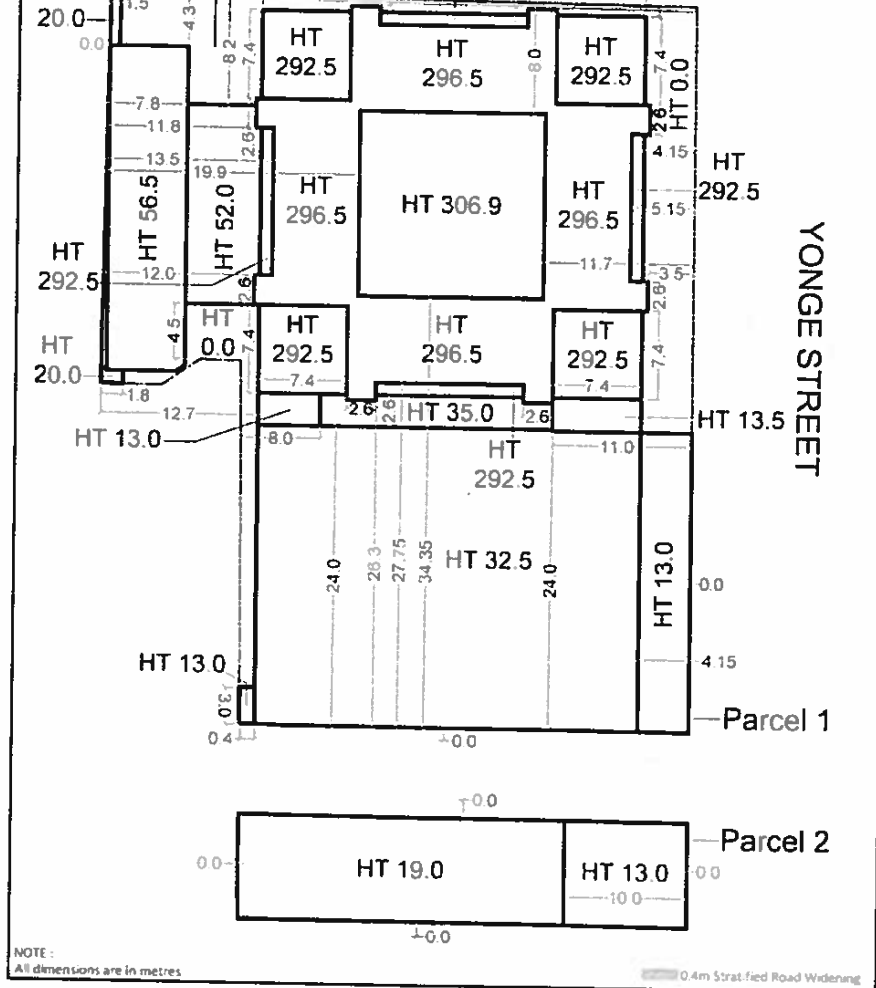
NOTE
All dimensions are in metres

1 Bloor Street West, Toronto



Diagram 2

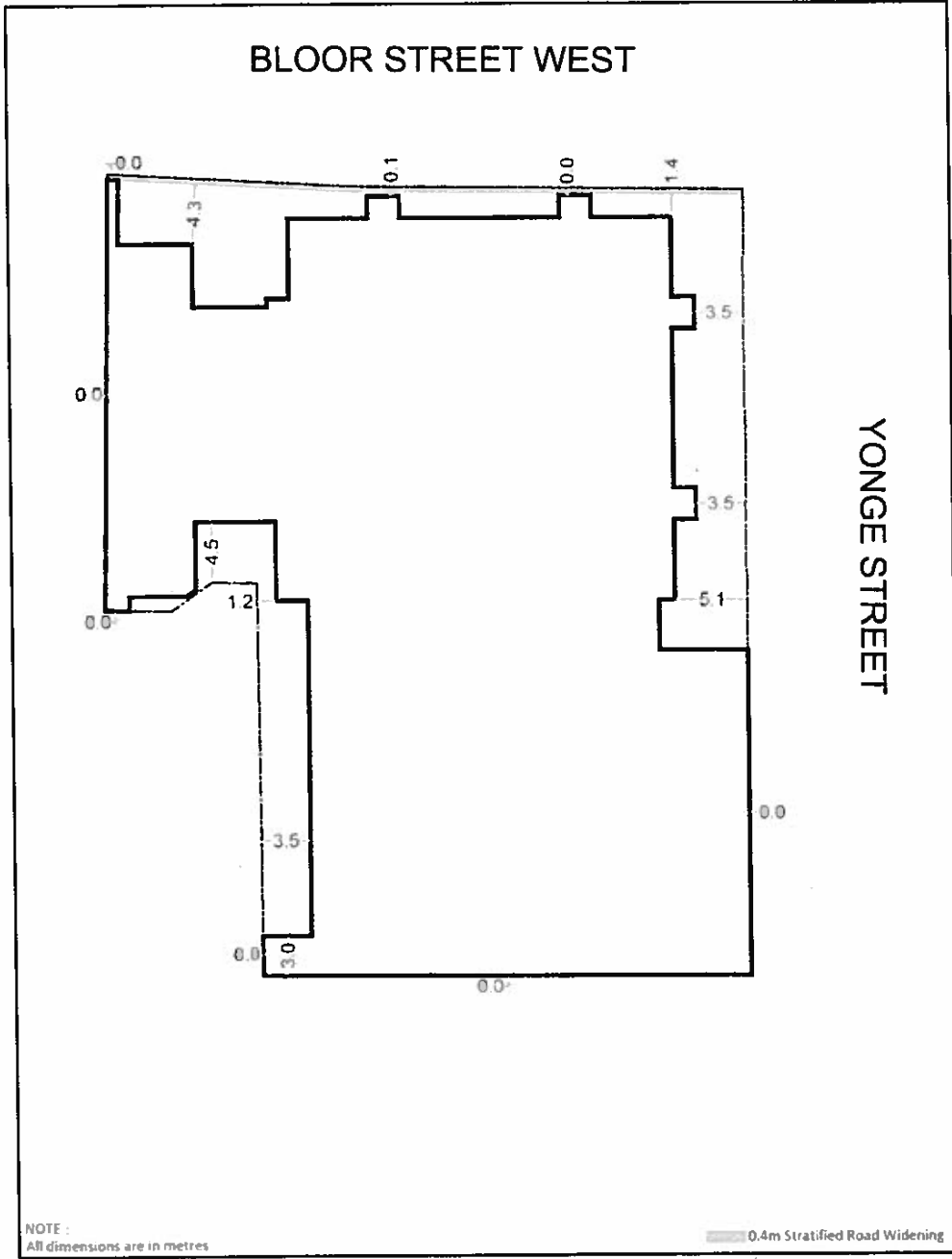
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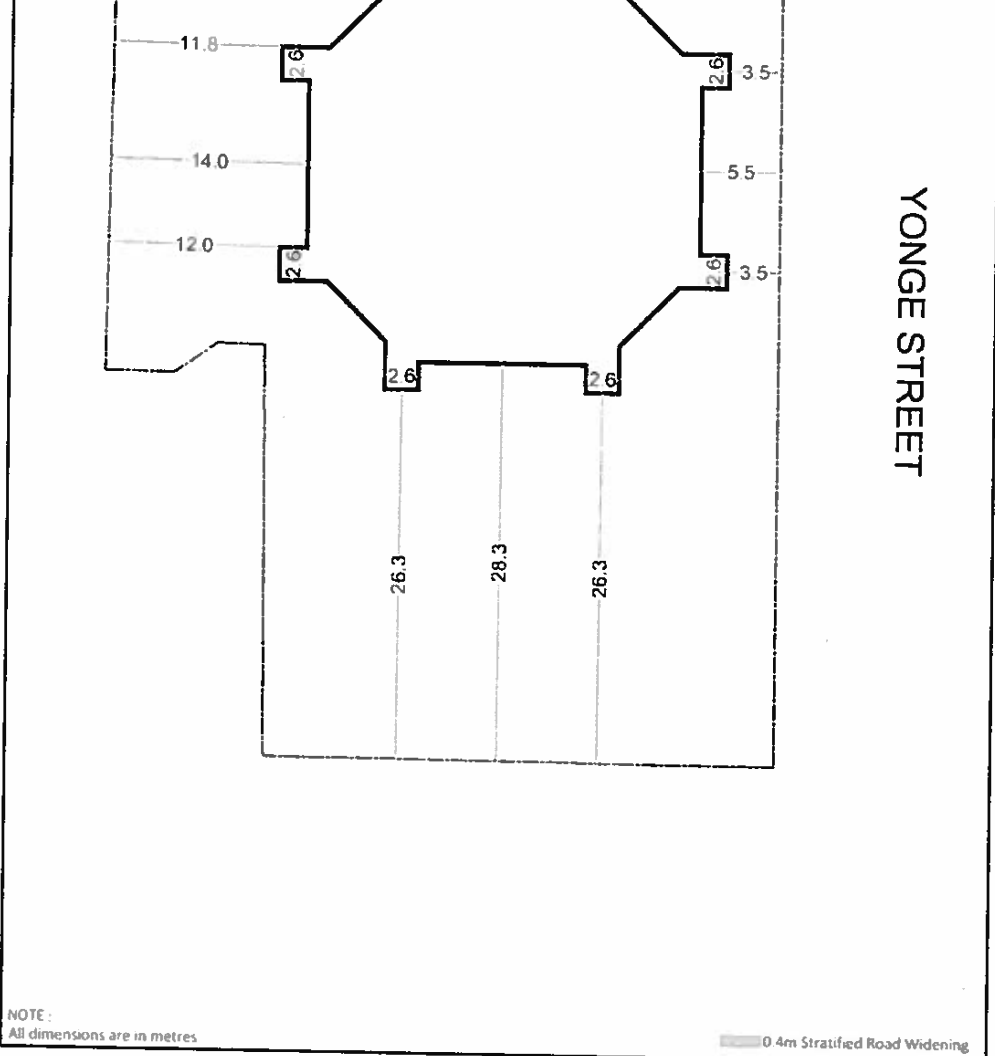
Toronto City Planning
Division
Diagram 3

1 Bloor Street West, Toronto





1 Bloor Street West, Toronto



1 Bloor Street West, Toronto

TORONTO City Planning Division

Diagram 5



Not to Scale

Schedule "B-2"

**Proposed Amendment to
City of Toronto Zoning By-law 438-86**

CITY OF TORONTO

BY-LAW No. XXX-2020(LPAT)

To amend by-law No. 438-86, as amended, of the former City of Toronto with respect with lands known as 760-762 Yonge Street, 768-784 Yonge Street and 1-11 Bloor Street West.

Whereas the Local Planning Appeal Tribunal, by its Decision issued on _____, 2020, in Tribunal File No. PL160431 approved amendments to the former City of Toronto Zoning By-law No. 438-86, as amended, with respect to the lands known municipally as 760-762 Yonge Street, 768-784 Yonge Street and 1-11 Bloor Street West; and

Whereas the Official Plan for the City of Toronto contains such provisions relating to the authorization of increases in height and density of development; and

Whereas pursuant to Section 37 of the *Planning Act*, a by-law under Section 34 of the *Planning Act*, may authorize increases in the height or density of development beyond those otherwise permitted by the by-law and that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law; and

Whereas subsection 37(3) of the *Planning Act* provides that where an owner of land elects to provide facilities, services and matters in return for an increase in the height or density of development, a municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services and matters; and

Whereas the owner of the aforesaid lands has elected to provide the facilities, services and matters hereinafter set out; and

Whereas the increase in height and density permitted beyond that otherwise permitted on the aforesaid lands by By-law No. 438-86, as amended, is permitted in return for the provision of the facilities, services and matters set out in the By-law which is secured by one or more agreements between the owner of the land and the City of Toronto; and

Pursuant to the Order of the Local Planning Appeal Tribunal, By-law No. 438-86, the Zoning By-law of the former City of Toronto, as amended, is further amended as follows:

1. Pursuant to Section 37 of the *Planning Act*, the heights and density of development permitted by this By-law on the lands identified as the *lot* on Map 1 forming part of this By-law are permitted subject to compliance with the conditions set out in By-law and in return for the provision by the owner of the *lot*, of the facilities, services and matters set out in Schedule A hereof, the provisions of which shall be secured by one or more agreements pursuant to Section 37(3) of the *Planning Act*.
2. Upon execution and registration of one or more agreements between the City and the owner of the *lot* on title pursuant to Section 37 of the *Planning Act*, securing the provision of the facilities, services and matters set out in Schedule A hereof, the *lot* is subject to the provisions of this By-law, provided that in the event the said agreement(s) require the provision of a facility, service or matter as a precondition to the issuance of a building permit or a permit issued pursuant to the *Ontario Heritage Act*, such building may not be erected or used until the owner of the loads has satisfied the said requirement.
3. None of the provisions of Section 2 with respect to the definitions of *bicycle parking space* –

- 66,000 square metres, subject to the following:
- (i) the *residential gross floor area* of buildings and structures shall not exceed 62,500 square metres; and
 - (ii) the *non-residential gross floor area* of buildings and structures shall not exceed 18,400 square metres excluding the *commercial parking garage* and mechanical rooms;
- (c) a minimum of 10 percent of the total number of *dwelling units* shall have a minimum area of 79.0 square metres and shall contain at least two bedrooms;
- (d) despite the definition of *residential amenity space* in Section 2(1) of By-law 438-86, *residential amenity space* can be shared and does not need to be provided for the exclusive use of residents of a building;
- (e) *residential amenity space* shall be provided and maintained on the *lot* at a minimum rate of 3.5 square metres per *dwelling unit*, of which:
- (i) a minimum of 1.7 square metres per *dwelling unit* for indoor *residential amenity space*, of which, a kitchen does not have to be provided in a multi-purpose room;
 - (ii) at least 40.0 square metres is outdoor *residential amenity space* in a location adjoining or directly accessible to the indoor *residential amenity space*; and
 - (iii) no more than 25% of the outdoor component may be a green roof;
- (f) no portion of a building or structure erected on the *lot* shall have a greater *height* in metres than the *heights* in metres specified by the numbers following the symbol H on the attached Map 2 except that:
- (i) the maximum *height* for trellises, canopies, outdoor amenity structures, building maintenance units and window washing equipment, having a maximum height of the sum of 5.3 metres and the applicable *height* limit shown on Map 2 shall be permitted within any area on Map 2;
 - (ii) main entrance canopies – a maximum vertical projection of 14.0 metres above the height within any area not having a height limit shown on Map 2;
 - (iii) the maximum *height* for parapets, guard rails, railings, lightning rods and elements of a green roof having a maximum height of the sum of 1.8 metres and the applicable *height* limit shown on Map 2 shall be permitted within any area on Map 2;
 - (iv) the maximum *height* for mechanical equipment and any associated enclosure structures, wind protection screens, stairs, stair and elevator enclosures, terrace dividers and having a maximum height of the sum of 3.0 metres and the applicable *height* limit shown on Map 2 shall be permitted within any area on Map 2;
 - (v) the maximum *height* for roof drainage having a maximum height of the sum of 0.5 metres and the applicable *height* limit shown on Map 2 shall be permitted within any area on Map 2;
 - (vi) the maximum *height* for pillars, columns, piers, architectural features, beams, hybrid exoskeleton structures and hybrid exoskeleton cladding having a maximum height of the sum of 16.5 metres and the applicable *height* limit shown on Map 2 shall be permitted within the area identified as H 292.5 on Map 2; and

- (vii) hard and soft landscaping and public art can extend beyond the applicable *height* limit shown on Map 2 within any area on Map 2;
- (g) no portion of the building above *grade* is located otherwise than wholly within the areas delineated by heavy lines on the attached Map 2, with the exception of the following:
 - (i) awnings and canopies – a maximum of 6.6 metres beyond the heavy lines shown on Map 2;
 - (ii) doors, revolving doors, signage, roof drains, gutters, flashing, tie-ins to adjacent buildings, cornices, ornamental elements, parapets, architectural flutes, columns, piers, pillars, ornamental louvres, beams, hybrid exoskeleton structures, hybrid exoskeleton cladding, window sills, light fixtures, art and landscape features and site servicing features – a maximum of 1.2 metres beyond the heavy lines shown on Map 2;
- (h) balconies are not permitted to project beyond the heavy lines shown on Map 2;
- (i) Despite (g) above, the minimum setbacks of the ground floor of a building or structure on Parcel 1 will be shown on Map 3;
- (j) Despite (g) above, the minimum setbacks of the tower floor plates of a building or structure on Parcel 1 between the heights of 69.0 metres and 75.0 metres, 132.0 metres and 138.0 metres, 196.0 metres and 202.0 metres, and 265.0 metres and 271.0 metres, will be shown on Map 4;
- (k) a minimum total number of 296 *parking spaces* shall be provided and maintained on the *lot* in accordance with the following:
 - (i) a *commercial parking garage* is permitted on the *lot*;
 - (ii) *parking spaces* are permitted to be shared between residents, residential visitors and non-residential uses;
 - (iii) *parking spaces* for residents, residential visitors and non-residential uses are permitted to be located within a *commercial parking garage*;
 - (iv) a minimum of 277 *parking spaces* shall be provided within a *commercial parking garage*, of which a minimum of 200 *parking spaces* shall be provided for residents;
 - (v) a minimum of 4 *car-share parking spaces* shall be provided;
 - (vi) a minimum of 15 short-term *parking spaces* shall be provided, of which, 5 short-term *parking spaces* may be obstructed on one side and at least one short-term *parking space* shall have a minimum width of 3.9 metres, a minimum length of 5.6 metres and a minimum vertical clearance of 2.1 metres;
- (l) the additional requirements outlined in Sections 2(1) and 4(17) of By-law 438-86 for obstructed *parking spaces* do not apply to a maximum of 33 *parking spaces* that are obstructed on one side and that are required in order to satisfy the residential parking requirements, as set out in section (k) above;
- (m) a maximum of 3 small car *parking spaces* may be provided and accessed by a drive aisle with a minimum width of 5.4 metres, each having a dimension of a minimum width of 3.2 metres, a minimum length of 5.1 metres and a minimum vertical clearance of 2.0 metres;
- (n) despite the definition of *parking space*, a maximum of 78 *parking spaces* that are required in order to satisfy the residential parking requirements, as set out in section (k) above, may be provided as 39 *tandem parking spaces*, of which, 35 *tandem parking*

- the following requirements:
- (i) a minimum of 0.9 *bicycle parking spaces – occupant per dwelling unit*;
 - (ii) a minimum of 0.1 *bicycle parking spaces – visitor per dwelling unit*;
 - (iii) a minimum of 0.2 *bicycle parking spaces – occupant per 100 square metres of interior floor area used for an office*;
 - (iv) a minimum of 3 plus 0.2 *bicycle parking spaces – visitor per 100 square metres of interior floor area used for an office*;
 - (v) a minimum of 0.2 *bicycle parking spaces – occupant per 100 square metres of interior floor area used for a restaurant and retail store*;
 - (vi) a minimum of 3 plus 0.3 *bicycle parking spaces – visitor per 100 square metres of interior floor area used for a restaurant and retail store*;
- (q) to calculate *bicycle parking space* requirements for other than *dwelling units*, the gross floor area of a building is reduced by the area in the building used for:
- (i) parking, loading and bicycle parking below-ground;
 - (ii) required loading spaces at the ground level and required bicycle parking spaces at or above-ground;
 - (iii) storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms in the basement;
 - (iv) shower and change facilities required by this By-law for required bicycle parking spaces;
 - (v) elevator shafts;
 - (vi) mechanical penthouse and mechanical rooms;
 - (vii) exit stairwells in the building; or
 - (viii) floor area associated with a *commercial parking garage*;
- (r) if a building has uses, other than *dwelling units*, for which a *bicycle parking space – occupant* is required, shower and change facilities must be provided for each gender at the following rate:
- (i) none if less than 5 required *bicycle parking spaces – occupant*;
 - (ii) 1 for 5 to 60 required *bicycle parking space – occupant*;
 - (iii) 2 for 61 to 120 required *bicycle parking spaces – occupant*;
 - (iv) 3 for 121 to 180 required *bicycle parking spaces – occupant*;
 - (v) 4 for more than 180 required *bicycle parking spaces – occupant*;
- (s) loading spaces shall be provided on the *lot* in accordance with the following:
- (i) one *loading space – type “G”*;
 - (ii) one *loading spave – type “B”*; and

- (iii) three *loading space – type “C”*;
4. In addition to the permitted uses identified in Section 1, a temporary *sales presentation centre* shall be permitted on the *lot*, and none of the other provisions of this By-law shall apply to such use.
5. For the purposes of this By-law:
- (a) “*bicycle parking space – occupant*” means an area that is equipped with a bicycle locker or a room or bicycle rack for the purpose of parking and securing bicycles, and
- (i) where the bicycles are to be parked on a horizontal surface, has a horizontal dimension of at least 0.6 metres by 1.8 metres and a vertical dimension of at least 1.9 metres;
 - (ii) where the bicycles are to be parked in a vertical position, has a horizontal dimension of at least 0.6 metres by 1.2 metres and a vertical dimension of at least 1.9 metres; and
 - (iii) notwithstanding (i) and (ii) above, where the bicycles are to be parking in a stacker, being a device that allows parking spaces to be positioned above or below one another with the aid of an elevating mechanism, the parking spaces within the stacker are not be subject to the dimensions outlined in (i) and (ii) above;
- (b) “*bicycle parking space – visitor*” means an area that is equipped with a room or a bicycle rack for the purpose of parking and securing bicycles, and
- (i) where the bicycles are to be parked on a horizontal surface, has a horizontal dimension of at least 0.6 metres by 1.8 metres and a vertical dimension of at least 1.9 metres;
 - (ii) where the bicycles are to be parked in a vertical position, has a horizontal dimension of at least 0.6 metres by 1.2 metres and a vertical dimension of at least 1.9 metres; and
 - (iii) notwithstanding (i) and (ii) above, where the bicycles are to be parking in a stacker, being a device that allows parking spaces to be positioned above or below one another with the aid of an elevating mechanism, the parking spaces within the stacker are not be subject to the dimensions outlined in (i) and (ii) above;
- (c) “*car-share*” means the practice where a number of people share the use of one or more cars that are owned by a profit or non-profit car-sharing organization and to use a car-sharing vehicle, a person must meet the membership requirements of the car-sharing organization, including the payment of a membership fee that may or may not be refundable. Cars are reserved in advance and fees for use are normally based on time and/or kilometres driven;
- (d) “*car-share parking space*” means a parking space exclusively for a car used only for car-sharing purposes;
- (e) “*grade*” means 115.8 metres Canadian Geodetic Datum;
- (f) “*height*” means the vertical distance between grade and the highest point of the building or structure except for those elements otherwise prescribed in this By-law;
- (g) “*interior floor area*” means the floor area of any part of a building, measured to:

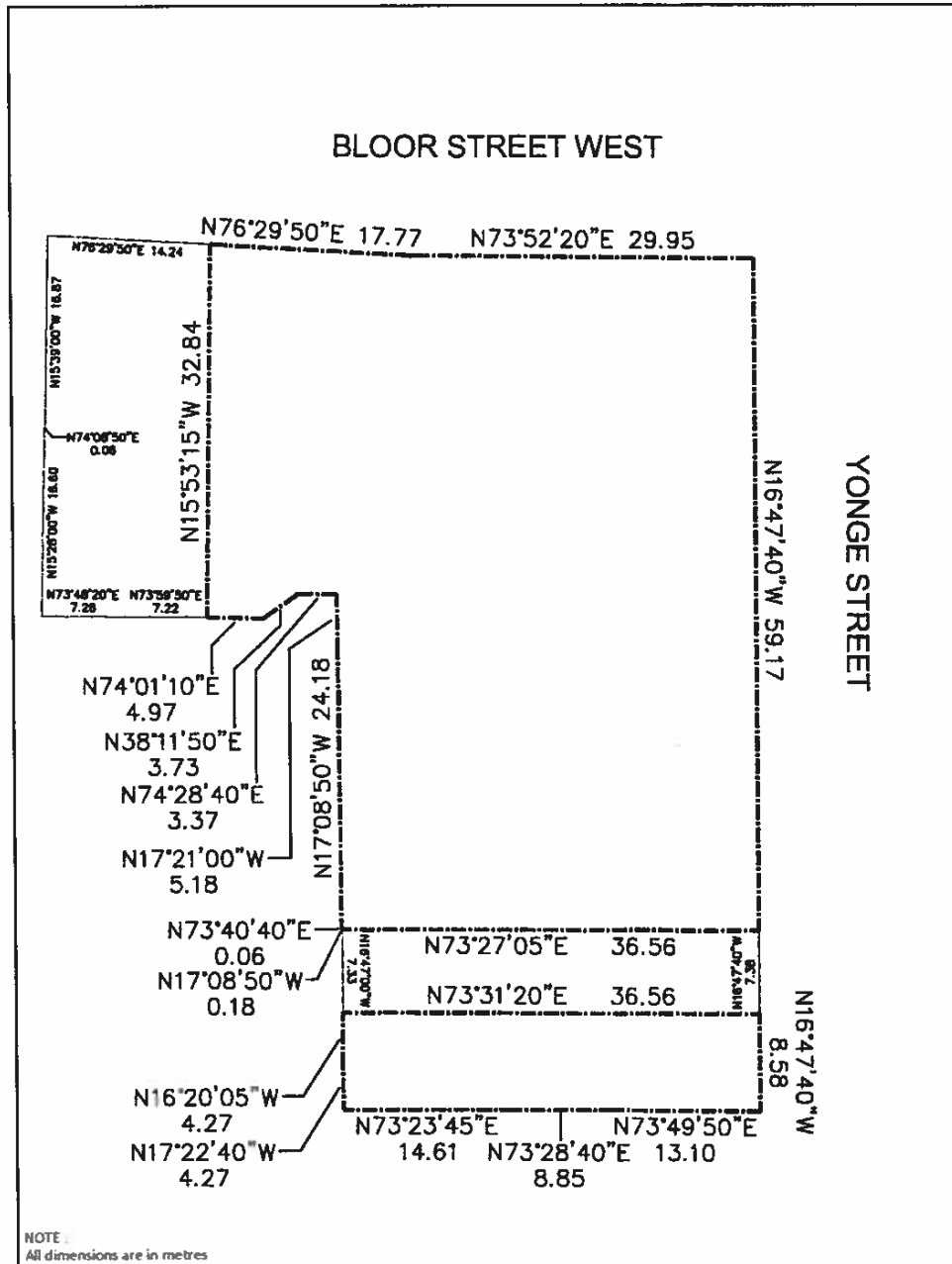
- (iii) parking, loading and bicycle parking at or above established grade;
 - (iv) storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms in the basement;
 - (v) shower and change facilities required by this By-law for required *bicycle parking spaces*;
 - (vi) elevator shafts;
 - (vii) garbage shafts;
 - (viii) mechanical rooms; and
 - (ix) exit stairwells in the building; and
- (h) “*tandem parking space*” means an area that includes two *parking spaces*, one of which is not readily accessible for parking and removal of a motor vehicle without the necessity of moving another vehicle;
- (i) “*sales presentation centre*” means a building, structure or facility on the *lot* used for the purpose of the sale of *dwelling units* to be erected on the *lot*;
- (j) Each word or expression which is italicized in this By-law shall have the same meaning as each word or expression as defined in the aforesaid By-law No. 438-86, as amended, unless otherwise defined in this By-law.
6. Notwithstanding any severance, partition or division of the *lot*, the provisions of this By-law shall apply to the whole of the *lot* as if no severance, partition or division had occurred.
7. Section 37 Provisions
- (a) Pursuant to Section 37 of the *Planning Act*, and subject to compliance with this By-law, the increase in *height* and density of the development is permitted beyond that otherwise permitted on the lands shown on Map 2 in return for the provision by the owner, at the owner's expense of the facilities, services and matters set out in Schedule A hereof and which are secured by one or more agreements pursuant to Section 37(3) of the *Planning Act* that are in a form and registered on title to the lands, to the satisfaction of the City Solicitor.
- (b) Where Schedule A of this By-law requires the owner to provide certain facilities, services or matters prior to the issuance of a building permit, the issuance of such permit shall be dependent on satisfaction of the same.
- (c) The owner shall not use, or permit the use of, a *building* or *structure* erected with an increase in *height* and density pursuant to this By-law unless all provisions of Schedule A are satisfied.
8. Within the *lot*, no person shall use any land or erect any building or structure unless the following municipal services are provided to the lot line and the following provisions are complied with:
- (a) all water mains and sanitary sewers, and appropriate appurtenances, have been installed and are operational.

PURSUANT TO DECISION/ORDER OF THE LOCAL PLANNING APPEAL TRIBUNAL ISSUED ON _____, 2020 IN TRIBUNAL CASE NO. PL160431.

SCHEDULE A**Section 37 Provisions**

The facilities, services and matters set out below are required to be provided by the owner of the *lot*, save and except Parcel 2 as shown on Map 2, at their expense to the City in accordance with one or more agreements pursuant to Section 37(3) of the Planning Act, in a form satisfactory to the City and registered against title to the *lot*, save and except Parcel 2 as shown on Map 2, with conditions providing for indexing escalation of both the financial contributions and letters of credit, development charges, indemnity, insurance, GST, HST, termination and unwinding, and registration and priority of agreement:

1. Prior to the issuance of the first Building Permit for a part or all of the *lot*, the Owner shall pay to the City the sum of TWENTY-ONE MILLION NINE HUNDRED THOUSAND DOLLARS (\$21,900,000.00) in Canadian funds (herein referred to as the "Cash Contribution") and the Cash Contribution shall be indexed in accordance with the terms of the Section 37 Agreement and used by the City for the purpose of community benefits in accordance with the terms of the Section Agreement on the proportions set out below:
 - (a) 10% directed to new or existing affordable housing facilities to the satisfaction of the Chief Planner & Executive Director, City Planning;
 - (b) 10% directed to new or existing cultural and community facilities to the satisfaction of the Chief Planner & Executive Director, City Planning, in consultation with the Ward Councillor; and
 - (c) 80% to be directed to any future publicly accessible underground pedestrian tunnel and related connections through buildings to be added as a part of the existing pedestrian pathway network in the vicinity of the lands as more particularly described in the Section 37 Agreement, local streetscape improvements including Yonge Street Revitalization, and local park improvements, to the satisfaction of the Chief Planner & Executive Director, City Planning, in consultation with the Ward Councillor.
2. Prior to the earlier of Release for Construction of a storm sewer which will service the development on the *lot* as described in the Section 37 Agreement and the issuance of the first Above Grade Building Permit for a part or all of the *lot*, the Owner shall provide the City with financial security indexed in accordance with the Section 37 Agreement to guarantee the satisfactory performance and completion of said storm sewer in an amount and form to the satisfaction of the Chief Engineer & Executive Director, Engineering and Construction Services.
3. Prior to the issuance of the first Above Grade Building Permit for a part or all of the lands, the Owner shall deliver to the City financial security in an amount equivalent to one hundred percent (100%) of the monetary value of the lands municipally known in the year 2019 as 14 Dundonald Street, to the satisfaction of the General Manager, Parks, Forestry and Recreation in consultation with the Director, Real Estate Services, to secure the Owner's conveyance in fee simple of 14 Dundonald Street to the City for the purpose of public parkland, free and clear of all physical obstructions and encumbrances above, upon, and below the surface of said lands including, but not limited to, above and below grade buildings, structures, foundations, utilities and services, all paved areas and associated base and foundation material, unless otherwise permitted in writing by the General Manager, Parks, Forestry & Recreation, and in accordance with terms and conditions of the amended and restated Section 37 Agreement.
4. Prior to the issuance of the first Above Grade Building Permit for any part or all of the lands, the owner shall submit a cost estimate and all plans for base park improvements to



Schedule "C"

Form of Letter of Credit

(PRINTED ON BANK LETTERHEAD)

IRREVOCABLE STANDBY LETTER OF CREDIT

Beneficiary: City of Toronto	Issue Date:
---------------------------------	-------------

Letter of Credit Number:	Credit Amount (Canadian Funds):	Initial Expiry Date: <u>(12 months following issue date)</u>
--------------------------	---------------------------------	--

We hereby authorize you, the City of Toronto, to draw on **(Bank name, address and branch)** (the "Bank") for the account of **(customer name and address)** _____, (the "Customer") up to an aggregate amount of \$ _____ Canadian Dollars (the "Credit Amount") available on demand up to _____ **(date)** _____ (the "Initial Expiry Date") or a subsequent anniversary date, and is hereby given to you pursuant to an agreement between the City of Toronto, and **(name of customer)** with respect to **(insert municipal address of property, if applicable)** , dated _____ (the "Agreement").

Pursuant to the request of the Customer, the Bank hereby establishes in your favour and gives to you an Irrevocable Standby Letter of Credit in the Credit Amount on which you may draw in whole or in part at any time and from time to time, subject to the terms herein.

A drawing under this Letter of Credit shall be made by you presenting to the Bank, at the address noted below, a demand in writing authorized by the City Treasurer or delegate.

Partial drawings are permitted.

Upon receipt of said demand, the Bank shall pay to you the amount stated in the demand, to be payable to you without inquiring whether you have a right as between yourself and the Customer to make such demand, and without recognizing any claim of the Customer or objection by the Customer to payment by the Bank.

This Letter of Credit will continue up to the Initial Expiry Date but shall be subject to the condition that it shall be deemed to be automatically extended without amendment for one year from the present or any future expiration date hereof, unless 60 days prior to any such expiration date the Bank notifies you by notice in writing delivered to the City of Toronto at the address noted below by registered mail that it shall not renew this Letter of Credit for any such additional period. Upon receipt by you of such notice, you may draw hereunder, for the available balance of this Letter of Credit by presenting a written demand together with confirmation that the amounts drawn will be retained and used by you to meet obligations incurred or to be incurred in connection with the Agreement. The demand must be authorized by the City Treasurer or delegate.

Sept 2013.doc

Schedule "D-1"

Form of Title Opinion For Registration Of This Agreement

Letterhead of Law Firm Giving Title Opinion

City of Toronto
Legal Division
Station 1260
26th Floor, Metro Hall
55 John Street
Toronto ON M5V 3C6

Attention: Wendy Walberg, City Solicitor

Dear Madam/Sir:

Re: *[Include reference to Schedule "A" and brief legal description of the subject land defined to be (the "Land") as well as a description of the type of agreement being entered into (ie Agreement under Section • of the • Act] defined to be (the "Agreement")]*

We act as solicitors for • (the "Owner") in connection with the execution and delivery of a • Agreement (the "Agreement") with the City of Toronto (the "City") and in connection with the giving of a title opinion to the City for the purpose of registration of the Agreement against title to the Land.

For the purpose of this opinion, we have examined title to the Lands as disclosed by the records of the Land Registry Office for the *[insert Land Titles or Registry]* Division of • (No. •)(the "LRO"), conducted necessary investigations as to the existence of prior corporate owners of all or part of the Land as disclosed by the records of the LRO in order to confirm the existence of each corporation during their respective period of ownership, conducted searches to ascertain any writs of execution or certificates of lien filed against the Owner. We have obtained a realty tax certificate and have made enquires to the City related to work orders, deficiency notices, zoning compliance and water/sewer charges respecting the Land.

We have obtained and relied upon statutory declarations and certificates where appropriate and have considered applicable questions of law. We have assumed with respect to documents examined by us, the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to authentic originals of all documents submitted to us as photocopies, facsimile, certified, conformed or notarial copies. We have also assumed the accuracy and currency of the indices and filing systems maintained at any public offices where we have conducted searches or made enquiries or caused such searches or enquiries to be conducted or made.

[NTD: If applicable, insert the following paragraph regarding any statutory declarations or certificates relied upon for the purpose of the opinion:

We have relied upon a statutory declaration of [Name of Owner / if Owner is a corporation or other entity, indicate the name and position of the signing officer], dated •, 20•, in connection with Section 44(1)1, 2, 3 and 4 of the Land Titles Act and certain factual matters which [is/ are] relevant for the purpose of providing our opinion expressed in paragraph 1 below. We have also relied upon a certificate of [Name of Owner / if Owner is a corporation or other entity, indicate the name and position of the signing officer], dated •, 20•, as to certain corporate matters, which [is/are] relevant for the purpose of providing our opinion expressed in paragraphs 3 and 4 below.]

1. The Owner is the registered owner in fee simple of the Land, free from encumbrances, liens or claims registered in the LRO or filed with the Sherriff, including any outstanding writs of execution that affect title to the Land, other than those liens, encumbrances, exceptions and qualifications to title set out in Parts I and II to Schedule B attached.
2. None of the documents identified in Schedule B, Part II referred to above, that are not being postponed, discharged or otherwise released, contain rights or remedies in favour of the parties thereto, or their respective successors or assigns, that could preclude, defeat or adversely affect, in any material respect, the rights and interests of the City arising from the Agreement.

[Where the Owner is a Corporation insert 3 and 4]

3. The Owner is an existing corporation pursuant to the • *[insert applicable statute name]* and has not been discontinued or dissolved.
4. The Owner has the corporate power and capacity to enter into and perform its obligations under the Agreement and has taken all necessary corporate action to authorize the execution and delivery of the Agreement.
5. The last registered instrument on title to the Land is • *[insert Instrument #]*.

Notwithstanding that our fee for this opinion will be paid by the Owner, and that we act for the Owner in this transaction, we acknowledge that the City is relying upon this opinion and the opinions expressed herein for the purpose of confirming that the Owner has good title to the Lands and to verify the priority of registration of the Agreement on title to the Land. We consent and agree to such reliance. Although this opinion may be relied upon by the City and its authorized agents for the purposes contemplated herein, it may not be relied upon or quoted, in whole or in part, by any other person or entity for any other purpose without our prior written consent.

Yours truly,

[]

- [NOTES:**
- i) this opinion must be drafted with all applicable inserts and should accompany all agreements submitted to the City. It must be forwarded directly to the Legal Services Division and the assigned file lawyer or law clerk as applicable; and*
 - ii) if the this opinion is signed by a "Law Firm" a cover letter must be attached confirming the name of the solicitor providing the opinion.]*

SCHEDULE "A"

LEGAL DESCRIPTION

Lands are registered in [*X*one]:

- REGISTRY
- LT ABSOLUTE
- LTCQ
- LT PLUS

[Insert PIN and brief legal description or a full metes and bounds description if the Lands are in Registry]

REFERENCE	Opinion for <i>[insert brief property reference]</i> dated • by <i>[insert name of opining solicitor]</i>
-----------	---

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates.
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
3. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
4. The following exceptions and qualification contained in section 44(1) of the *Land Titles Act*: paragraph 7, 8, 9, 10, 12 and 14.

PART II – Specific Encumbrances

[Insert if applicable and indicate where postponements, discharges, releases etc are to be provided]

REFERENCE	Opinion for <i>[insert brief property reference]</i> dated • by <i>[insert name of opining solicitor]</i>
-----------	---

SCHEDULE "B"
ENCUMBRANCES/QUALIFICATIONS

[Lands in LT CONVERSION QUALIFIED (LTCQ)]

PART I – General Qualifications

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates.
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
3. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
4. The following exceptions and qualification contained in section 44(1) of the *Land Titles Act*: paragraph 7, 8, 9, 10, 12 and 14.
5. The exceptions and qualifications contained in section 44(1) 11 of the *Land Titles Act* to the date of conversion to LTCQ.

PART II – Specific Encumbrances

[Insert if applicable and indicate where postponements, discharges, releases etc. are to be provided]

REFERENCE	Opinion for <i>[insert brief property reference]</i> dated • by <i>[insert name of opining solicitor]</i>
-----------	---

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates.
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
3. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
4. The following exceptions and qualification contained in section 44(1) of the *Land Titles Act*: paragraph 3, 7, 8, 9, 10, 12 and 14.
5. The exceptions and qualifications contained in section 44(1) 11 of the *Land Titles Act* to the date of conversion to LTCQ.

PART II – Specific Encumbrances

[Insert if applicable and insert where postponements, discharges, releases etc. are to be provided]

REFERENCE	Opinion for <i>[insert brief property reference]</i> dated • by <i>[insert name of opining solicitor]</i>
-----------	---

SCHEDULE "B"
ENCUMBRANCES/QUALIFICATIONS

[Lands in REGISTRY]

PART I – General Qualifications

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates.
2. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
3. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
4. Where the registered owner is or a previous owner was a railway company, any interest that may be or may have been created by an instrument deposited in the office of the Secretary of State of Canada or the Registrar General of Canada, as the case may be, under section 81 of the *Railway Act* (Canada), or any predecessor thereof.

PART II – Specific Encumbrances

[Insert if applicable and insert where postponements, discharges, releases etc. are to be provided]

REFERENCE	Opinion for <i>[insert brief property reference]</i> dated • by <i>[insert name of opining solicitor]</i>
-----------	---

City of Toronto
Legal Division
Station 1260
26th Floor, Metro Hall
55 John Street
Toronto ON M5V 3C6

Attention: Wendy Walberg, City Solicitor

Dear Madam/Sir:

Re: *[Include reference to Schedule "A" and a brief legal description of the subject land defined to be (the "Land") as well as a description of the nature of the transfer to the City (ie conveyance in fee simple, granting of an easement interest)]*

We act as solicitors for y (the "Owner") in connection with the *[conveyance of the Land in fee simple / conveyance of easement interest in the Land]* (the "Conveyance") to the City of Toronto (the "City") and in connection with the giving of a title opinion to the City with respect to the Land.

For the purpose of this opinion, we have examined the title to the Land as disclosed by the records of the Land Registry Office for the *[insert Land Titles or Registry]* Division of y (No. y) (the "LRO"), conducted necessary investigations as to the existence of prior corporate owners of all or part of the Land as disclosed by the records of the LRO in order to confirm the existence of each corporation during their respective period of ownership, conducted searches to ascertain any writs of execution or certificates of lien filed against the Owner and have undertaken the required off title enquires and searches identified in Schedule C attached. In addition, we have made such other searches, enquiries and investigations as we considered necessary and relevant for the purposes of our title opinion having regard to the nature and location of the Land.

[NOTE: The enquiries/searches specified are the basic enquiries that must be carried out for the purpose conveying land interests to the City. However, the City relies on the opining solicitor to undertake such other searches and enquiries as they consider necessary or desirable having regard to the nature and location of the Land.]

We have obtained and relied upon statutory declarations and certificates where appropriate and have considered applicable questions of law. We have assumed with respect to documents examined by us, the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to authentic originals of all documents submitted to us as photocopies, facsimile, certified, conformed or notarial copies. We have also assumed the accuracy and currency of the indices and filing systems maintained at any public offices where we have conducted searches or made enquiries or caused such searches or enquiries to be conducted or made.

[NTD: If applicable, insert the following paragraph regarding any statutory declarations or certificates relied upon for the purpose of the opinion:

We have relied upon a statutory declaration of [Name of Owner / if Owner is a corporation or other entity, indicate the name and position of the signing officer], dated y, 20y, in connection with Section 44(1) 1, 2, 3 and 4 of the Land Titles Act and certain factual matters which [is/are] relevant for the purpose of providing our opinion expressed in paragraph 1 below. We have also relied upon] a certificate of [Name of Owner / if Owner is a corporation or other entity, indicate the name and position of the signing officer], dated y, 20y, as to certain corporate matters which [is/are] relevant for the purpose of providing our opinion expressed in paragraphs 3 and 4 below.]

We are solicitors qualified to carry on the practice of law in the Province of Ontario. The opinion expressed extends only to the laws of the Province of Ontario and the federal laws of Canada applicable therein in force as of the date of this opinion.

Our enquiries and searches with respect to the Land confirm that:

- (a) the Land has not escheated to the Crown;
- (b) there are no unregistered easements affecting the Land claimed by Ontario Hydro or Toronto Hydro;
- (c) there are no outstanding work orders or deficiency notices and there is no record of non-compliance with applicable building or zoning by-laws;
- (d) there are no arrears in the payment of realty taxes;
- (e) there are no outstanding accounts for the supply of water or sewer services to the Land;
- (f) there are no regulations or restrictions imposed on the Land by the Toronto and Region Conservation Authority; and
- (g) according to the records of the Ministry of the Environment, the Land has never been used as a waste disposal site, the names in the chain of title to the Lands do not appear in the index record maintained by the Ministry and there are no outstanding violations or action request notices with respect to the Land;
- (h) *[if appropriate, insert determinations based on additional searches and enquiries that were undertaken as being considered necessary or desirable].*

Based upon and subject to the foregoing, we are of the opinion that, as at ŷ p.m., ŷ, 20ŷ :

1. The Owner is the registered owner in fee simple of the Land, free from any encumbrances, claims or liens, including any outstanding writs of execution that affect title to the Land, other than those liens, encumbrances, exceptions and qualifications to title set out in Parts I and II to Schedule B attached .
2. None of the documents identified in Schedule B, Part II referred to above, that are not being postponed, discharged or otherwise released, contain rights or remedies in favour of the parties thereto, or their respective successors and assigns, that could preclude, defeat, adversely affect or interfere with the *[City's fee simple interest in the Land ability of the City to exercise the rights established through its easement interest in the Land]*.

[Where the Owner is a Corporation insert 3 and 4]

3. The Owner is an existing corporation pursuant to the ŷ *[insert applicable statute name]* and has not been discontinued or dissolved.
4. The Owner has the corporate power and authority and has taken all necessary corporate action to authorize the *[conveyance of the Land / grant of easement with respect to the Land]* to the City .
5. The last registered instrument on title to the Land is ŷ *[insert Instrument #]*.

Notwithstanding that our fee for this opinion will be paid by the Owner, and that we act for the Owner in this transaction, we acknowledge that the City is relying upon this title opinion. We consent and agree to such reliance. Although this opinion may be relied upon by the City and its authorized agents for the purposes contemplated herein, it may not be relied upon or quoted, in whole or in part, by any other person or entity for any other purpose without our prior written consent.

Yours truly,

[]

[NOTES: i) this opinion must be drafted with all applicable inserts and should accompany all agreements submitted to the City. It must be forwarded directly to the Legal Services Division and the assigned file lawyer or law clerk as applicable; and

[Insert PIN and brief legal description or a full metes and bound description if the Lands are in Registry.]

REFERENCE	Opinion for <i>[insert brief property reference]</i> dated <i>y</i> by <i>[insert name of opining solicitor]</i>
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**SCHEDULE "B"
ENCUMBRANCES/QUALIFICATIONS**

[Lands in LT ABSOLUTE]

PART I – General Qualifications

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates.
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.

3. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
4. The following exceptions and qualification contained in section 44(1) of the *Land Titles Act*: paragraph 7, 8, 9, 10, 12 and 14.

PART II – Specific Encumbrances

[Insert if applicable]

REFERENCE	Opinion for <i>[insert brief property reference]</i> dated <i>y</i> by <i>[insert name of opining solicitor]</i>
-----------	--

**SCHEDULE “B”
ENCUMBRANCES/QUALIFICATIONS**

[Lands in LT CONVERSION QUALIFIED (LTCQ)]

PART I – General Qualifications

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates.
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
3. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
4. The following exceptions and qualification contained in section 44(1) of the *Land Titles Act*: paragraph 7, 8, 9, 10, 12 and 14.
5. The exceptions and qualifications contained in section 44(1) 11 of the *Land Titles Act* to the date of conversion to LTCQ.

PART II – Specific Encumbrances

REFERENCE	Opinion for <i>[insert brief property reference]</i> dated <i>y</i> by <i>[insert name of opining solicitor]</i>
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**SCHEDULE "B"
ENCUMBRANCES/QUALIFICATIONS**

[Lands in LT PLUS]

PART I – General Qualifications

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates.
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
3. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
4. The following exceptions and qualification contained in section 44(1) of the *Land Titles Act*: paragraph 3, 7, 8, 9, 10, 12 and 14.
5. The exceptions and qualifications contained in section 44(1) 11 of the *Land Titles Act* to the date of conversion to LTCQ.

PART II – Specific Encumbrances

[Insert if applicable]

REFERENCE	Opinion for <i>[insert brief property reference]</i> dated <i>y</i> by <i>[insert name of opining solicitor]</i>
------------------	--

**SCHEDULE "B"
ENCUMBRANCES/QUALIFICATIONS**

[Lands in Registry]

PART I – General Qualifications

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates.
2. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
3. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
4. Where the registered owner is or a previous owner was a railway company, any interest that may be or may have been created by an instrument deposited in the office of the Secretary of State of Canada or the Registrar General of Canada, as the case may be, under section 81 of the *Railway Act* (Canada), or any predecessor thereof.

PART II – Specific Encumbrances

[Insert if applicable]

REFERENCE	Opinion for <i>[insert brief property reference]</i> dated <i>y</i> by <i>[insert name of opining solicitor]</i>
------------------	--

SCHEDULE "C"

REQUIRED OFF TITLE SEARCHES AND ENQUIRIES

Property taxes and local improvements (Tax Certificate to be obtained)

City Building Division compliance certificate (as to existence of work orders, deficiency notices or non-compliance with applicable building or zoning by-laws)

Local and provincial hydro as to existence of unregistered hydro easements

Local water/sewer departments as to existence of arrears in charges

Ministry of Environment requirements

Toronto and Region Conservation requirements

REFERENCE	Opinion for <i>[insert brief property reference]</i> dated <i>y</i> by <i>[insert name of opining solicitor]</i>
------------------	--

Schedule "E"

List of Drawings and Reports for Storm Sewer

SG-01 - Site Grading Plan – The One 1 Bloor West, Revision 4, dated October 31, 2019;

SS-01 – Site Servicing Plan – The One 1 Bloor West, Revision 4, dated October 31, 2019;

PP-01 – Plan and Profile Public Laneway – The One 1 Bloor West, Revision 4, dated October 31, 2019;

EC-01 – Erosion Control Plan – The One 1 Bloor West, Revision 4, dated October 31, 2019;

DD-01 – General Notes & Details – The One 1 Bloor West, Revision 4, dated October 31, 2019;

DD-02 – Cross Sections – The One 1 Bloor West, Revision 4, dated October 31, 2019;
and

Mizrahi Development Group (The One) Inc. - Stormwater Management Report – 1 Bloor Street West, dated October 2019

all prepared by Cole Engineering Group Ltd.

In addition to the Owner's obligations described elsewhere in this Agreement, prior to the earlier of Release for Construction of Services and the issuance of the first Above Grade Building Permit for a part or all of the Site, the Owner shall provide a certified cheque in an amount equal to five percent (5%) of the preliminary cost estimate attached hereto as Schedule "F" for the purpose of inspection fees.

ITEM NO.	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL PRICE
B	SECTION B - STORM SEWERS				
	Storm Sewer Pipes				
B.1	OGS STC300 - MH2, 300mm PVC	7.0	m	\$ 625.00	\$ 4,375.00
B.2	MH2 - MH1, 300mm PVC	32.6	m	\$ 625.00	\$ 20,375.00
B.3	MH1 - EX Concrete Box MH	17.0	m	\$ 675.00	\$ 11,475.00
	Storm Maintenance Hole				
B.4	OGS STC300	1.0	L.S.	\$ 120,000.00	\$ 120,000.00
B.5	MH2	1.0	L.S.	\$ 15,000.00	\$ 15,000.00
B.6	MH1	1.0	L.S.	\$ 15,000.00	\$ 15,000.00
	Miscellaneous				
B.7	Install vertical bends on watermain required for storm sewer installation	1.0	L.S.	\$ 10,000.00	\$ 10,000.00
B.8	Restoration of Laneway and Balmuto Street	250.0	m ²	\$ 200.00	\$ 50,000.00
TOTAL SECTION B - STORM SEWERS					\$ 246,225.00

This is Exhibit "U" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #66

21106-0118 (LT)

PAGE 1 OF 2
PREPARED FOR RO
ON 2022/08/08 A

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

L 250E TORONTO; CITY OF TORONTO

RECENTLY:
FIRST CONVERSION FROM BOOK

PIN CREATION DATE:
2003/07/28

CAPACITY SHARE

EVENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
<p>DELETED INSTRUMENTS SINCE 2003/07/25 **</p> <p>UNDER THE LAND TITLES ACT, TO:</p> <p>THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *</p> <p>ATURE TO THE CROWN.</p> <p>ON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF</p> <p>ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY</p> <p>SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</p> <p>ES: 2003/07/28 **</p> <p>LEASE</p> <p>AME OWNER</p> <p>ERAL)</p> <p>ATEMENTS.</p>		<p>*** COMPLETELY DELETED ***</p> <p>*** COMPLETELY DELETED ***</p> <p>*** COMPLETELY DELETED ***</p> <p>473377 ONTARIO INC.</p> <p>*** COMPLETELY DELETED ***</p> <p>VERITAS CONSULTANTS INC.</p> <p>*** COMPLETELY DELETED ***</p> <p>VERITAS CONSULTANTS INC.</p> <p>*** COMPLETELY DELETED ***</p> <p>VERITAS CONSULTANTS INC.</p> <p>*** COMPLETELY DELETED ***</p> <p>VERITAS CONSULTANTS INC.</p>	<p>473377 ONTARIO INC.</p> <p>VERITAS CONSULTANTS LIMITED</p> <p>VERITAS CONSULTANTS INC.</p> <p>MIZRAHI REAL ESTATE GROUP INC.</p> <p>2495159 ONTARIO INC.</p>



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #66

21106-0118 (LT)

PAGE 2 OF 2
PREPARED FOR RO
ON 2022/08/08 A

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

CHARGE TYPE	AMOUNT	PARTIES FROM	PARTIES TO
CHARGE		*** COMPLETELY DELETED *** MIZRAHI REAL ESTATE GROUP INC.	
		*** COMPLETELY DELETED *** 2495159 ONTARIO INC.	BRIDGING FINANCE INC.
RENT GEN 31922		*** COMPLETELY DELETED *** 2495159 ONTARIO INC.	BRIDGING FINANCE INC.
CON-LAND		*** COMPLETELY DELETED *** 2495159 ONTARIO INC.	
WITHOUT THE CONSENT OF THE MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.			
CHARGE		*** COMPLETELY DELETED *** BRIDGING FINANCE INC.	
FE REST		*** COMPLETELY DELETED *** 2495159 ONTARIO INC.	
CON-LAND		*** COMPLETELY DELETED *** 2495159 ONTARIO INC.	
CHARGE WITHOUT THE CONSENT OF		THE GENERAL MANAGER, PARKS, FORESTRY AND RECREATION FOR THE CITY OF TORONTO, OR THEIR DESIGNATE	
	\$2	CITY OF TORONTO 2495159 ONTARIO INC.	CITY OF TORONTO
FE REST		*** COMPLETELY DELETED *** CITY OF TORONTO	

This is Exhibit "V" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #66

21196-0334 (LT)

PAGE 1 OF 3
PREPARED FOR BO
ON 2022/07/08 A

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

LOT 8 S/S DAVENPORT RD PLAN 689E TORONTO, DESIGNATED AS PART 2 ON PLAN 66R28729; SUBJECT TO AN EASEMENT AS IN AT3773749; SUBJECT TO AN EASEMENT AS IN AT3903195; TOGETHER WITH AN EASEMENT OVER THE COMMON ELEMENTS IN TORONTO STANDARD CONDOMINIUM PLAN NO. 2609 AS IN AT4681450; TOGETHER WITH AN EASEMENT OVER THE COMMON ELEMENTS ON LEVEL A & 1 IN TORONTO STANDARD CONDOMINIUM PLAN NO. 2609 AS IN AT4681450; TOGETHER WITH AN EASEMENT OVER THE COMMON ELEMENTS ON LEVEL 1 IN TORONTO STANDARD CONDOMINIUM PLAN NO. 2609 AS IN AT4681450; TOGETHER WITH AN EASEMENT OVER THE COMMON ELEMENTS IN TORONTO STANDARD CONDOMINIUM PLAN NO. 2609 AS IN AT4681450; SUBJECT TO AN EASEMENT OVER PART 2 ON PLAN 66R28729 IN FAVOUR OF TORONTO STANDARD CONDOMINIUM PLAN NO. 2609 AS IN AT4681450; CITY OF TORONTO

PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2003/11/07.

RECENTLY:
DIVISION FROM 21196-0333

PIN CREATION DATE:
2017/09/21

CAPACITY SHARE
ROWN

INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
DELETED INSTRUMENTS		SINCE 2017/09/21 **	
		*** DELETED AGAINST THIS PROPERTY *** MIZRAHI SOARING DEVELOPMENTS INC.	THE CORPORATION OF THE CITY OF TORONTO MIZRAHI DEVELOPMENT GROUP (145 DAVENPORT)
		*** DELETED AGAINST THIS PROPERTY *** FOSTER, ROBIN	MIZRAHI DEVELOPMENT GROUP (185 DAVENPORT)
		*** DELETED AGAINST THIS PROPERTY *** VUKASOVIC, DRAGAN	MIZRAHI DEVELOPMENT GROUP (185 DAVENPORT)
		*** DELETED AGAINST THIS PROPERTY *** NIKIC, BORIS SALIB, PATRICIA	MIZRAHI DEVELOPMENT GROUP (185 DAVENPORT)
		*** DELETED AGAINST THIS PROPERTY *** NIKIC, BORIS NIKIC, VLADIMIR SALIB, PATRICIA ANNE	MIZRAHI DEVELOPMENT GROUP (185 DAVENPORT)
		*** DELETED AGAINST THIS PROPERTY *** KEEFE, ORAL DENNIS	MIZRAHI DEVELOPMENT GROUP (185 DAVENPORT)
	\$2	CITY OF TORONTO	
FOR AN INDETERMINATE PERIOD		*** DELETED AGAINST THIS PROPERTY ***	

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

EVENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
MENT 3484185		MIZRAHI DEVELOPMENT GROUP (145 DAVENPORT) INC. MIZRAHI DEVELOPMENT GROUP (185 DAVENPORT) INC. *** DELETED AGAINST THIS PROPERTY *** MIZRAHI DEVELOPMENT GROUP (145 DAVENPORT) INC. MIZRAHI DEVELOPMENT GROUP (185 DAVENPORT) INC. *** DELETED AGAINST THIS PROPERTY *** AVIVA INSURANCE COMPANY OF CANADA	AVIVA INSURANCE COMPANY OF CANADA UNITED OVERSEAS BANK LIMITED UNITED OVERSEAS BANK LIMITED
OR AN INDETERMINATE PERIOD	\$2	133 HAZELTON INC. MIZRAHI DEVELOPMENT GROUP (185 DAVENPORT) INC.	CITY OF TORONTO
MENT 3506298		AVIVA INSURANCE COMPANY OF CANADA	CITY OF TORONTO
MENT 3506298		*** DELETED AGAINST THIS PROPERTY *** UNITED OVERSEAS BANK LIMITED	CITY OF TORONTO
MENT 3506298. DELETED 2017/09/22. KS		*** DELETED AGAINST THIS PROPERTY *** 7537506 CANADA INC.	CITY OF TORONTO
NAME OWNER		*** DELETED AGAINST THIS PROPERTY *** MIZRAHI DEVELOPMENT GROUP (145 DAVENPORT) INC.	ONE8ONE DAVENPORT INC.
NAME OWNER		*** DELETED AGAINST THIS PROPERTY *** MIZRAHI DEVELOPMENT GROUP (185 DAVENPORT) INC.	ONE8ONE DAVENPORT INC.
EASEMENT	\$2	ONE8ONE DAVENPORT INC.	ROGERS COMMUNICATIONS INC.
MENT	\$2	CITY OF TORONTO	ONE8ONE DAVENPORT INC.
EASEMENT		ONE8ONE DAVENPORT INC.	ENBRIDGE GAS DISTRIBUTION INC.
OLIDATE		ONE8ONE DAVENPORT INC.	
ERENCE			



LAND
REGISTRY
OFFICE #66

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

21196-0334 (LT)

PAGE 3 OF 3
PREPARED FOR BO
ON 2022/07/08 A

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

MENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
		*** DELETED AGAINST THIS PROPERTY *** ONE8ONE DAVENPORT INC.	AVIVA INSURANCE COMPANY OF CANADA
		*** DELETED AGAINST THIS PROPERTY *** ONE8ONE DAVENPORT INC.	AVIVA INSURANCE COMPANY OF CANADA
	\$2	TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2609	ONE8ONE DAVENPORT INC.
CHARGE		*** COMPLETELY DELETED *** UNITED OVERSEAS BANK LIMITED	
	\$4,000,000	ONE8ONE DAVENPORT INC.	181 DAVENPORT RETAIL INC.
	\$4,500,000	181 DAVENPORT RETAIL INC.	KEB HANA BANK CANADA
CHARGE		*** COMPLETELY DELETED *** AVIVA INSURANCE COMPANY OF CANADA	
RENT GEN		181 DAVENPORT RETAIL INC.	KEB HANA BANK CANADA
	\$12,000,000	181 DAVENPORT RETAIL INC.	BRIDGING FINANCE INC.
RENT GEN		181 DAVENPORT RETAIL INC.	BRIDGING FINANCE INC.

This is Exhibit “W” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

552
F2846

Message

From: Graham Marr [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DF3416578487481A9B11DC95E161E8B5-GRAHAM MARR]
Sent: 3/10/2021 9:14:15 AM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) [sam@mizrahidevelopments.ca]
Subject: 181 Extension
Importance: High

Hi Sam, as discussed, we need to update our files for the 181 loan as we are at the tail end of our audit and they are asking us about this file. I have drafted a simple extension to the prior extension basically showing that the loan is not out of maturity. I understand that Bruno from our team has liaised with Mark on the calculation of the balance. Can you please review and sign back at your earliest convenience?

Thank you

Graham Marr, CPA, CA, CFAPresident | **Bridging Finance Inc.**

77 King St W, Suite 2925 | Toronto | ON | M5K 1K7

T: (416) 777-1794 | C: (416) 906-0395

E: gmarr@bridgingfinance.cawww.bridgingfinance.ca*Canada's Premier Private Debt Provider*

F578

Dated as of November 30, 2020

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc. as agent for Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) (the “**Lender**”) loan to Northern Citadel Capital Inc., Mizrahi Inc. and 2495159 Ontario Inc. (collectively, the “**Borrower**”) pursuant to a loan agreement among, *inter alia*, the Borrower and the Lender dated as of December 17, 2014, as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015, June 30, 2016, November 30, 2016 (the “**November Letter**”), November 1, 2017 and May 2, 2018 (collectively, the “**Loan Agreement**”)

We confirm that the Lender has agreed, to amend the terms and conditions of the Loan Agreement and the Security as follows (all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement):

1. As of December 31, 2020, the Obligors acknowledge and agree that there is \$45,892,107.79 outstanding under the Loan and that they do not dispute their liability to the Lender on any ground whatsoever. The Obligors further confirm that they have no claim, demand, setoff or counter-claim against the Lender on any basis whatsoever and that there is no matter, fact or thing which may be asserted by any of them in extinction or diminution of their indebtedness to the Lender or result in any bar to or delay in the recovery thereof. If there are any such claims for setoff, counter-claim, damages or otherwise, they are hereby expressly released and discharged
2. Effective the date hereof, the Maturity Date (as defined in the November Letter) is hereby extended to April 30, 2022.
3. The Borrower shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Agreement and all matters relating thereto which fees shall be paid within 10 days of request therefore. If not paid as aforesaid, such amounts may be paid by the Lender and added to the Loan and shall bear interest from the date of such payment in accordance with the terms of the Loan and shall be secured by the Security.
4. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
5. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.

6. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Security, as may be required to evidence the true intent and meaning of this Agreement.
7. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
8. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]

Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
BRIDGING INCOME FUND LP**

Per: _____
Name:
Title:

We Acknowledge and Accept the terms and conditions of this Agreement as of this 30th day of November, 2018.

**NORTHERN CITADEL CAPITAL INC. (as
Borrower and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI INC. (as Borrower and Obligor)

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**2495159 ONTARIO INC. (as Borrower and
Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have authority to bind the corporation

**ONE8ONE DAVENPORT INC. (as Guarantor
and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI ENTERPRISES INC. (as Obligor)

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**MIZRAHI SOARING DEVELOPMENTS
INC. (as Guarantor and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**181 DAVENPORT RETAIL INC. (as
Guarantor and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

Witness:

Sam Mizrahi (as Obligor)

557

F2851

F583

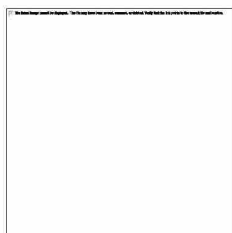
558
F2852

Message

From: Sam Mizrahi [sam@mizrahidevelopments.ca]
Sent: 3/10/2021 10:17:48 AM
To: Graham Marr [GMarr@bridgingfinance.ca]
Subject: Re: 181 Extension

Hi Graham, what was the last one we signed as this one seems different on the initial read. Can you send me the one we did last time. Thanks

Sincerely,



Sam Mizrahi
President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4210

C. 416.818.5288

F. 1.866.300.0219

E. Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

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 system.

On Mar 10, 2021, at 9:14 AM, Graham Marr <GMarr@bridgingfinance.ca> wrote:

Hi Sam, as discussed, we need to update our files for the 181 loan as we are at the tail end of our audit and they are asking us about this file. I have drafted a simple extension to the prior extension basically showing that the loan is not out of maturity. I understand that Bruno from our team has liaised with Mark on the calculation of the balance. Can you please review and sign back at your earliest convenience?

Thank you

Graham Marr, CPA, CA, CFA

President | **Bridging Finance Inc.**

77 King St W, Suite 2925 | Toronto | ON | M5K 1K7

T: (416) 777-1794 | C: (416) 906-0395

E: gmarr@bridgingfinance.ca

www.bridgingfinance.ca

Canada's Premier Private Debt Provider

<Bridging_Mizrahi_-_amending_agreement_(extenstion_to_April2022.DOC)>

F584

This is Exhibit "X" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

Message

From: Graham Marr [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DF3416578487481A9B11DC95E161E8B5-GRAHAM MARR]
Sent: 3/30/2021 2:17:43 PM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) [sam@mizrahidevelopments.ca]
Subject: FW: 181 Extension

Hi Sam, can you please call me as soon as you can, thank you

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Graham Marr
Sent: March 10, 2021 9:14 AM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: 181 Extension
Importance: High

Hi Sam, as discussed, we need to update our files for the 181 loan as we are at the tail end of our audit and they are asking us about this file. I have drafted a simple extension to the prior extension basically showing that the loan is not out of maturity. I understand that Bruno from our team has liaised with Mark on the calculation of the balance. Can you please review and sign back at your earliest convenience?

Thank you

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President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca
www.bridgingfinance.ca

Canada's Premier Private Debt Provider

Dated as of November 30, 2020

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc. as agent for Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) (the “**Lender**”) loan to Northern Citadel Capital Inc., Mizrahi Inc. and 2495159 Ontario Inc. (collectively, the “**Borrower**”) pursuant to a loan agreement among, *inter alia*, the Borrower and the Lender dated as of December 17, 2014, as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015, June 30, 2016, November 30, 2016 (the “**November Letter**”), November 1, 2017 and May 2, 2018 (collectively, the “**Loan Agreement**”)

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4. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
5. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.

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7. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
8. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]

Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
BRIDGING INCOME FUND LP**

Per: _____
Name:
Title:

We Acknowledge and Accept the terms and conditions of this Agreement as of this 30th day of November, 2018.

**NORTHERN CITADEL CAPITAL INC. (as
Borrower and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI INC. (as Borrower and Obligor)

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**2495159 ONTARIO INC. (as Borrower and
Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have authority to bind the corporation

**ONE8ONE DAVENPORT INC. (as Guarantor
and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI ENTERPRISES INC. (as Obligor)

Per: _____

Name: Sam Mizrahi

Title: President

I have the authority to bind the corporation

**MIZRAHI SOARING DEVELOPMENTS
INC. (as Guarantor and Obligor)**

Per: _____

Name: Sam Mizrahi

Title: President

I have the authority to bind the corporation

**181 DAVENPORT RETAIL INC. (as
Guarantor and Obligor)**

Per: _____

Name: Sam Mizrahi

Title: President

I have the authority to bind the corporation

Witness:

Sam Mizrahi (as Obligor)

This is Exhibit "Y" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

Message

From: Graham Marr [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DF3416578487481A9B11DC95E161E8B5-GRAHAM MARR]
Sent: 3/30/2021 2:29:47 PM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) [sam@mizrahidevelopments.ca]
Subject: RE: 181 Extension

As discussed

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Graham Marr
Sent: March 30, 2021 2:18 PM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: FW: 181 Extension

Hi Sam, can you please call me as soon as you can, thank you

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Graham Marr
Sent: March 10, 2021 9:14 AM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: 181 Extension
Importance: High

Hi Sam, as discussed, we need to update our files for the 181 loan as we are at the tail end of our audit and they are asking us about this file. I have drafted a simple extension to the prior extension basically showing that the loan is not out of maturity. I understand that Bruno from our team has liaised with Mark on the calculation of the balance. Can you please review and sign back at your earliest convenience?
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www.bridgingfinance.ca

Canada's Premier Private Debt Provider

Dated as of November 30, 2020

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc. as agent for Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) (the “**Lender**”) loan to Northern Citadel Capital Inc., (collectively, the “**Borrower**”) pursuant to a loan agreement among, *inter alia*, the Borrower and the Lender dated as of December 17, 2014, as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015, June 30, 2016, November 30, 2016 (the “**November Letter**”), November 1, 2017 and May 2, 2018 (collectively, the “**Loan Agreement**”)

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2. Effective the date hereof, the Maturity Date (as defined in the November Letter) is hereby extended to April 30, 2022.
3. The Borrower shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Agreement and all matters relating thereto which fees shall be paid within 10 days of request therefore. If not paid as aforesaid, such amounts may be paid by the Lender and added to the Loan and shall bear interest from the date of such payment in accordance with the terms of the Loan and shall be secured by the Security.
4. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
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6. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Security, as may be required to evidence the true intent and meaning of this Agreement.
7. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
8. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]

Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
BRIDGING INCOME FUND LP**

Per: _____
Name:
Title:

We Acknowledge and Accept the terms and conditions of this Agreement as of this 30th day of November, 2020.

**NORTHERN CITADEL CAPITAL INC. (as
Borrower and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**ONESONE DAVENPORT INC. (as Guarantor
and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**MIZRAHI SOARING DEVELOPMENTS
INC. (as Guarantor and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**181 DAVENPORT RETAIL INC. (as
Guarantor and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

Witness:

Sam Mizrahi (as Obligor)

571
F2865

F597

Dated as of November 30, 2020

Mizrahi Development Group Inc. 189
Forest Hill Road Toronto, Ontario M
5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc. as agent for Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) (the “**Lender**”) loan to Northern Citadel Capital Inc., ~~Mizrahi Inc. and 2495159 Ontario Inc.~~ (collectively, the “**Borrower**”) pursuant to a loan agreement among, *inter alia*, the Borrower and the Lender dated as of December 17, 2014, as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015, June 30, 2016, November 30, 2016 (the “**November Letter**”), November 1, 2017 and May 2, 2018 (collectively, the “**Loan Agreement**”)

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3. The Borrower shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Agreement and all matters relating thereto which fees shall be paid within 10 days of request therefore. If not paid as aforesaid, such amounts may be paid by the Lender and added to the Loan and shall bear interest from the date of such payment in accordance with the terms of the Loan and shall be secured by the Security.
4. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
5. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.

- 6. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Security, as may be required to evidence the true intent and meaning of this Agreement.
- 7. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 8. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]
 Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
 BRIDGING INCOME FUND LP**

Per: _____ Name:
 Title:

We Acknowledge and Accept the terms and conditions of this Agreement as of this 30th day of November, ~~2018~~2020.

**NORTHERN CITADEL CAPITAL INC. (as
 Borrower and Obligor)**

Per: _____ Name: _____ S:
 Title: President I have the authority to bind the corporation

MIZRAHI INC. (as Borrower and Obligor)

Per: _____ Name: _____ S:
 Title: President I have the authority to bind the corporation

**2495159 ONTARIO INC. (as Borrower and
 Obligor)**

Per: _____ Name: _____ S:
 Title: President I have authority to bind the corporation

**ONE8ONE DAVENPORT INC. (as Guarantor
 and Obligor)**

Per: _____ Name: S:
Title: President I have the authority to bind the
corporation

~~MIZRAHI ENTERPRISES INC. (as Obligor)~~

~~Per: _____ Name: S:
Title: President I have the authority to bind the
corporation~~

**MIZRAHI SOARING DEVELOPMENTS INC.
(as Guarantor and Obligor)**

Per: _____ Name: S:
Title: President I have the authority to bind the
corporation

**181 DAVENPORT RETAIL INC. (as Guarantor
and Obligor)**

Per: _____ Name: S:
Title: President I have the authority to bind the
corporation

Witness:

Sam Mizrahi (as Obligor)

This is Exhibit “Z” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

576
F2870

Message

From: Graham Marr [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DF3416578487481A9B11DC95E161E8B5-GRAHAM MARR]
Sent: 3/30/2021 2:52:34 PM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) [sam@mizrahidevelopments.ca]
Subject: RE: 181 Extension

Updated attached

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Graham Marr
Sent: March 30, 2021 2:30 PM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: RE: 181 Extension

As discussed

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Graham Marr
Sent: March 30, 2021 2:18 PM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: FW: 181 Extension

Hi Sam, can you please call me as soon as you can, thank you

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Graham Marr
Sent: March 10, 2021 9:14 AM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: 181 Extension
Importance: High

Hi Sam, as discussed, we need to update our files for the 181 loan as we are at the tail end of our audit and they are asking us about this file. I have drafted a simple extension to the prior extension basically showing that the loan is not out of maturity. I understand that Bruno from our team has liaised with Mark on the calculation of the balance. Can you please review and sign back at your earliest convenience?

Thank you

Graham Marr, CPA, CA, CFA

F602

577
F2871

President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca
www.bridgingfinance.ca

Canada's Premier Private Debt Provider

F603

Dated as of November 30, 2020

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc. as agent for Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) (the “**Lender**”) loan to Northern Citadel Capital Inc., (collectively, the “**Borrower**”) pursuant to a loan agreement among, *inter alia*, the Borrower and the Lender dated as of December 17, 2014, as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015, June 30, 2016, November 30, 2016 (the “**November Letter**”), November 1, 2017 and May 2, 2018 (collectively, the “**Loan Agreement**”)

We confirm that the Lender has agreed, to amend the terms and conditions of the Loan Agreement and the Security as follows (all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement):

1. As of December 31, 2020, the Obligors acknowledge and agree that there is \$45,892,107.79 outstanding under the Loan and that they do not dispute their liability to the Lender on any ground whatsoever. The Obligors further confirm that they have no claim, demand, setoff or counter-claim against the Lender on any basis whatsoever and that there is no matter, fact or thing which may be asserted by any of them in extinction or diminution of their indebtedness to the Lender or result in any bar to or delay in the recovery thereof.
2. Effective the date hereof, the Maturity Date (as defined in the November Letter) is hereby extended to April 30, 2022.
3. The Borrower shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Agreement and all matters relating thereto which fees shall be paid within 10 days of request therefore. If not paid as aforesaid, such amounts may be paid by the Lender and added to the Loan and shall bear interest from the date of such payment in accordance with the terms of the Loan and shall be secured by the Security.
4. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
5. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.

6. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Security, as may be required to evidence the true intent and meaning of this Agreement.
7. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
8. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]

Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
BRIDGING INCOME FUND LP**

Per: _____
Name:
Title:

We Acknowledge and Accept the terms and conditions of this Agreement as of this 30th day of November, 2020.

**NORTHERN CITADEL CAPITAL INC. (as
Borrower and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**ONESONE DAVENPORT INC. (as Guarantor
and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President

MIZRAHI ENTERPRISES INC. (as Obligor)

Per:
Name: Sam Mizrahi
Title: President

**MIZRAHI SOARING DEVELOPMENTS
INC. (as Guarantor and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**181 DAVENPORT RETAIL INC. (as
Guarantor and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

582
F2876

F608

Dated as of November 30, 2020

Mizrahi Development Group Inc. 189
Forest Hill Road Toronto, Ontario M
5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc. as agent for Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) (the “**Lender**”) loan to Northern Citadel Capital Inc., (collectively, the “**Borrower**”) pursuant to a loan agreement among, *inter alia*, the Borrower and the Lender dated as of December 17, 2014, as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015, June 30, 2016, November 30, 2016 (the “**November Letter**”), November 1, 2017 and May 2, 2018 (collectively, the “**Loan Agreement**”)

We confirm that the Lender has agreed, to amend the terms and conditions of the Loan Agreement and the Security as follows (all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement):

1. As of December 31, 2020, the Obligors acknowledge and agree that there is \$45,892,107.79 outstanding under the Loan and that they do not dispute their liability to the Lender on any ground whatsoever. The Obligors further confirm that they have no claim, demand, setoff or counter-claim against the Lender on any basis whatsoever and that there is no matter, fact or thing which may be asserted by any of them in extinction or diminution of their indebtedness to the Lender or result in any bar to or delay in the recovery thereof. ~~If there are any such claims for setoff, counter-claim, damages or otherwise, they are hereby expressly released and discharged~~
2. Effective the date hereof, the Maturity Date (as defined in the November Letter) is hereby extended to April 30, 2022.
3. The Borrower shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Agreement and all matters relating thereto which fees shall be paid within 10 days of request therefore. If not paid as aforesaid, such amounts may be paid by the Lender and added to the Loan and shall bear interest from the date of such payment in accordance with the terms of the Loan and shall be secured by the Security.
4. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
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- 7. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 8. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]
 Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
 BRIDGING INCOME FUND LP**

Per: _____ Name:
 Title:

We Acknowledge and Accept the terms and conditions of this Agreement as of this 30th day of November, 2020.

**NORTHERN CITADEL CAPITAL INC. (as
 Borrower and Obligor)**

Per: _____ Name: S:
 Title: President I have the authority to bind the corporation

**ONE8ONE DAVENPORT INC. (as Guarantor
 and Obligor)**

Per: _____ Name: S:
 Title: President ~~I have the authority to bind the corporation~~

MIZRAHI ENTERPRISES INC. (as Obligor)

Per: Name: Sam Mizrahi Title: President

**MIZRAHI SOARING DEVELOPMENTS INC.
(as Guarantor and Obligor)**


Per: _____ Name: S:
Title: President I have the authority to bind the
corporation

**181 DAVENPORT RETAIL INC. (as Guarantor
and Obligor)**

Per: _____ Name: S:
Title: President I have the authority to bind the
corporation

~~Witness: _____ Sam Mizrahi (as Obligor)~~

This is Exhibit "AA" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

587
F2881

Message

From: Sam Mizrahi [sam@mizrahidevelopments.ca]
Sent: 3/30/2021 2:58:04 PM
To: Graham Marr [GMarr@bridgingfinance.ca]
Subject: Re: 181 Extension

Attached. As discussed.

Sincerely,



Sam Mizrahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T. 416.922.4200 ext.4210
C. 416.818.5288
F. 1.866.300.0219
E. Sam@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

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On Mar 30, 2021, at 2:52 PM, Graham Marr <GMarr@bridgingfinance.ca> wrote:

Updated attached

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Graham Marr
Sent: March 30, 2021 2:30 PM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: RE: 181 Extension

As discussed

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

F613

588
F2882

From: Graham Marr
Sent: March 30, 2021 2:18 PM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: FW: 181 Extension

Hi Sam, can you please call me as soon as you can, thank you

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Graham Marr
Sent: March 10, 2021 9:14 AM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: 181 Extension
Importance: High

Hi Sam, as discussed, we need to update our files for the 181 loan as we are at the tail end of our audit and they are asking us about this file. I have drafted a simple extension to the prior extension basically showing that the loan is not out of maturity. I understand that Bruno from our team has liaised with Mark on the calculation of the balance. Can you please review and sign back at your earliest convenience?

Thank you

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca
www.bridgingfinance.ca

Canada's Premier Private Debt Provider

<Bridging_Mizrahi_-_amending_agreement_(extenstion_to_April2022_Final.pdf)>

F614

589

F2883

F615

Dated as of November 30, 2020

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc. as agent for Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) (the “**Lender**”) loan to Northern Citadel Capital Inc., (collectively, the “**Borrower**”) pursuant to a loan agreement among, *inter alia*, the Borrower and the Lender dated as of December 17, 2014, as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015, June 30, 2016, November 30, 2016 (the “**November Letter**”), November 1, 2017 and May 2, 2018 (collectively, the “**Loan Agreement**”)

We confirm that the Lender has agreed, to amend the terms and conditions of the Loan Agreement and the Security as follows (all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement):

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2. Effective the date hereof, the Maturity Date (as defined in the November Letter) is hereby extended to April 30, 2022.
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7. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
8. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]

Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
BRIDGING INCOME FUND LP**

Per: _____
Name:
Title:

We Acknowledge and Accept the terms and conditions of this Agreement as of this 30th day of November, 2020.

**NORTHERN CITADEL CAPITAL INC. (as
Borrower and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

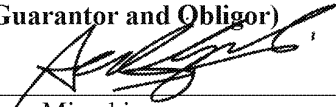
**ONESONE DAVENPORT INC. (as Guarantor
and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President

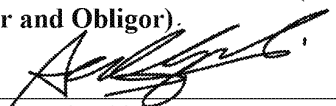
MIZRAHI ENTERPRISES INC. (as Obligor)

Per: _____
Name: Sam Mizrahi
Title: President

**MIZRAHI SOARING DEVELOPMENTS
INC. (as Guarantor and Obligor)**

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**181 DAVENPORT RETAIL INC. (as
Guarantor and Obligor)**

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

This is Exhibit “BB” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

595
F2889

Message

From: Graham Marr [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DF3416578487481A9B11DC95E161E8B5-GRAHAM MARR]
Sent: 3/30/2021 4:58:37 PM
To: Sam Mizrahi [sam@mizrahidevelopments.ca]
BCC: bchamp@bridgingfinance.ca [BChamp@bridgingfinance.ca]
Subject: RE: 181 Extension

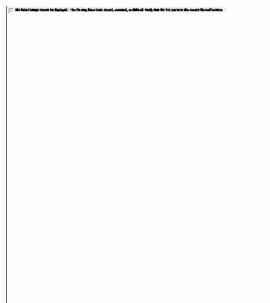
Sam, apologies, I realized that it was dated November 30th and referencing a Dec 31 balance. I've redated that attached December 31 to be consistent. If u you could please sign back, many thanks

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Sam Mizrahi <sam@mizrahidevelopments.ca>
Sent: March 30, 2021 2:58 PM
To: Graham Marr <GMarr@bridgingfinance.ca>
Subject: Re: 181 Extension

Attached. As discussed.

Sincerely,



Sam Mizrahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T. 416.922.4200 ext.4210
C. 416.818.5288
F. 1.866.300.0219
E. Sam@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

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On Mar 30, 2021, at 2:52 PM, Graham Marr <GMarr@bridgingfinance.ca> wrote:

Updated attached

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**

F621

77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Graham Marr
Sent: March 30, 2021 2:30 PM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: RE: 181 Extension

As discussed

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Graham Marr
Sent: March 30, 2021 2:18 PM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: FW: 181 Extension

Hi Sam, can you please call me as soon as you can, thank you

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President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Graham Marr
Sent: March 10, 2021 9:14 AM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: 181 Extension
Importance: High

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Thank you

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca
www.bridgingfinance.ca

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<Bridging_Mizrahi_-_amending_agreement_(extenstion_to_April2022_Final.pdf)>

597

F2891

F623

Dated as of December 31, 2020

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc. as agent for Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) (the “**Lender**”) loan to Northern Citadel Capital Inc., (collectively, the “**Borrower**”) pursuant to a loan agreement among, *inter alia*, the Borrower and the Lender dated as of December 17, 2014, as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015, June 30, 2016, November 30, 2016 (the “**November Letter**”), November 1, 2017 and May 2, 2018 (collectively, the “**Loan Agreement**”)

We confirm that the Lender has agreed, to amend the terms and conditions of the Loan Agreement and the Security as follows (all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement):

1. As of December 31, 2020, the Obligors acknowledge and agree that there is \$45,892,107.79 outstanding under the Loan and that they do not dispute their liability to the Lender on any ground whatsoever. The Obligors further confirm that they have no claim, demand, setoff or counter-claim against the Lender on any basis whatsoever and that there is no matter, fact or thing which may be asserted by any of them in extinction or diminution of their indebtedness to the Lender or result in any bar to or delay in the recovery thereof.
2. Effective the date hereof, the Maturity Date (as defined in the November Letter) is hereby extended to April 30, 2022.
3. The Borrower shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Agreement and all matters relating thereto which fees shall be paid within 10 days of request therefore. If not paid as aforesaid, such amounts may be paid by the Lender and added to the Loan and shall bear interest from the date of such payment in accordance with the terms of the Loan and shall be secured by the Security.
4. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
5. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.

6. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Security, as may be required to evidence the true intent and meaning of this Agreement.
7. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
8. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]

Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
BRIDGING INCOME FUND LP**

Per: _____
Name:
Title:

We Acknowledge and Accept the terms and conditions of this Agreement as of this 31th day of December, 2020.

**NORTHERN CITADEL CAPITAL INC. (as
Borrower and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**ONESONE DAVENPORT INC. (as Guarantor
and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President

MIZRAHI ENTERPRISES INC. (as Obligor)

Per:
Name: Sam Mizrahi
Title: President

**MIZRAHI SOARING DEVELOPMENTS
INC. (as Guarantor and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**181 DAVENPORT RETAIL INC. (as
Guarantor and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

This is Exhibit “CC” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

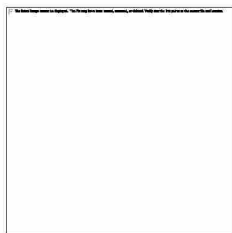
603
F2897

Message

From: Sam Mizrahi [sam@mizrahidevelopments.ca]
Sent: 3/30/2021 9:38:37 PM
To: Graham Marr [GMarr@bridgingfinance.ca]
Subject: Re: 181 Extension

Good evening Graham,

Please find attached. Wishing you a restful evening.

**Sam Mizrahi**
President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T. 416.922.4200 ext.4210
C. 416.818.5288
F. 1.866.300.0219
E. Sam@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

On Mar 30, 2021, at 4:58 PM, Graham Marr <GMarr@bridgingfinance.ca> wrote:

Sam, apologies, I realized that it was dated November 30th and referencing a Dec 31 balance. I've redated that attached December 31 to be consistent. If u you could please sign back, many thanks

Graham Marr, CPA, CA, CFAPresident | **Bridging Finance Inc.**

77 King St W, Suite 2925 | Toronto | ON | M5K 1K7

T: (416) 777-1794 | C: (416) 906-0395

E: gmarr@bridgingfinance.ca

From: Sam Mizrahi <sam@mizrahidevelopments.ca>

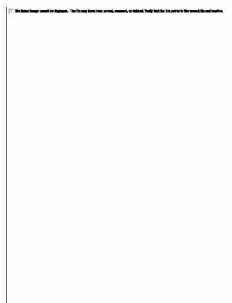
Sent: March 30, 2021 2:58 PM

To: Graham Marr <GMarr@bridgingfinance.ca>

Subject: Re: 181 Extension

Attached. As discussed.

Sincerely,

**Sam Mizrahi**
President

[125 Hazelton Avenue](#)
[Toronto, Ontario M5R 2E4](#)

T. 416.922.4200 ext.4210

C. 416.818.5288

F. 1.866.300.0219

E. Sam@MizrahiDevelopments.cawww.MizrahiDevelopments.ca

F629

604
F2898

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 system.

On Mar 30, 2021, at 2:52 PM, Graham Marr <GMarr@bridgingfinance.ca> wrote:

Updated attached

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Graham Marr
Sent: March 30, 2021 2:30 PM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: RE: 181 Extension

As discussed

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Graham Marr
Sent: March 30, 2021 2:18 PM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: FW: 181 Extension

Hi Sam, can you please call me as soon as you can, thank you

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Graham Marr
Sent: March 10, 2021 9:14 AM
To: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: 181 Extension
Importance: High

Hi Sam, as discussed, we need to update our files for the 181 loan as we are at the tail end of our audit and they are asking us about this file. I have drafted a simple extension to the prior extension basically showing that the loan is not

F630

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F2899

out of maturity. I understand that Bruno from our team has liaised with Mark on the calculation of the balance. Can you please review and sign back at your earliest convenience?

Thank you

Graham Marr, CPA, CA, CFA

President | **Bridging Finance Inc.**

77 King St W, Suite 2925 | Toronto | ON | M5K 1K7

T: (416) 777-1794 | C: (416) 906-0395

E: gmarr@bridgingfinance.ca

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<Bridging_Mizrahi_-_amending_agreement_(extenstion_to_April2022_Final.pdf)>

<Bridging_Mizrahi_-_amending_agreement_(extenstion_to_April2022_FinalGM.pdf)>

F631

606

F2900

F632

Dated as of December 31, 2020

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc. as agent for Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) (the “**Lender**”) loan to Northern Citadel Capital Inc., (collectively, the “**Borrower**”) pursuant to a loan agreement among, *inter alia*, the Borrower and the Lender dated as of December 17, 2014, as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015, June 30, 2016, November 30, 2016 (the “**November Letter**”), November 1, 2017 and May 2, 2018 (collectively, the “**Loan Agreement**”)

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4. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
5. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.



6. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Security, as may be required to evidence the true intent and meaning of this Agreement.
7. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
8. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]

Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
BRIDGING INCOME FUND LP**

Per: _____
Name:
Title:

We Acknowledge and Accept the terms and conditions of this Agreement as of this 31th day of December, 2020.

**NORTHERN CITADEL CAPITAL INC. (as
Borrower and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**ONESONE DAVENPORT INC. (as Guarantor
and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President

MIZRAHI ENTERPRISES INC. (as Obligor)

Per: _____
Name: Sam Mizrahi
Title: President

**MIZRAHI SOARING DEVELOPMENTS
INC. (as Guarantor and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**181 DAVENPORT RETAIL INC. (as
Guarantor and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

This is Exhibit “DD” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

612
F2906

Message

From: Graham Marr [GMarr@bridgingfinance.ca]
Sent: 3/30/2021 7:06:17 PM
To: Brian Champ [BChamp@bridgingfinance.ca]
Subject: Fwd: Commissions

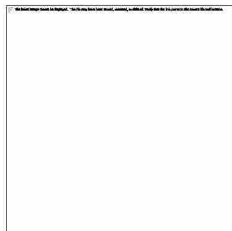
Graham Marr, CPA, CA, CFA
President | Bridging Finance Inc.
77 King St W, Suite 2925 | Toronto ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca
www.bridgingfinance.ca
Canada's Premier Private Debt Provider

From: Mark Kilfoyle <mark@mizrahidevelopments.ca>
Sent: Tuesday, March 30, 2021 3:04:43 PM
To: Graham Marr <GMarr@bridgingfinance.ca>
Cc: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: Re: Commissions

Hi Graham,

The rough number is \$24M less any third party commissions we will be required to pay on any sales.

Best regards
Mark



Mark Kilfoyle
CFO and COO
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T. 416.922.4200 ext.4220
F. 1.866.300.0219
E. Mark@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

On Mar 30, 2021, at 2:19 PM, Graham Marr <GMarr@bridgingfinance.ca> wrote:

Hi Mark, our auditors are asking what the total commissions that Mizrahi is entitled to in respect of the sales from 1 Bloor. Can you please let me know at your earliest convenience what this rough number is? They are looking to sign off on our audit end of day today and they are trying to finalize their review of the Mizrahi loan.
Thank you in advance

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca
www.bridgingfinance.ca

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F638

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F2907

F639

This is Exhibit “EE” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

615
F2909

Message

From: Graham Marr [GMarr@bridgingfinance.ca]
Sent: 3/30/2021 7:06:17 PM
To: Brian Champ [BChamp@bridgingfinance.ca]
Subject: Fwd: Commissions

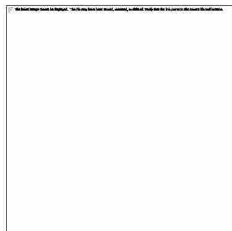
Graham Marr, CPA, CA, CFA
President | Bridging Finance Inc.
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T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca
www.bridgingfinance.ca
Canada's Premier Private Debt Provider

From: Mark Kilfoyle <mark@mizrahidevelopments.ca>
Sent: Tuesday, March 30, 2021 3:04:43 PM
To: Graham Marr <GMarr@bridgingfinance.ca>
Cc: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: Re: Commissions

Hi Graham,

The rough number is \$24M less any third party commissions we will be required to pay on any sales.

Best regards
Mark



Mark Kilfoyle
CFO and COO
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T. 416.922.4200 ext.4220
F. 1.866.300.0219
E. Mark@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

On Mar 30, 2021, at 2:19 PM, Graham Marr <GMarr@bridgingfinance.ca> wrote:

Hi Mark, our auditors are asking what the total commissions that Mizrahi is entitled to in respect of the sales from 1 Bloor. Can you please let me know at your earliest convenience what this rough number is? They are looking to sign off on our audit end of day today and they are trying to finalize their review of the Mizrahi loan.
Thank you in advance

Graham Marr, CPA, CA, CFA
President | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca
www.bridgingfinance.ca

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F641

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F2910

F642

This is Exhibit "FF" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

618
F2912

Message

From: Brian Champ [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=03E802EE499B4095AC18A73F4AEAE029-BRIAN CHAMP]
Sent: 3/30/2021 9:15:41 PM
To: Benson, Shereka [sherekabenson1@kpmg.ca]
CC: Jhajj, Amrita [ajhajj@kpmg.ca]
Subject: RE: KPMG Audit - Bridging Request -Mizrahi

Hi Shereka,

Sorry for the delay, imminent means something different to me than it does to counsel apparently! As discussed, the extension for the loan to April 2022 is attached.

Regarding the commissions, I have attached the email from Mizrahi's CFO that gives the estimate of \$24MM less any third party commissions they may be required to pay (if they engage other parties to conduct sales on their behalf).

Trust this is sufficient for your records.

Thanks,
Brian

From: Benson, Shereka <sherekabenson1@kpmg.ca>
Sent: Tuesday, March 30, 2021 2:09 PM
To: Brian Champ <BChamp@bridgingfinance.ca>; Bryan Chavez <bchavez@bridgingfinance.ca>; Michael Garofalo <mgarofalo@bridgingfinance.ca>
Cc: Jhajj, Amrita <ajhajj@kpmg.ca>
Subject: RE: KPMG Audit - Bridging Request -Mizrahi

Hi Brian,

We are trying to wrap up Mizrahi. Can you provide us with support (agreement, communication) that Mizrahi loan is not past due. If not available, an explanation as to why there is no updated agreement.

The initial loan portfolio listing you sent us indicated 2018 maturity which then changed to 'on demand'. Please let me know when you are available for a quick call.

Thank you.

Regards,
Shereka Benson
KPMG LLP | Audit | Financial Institutions & Real Estate
416-777-3752

From: Benson, Shereka
Sent: Monday, March 29, 2021 4:59 PM
To: 'Brian Champ' <BChamp@bridgingfinance.ca>; Bryan Chavez <bchavez@bridgingfinance.ca>; Michael Garofalo <mgarofalo@bridgingfinance.ca>
Cc: Jhajj, Amrita <ajhajj@kpmg.ca>
Subject: RE: KPMG Audit - Bridging Request -Mizrahi

Hi Brian,

F644

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F2913

As a reminder, we have not received your response or the requested regarding Mizrahi loan for the following:

- Mizrahi 2015 and 2016 agreements; and any other agreements after 2017 .
- Is the amount outstanding as of December 31, 2020 related to 181 Davenport or Bloor Street or other properties?;
- When was the maturity date prior to being placed "On Demand"?
- Are we able to obtain a copy of the quitclaim deed for 181 Davenport?

Can we obtain the documents (and your response) by end of day?

Thank you.

Regards,

Shereka Benson

KPMG LLP | Audit | Financial Institutions & Real Estate
416-777-3752

From: Jhajj, Amrita <ajhajj@kpmg.ca>

Sent: Sunday, March 28, 2021 12:25 PM

To: Michael Garofalo <mgarofalo@bridgingfinance.ca>; 'Brian Champ' <BChamp@bridgingfinance.ca>; Bryan Chavez <bchavez@bridgingfinance.ca>

Cc: Morettin, Sonja D <sonjamorettin@kpmg.ca>; Lupinski, Sydney <slupinski@kpmg.ca>; Benson, Shereka <sherekabenson1@kpmg.ca>

Subject: KPMG Audit - Bridging Request

Hi Bridging team,

Please see attached:

- Val questions for McKinsey attached – could you please forward to McKinsey ahead of our call late Monday/early Tuesday (which hasn't yet been set up)
- o/s PBC listing
- FS comments updated for some items we found over the weekend

Thanks,

Amrita Jhajj, CPA, CA

Manager, Audit
Financial Institutions and Real Estate

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 791 2055
ajhajj@kpmg.ca

This email was sent to you by **KPMG** (<http://info.kpmg.ca>). To sign up to receive event invitations and other communications from us (we have some informative publications that may be of interest to you), or to stop receiving electronic messages sent by KPMG, visit the **KPMG Online Subscription Centre** (<http://subscribe.kpmg.ca>).

At KPMG we are passionate about earning your trust and building a long-term relationship through service excellence. This extends to our communications with you. **F645**

Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

- [Disclaimer concerning confidential and privileged information/unintended recipient](http://disclaimer.kpmg.ca) (<http://disclaimer.kpmg.ca>).
- [Disclaimer concerning tax advice](http://taxdisclaimer.kpmg.ca) (<http://taxdisclaimer.kpmg.ca>).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

621
F2915

Message

From: Graham Marr [GMarr@bridgingfinance.ca]
Sent: 3/30/2021 3:06:17 PM
To: Brian Champ [BChamp@bridgingfinance.ca]
Subject: Fwd: Commissions

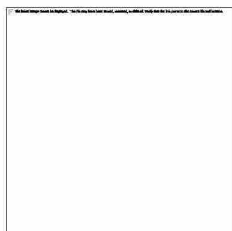
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www.bridgingfinance.ca
Canada's Premier Private Debt Provider

From: Mark Kilfoyle <mark@mizrahidevelopments.ca>
Sent: Tuesday, March 30, 2021 3:04:43 PM
To: Graham Marr <GMarr@bridgingfinance.ca>
Cc: Sam Mizrahi (sam@mizrahidevelopments.ca) <sam@mizrahidevelopments.ca>
Subject: Re: Commissions

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Best regards
Mark



Mark Kilfoyle
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125 Hazelton Avenue
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Thank you in advance

Graham Marr, CPA, CA, CFA
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E: gmarr@bridgingfinance.ca
www.bridgingfinance.ca

Canada's Premier Private Debt Provider

F647

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F2918

Dated as of December 31, 2020

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc. as agent for Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) (the “**Lender**”) loan to Northern Citadel Capital Inc., (collectively, the “**Borrower**”) pursuant to a loan agreement among, *inter alia*, the Borrower and the Lender dated as of December 17, 2014, as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015, June 30, 2016, November 30, 2016 (the “**November Letter**”), November 1, 2017 and May 2, 2018 (collectively, the “**Loan Agreement**”)

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1. As of December 31, 2020, the Obligors acknowledge and agree that there is \$45,892,107.79 outstanding under the Loan and that they do not dispute their liability to the Lender on any ground whatsoever. The Obligors further confirm that they have no claim, demand, setoff or counter-claim against the Lender on any basis whatsoever and that there is no matter, fact or thing which may be asserted by any of them in extinction or diminution of their indebtedness to the Lender or result in any bar to or delay in the recovery thereof.
2. Effective the date hereof, the Maturity Date (as defined in the November Letter) is hereby extended to April 30, 2022.
3. The Borrower shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Agreement and all matters relating thereto which fees shall be paid within 10 days of request therefore. If not paid as aforesaid, such amounts may be paid by the Lender and added to the Loan and shall bear interest from the date of such payment in accordance with the terms of the Loan and shall be secured by the Security.
4. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
5. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.



6. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Security, as may be required to evidence the true intent and meaning of this Agreement.
7. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
8. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]


Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
BRIDGING INCOME FUND LP**

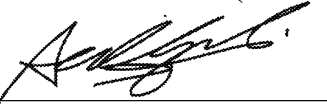
Per: 
Name: Brian Champ
Title: Portfolio Manager

We Acknowledge and Accept the terms and conditions of this Agreement as of this 31st day of December, 2020.

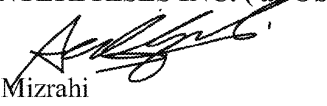
**NORTHERN CITADEL CAPITAL INC. (as
Borrower and Obligor)**

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

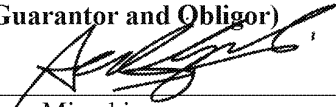
**ONESONE DAVENPORT INC. (as Guarantor
and Obligor)**

Per: 
Name: Sam Mizrahi
Title: President

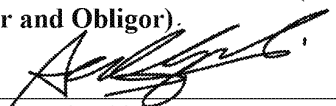
MIZRAHI ENTERPRISES INC. (as Obligor)

Per: 
Name: Sam Mizrahi
Title: President

**MIZRAHI SOARING DEVELOPMENTS
INC. (as Guarantor and Obligor)**

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**181 DAVENPORT RETAIL INC. (as
Guarantor and Obligor)**

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

This is Exhibit “GG” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

ing Finance and Northern Citadel Capital

foyle <mark@mizrahidevelopments.ca>

Tue, Sep 28, 2021 at

Tyler Ray (CA) <tyler.ray@pvc.com>

Mizrahi <sam@mizrahidevelopments.ca>, "Michael McTaggart (CA)" <michael.mctaggart@pvc.com>, "Christine Sinclair (CA)" <c.sinclair@pvc.com>, "Graham Page (CA)" <graham.page@pvc.com>

r,

Over to the four points raised in your email dated September 21, 2021, I advise as follows:

The "Project" defined in the Loan Agreement and subsequent amendments is not the 1 Bloor project. Sections 1.1(w) and (x) of the Loan Agreement, dated December 17, 2014, define "Project" as the residential condominium project to be constructed on "the lands and premises in the City of Toronto, Province of Ontario, municipally known as [145 Davenport Road](#) and [185 Davenport Road](#)" and as described in Schedule "A" attached to the Loan Agreement. The lands are not the 1 Bloor lands.

- o The definition of "Project" has never been changed or revised by any subsequent amendments to the Loan Agreement.
- o Section 9.1(i) of the Loan Agreement refers to information in respect of the "Project", namely the 181 Davenport project. That section has never been changed or revised by any subsequent amendments to include the 1 Bloor project.
- o You are misinterpreting the use of the word "Project" in the November 30, 2016 amendment. The 1 Bloor project is referred to in the amendment for the sole purpose of altering the term of the loan (section 6) and dealing with the application of commissions to pay down the loan. There is nothing in the amendment that requires production of the information outlined in section 9.1(i) of the Loan Agreement in respect of the 1 Bloor Project.

At no time have we ever suggested that any amounts earned as commissions were directed towards "construction costs" or "other non-real estate broking costs". The reference to "costs" in my September 15 email was in respect of the fees payable to real estate brokers as shown on the spreadsheet provided to you on August 31, 2021. As you know from that spreadsheet, sales commissions were applied against external commissions, staff commissions and listing fees all of which are permitted deductions under section 14 of the November 1, 2017 amendment. The balance of the commissions was paid to Bridging. No commissions payable to Bridging have been directed to any costs other than those identified in section 14. In fact, no deductions have been taken on account of reimbursements related to the Presentation Gallery or the parkland dedication, even though such deductions are expressly permitted. Your new threat of an "Event of Default" in these circumstances is without foundation and certainly not conducive to resolving the outstanding issues we have been discussing.

Attached is a copy of the 2019 financial statements for the 181 Davenport project, which have previously been provided to Bridging. The 2020 financial statements will be provided once available, although they are unlikely to show any material difference from 2019. There is no obligation, contractual or otherwise, to provide financial information in respect of "other entities". The Loan Agreement limits disclosure of financial information and financial statements to the "Borrower" defined as Northern Citadel Capital Inc. and "Subsidiaries" defined as Mizrahi Soaring Developments Inc. and One8One Davenport Inc.. These two entities merged into One8One for which the 2019 financial statement is attached. Although in November 2016, the term "Borrower" was amended to include Mizrahi Inc. and 249 Ontario on account of the \$6.5 million loan for the Presentation Gallery at 181 Davenport and 14 Dundonald parkland, that loan was paid off with interest and fees in 2020, following which the parties entered into an amendment on December 31, 2020 removing Mizrahi Inc. and 249 Ontario from the definition of "Borrower".

The documents you provided to us in your September 21 email shows that the \$8,000,000 was applied to reduce the loan balance from \$45,430,356.63 to \$37,430,356.63 and interest was calculated on the reduced loan balance. It is unclear on what basis you say that the \$8,000,000 is not a credit. Your claim is the first time we have heard about an internal, partial re-allocation from Bridging Income Fund to Bridging SMA 2. I am not aware of any record or notification of a re-allocation. Please provide us with all of the details in respect of this re-allocation, including the date of the re-allocation, Bridging's accounting records confirming the re-allocation and any other documents and communications that support the re-allocation.

look forward to hearing from you at your earliest convenience.

Regards



Mark Kilfoyle

CFO and COO

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4220

F. 1.866.300.0219

E. Mark@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

On Sep 21, 2021, at 3:59 PM, Tyler Ray (CA) <tyler.ray@pwc.com> wrote:

Hi Mark,

Thanks for your email. We agree that both parties should work towards a commercially reasonable solution with respect to the repayment of the monies owing from the Mizrahi entities to Bridging under the Loan Agreement. We note that providing the Receiver with visibility into the financial situation of the Mizrahi entities (as is required under the Loan Agreement) will only assist in that regard, particularly in light of the \$49,689,164.12 balance owing under the Loan Agreement as at August 31, 2021 and the fact that your email below appears to suggest that the Mizrahi entities do not yet have a commercially reasonable plan for repayment.

There are a few points from your email dated September 15 that we want to clarify below. We will respond to the balance of your email, if necessary, in due course.

1. With respect to the requested information:

- o The Loan Amendment dated November 30, 2016 defines the Project as "1 Bloor Street West". The requests in my email dated September 3, 2021 for Project information under section 9.1(i) should be read in the context of this definition of Project.
- o I reiterate my previous request for cash flow projections (9.1(i)(ii)), sales reports for the Project (9.1(i)(v)), and status reports regarding construction of the Project and work completed to date (9.1(i)(vi)). We consider this a reasonable request in context of the 1 Bloor sales commissions, discussed below.

2. With respect to the sales commissions from 1 Bloor:

- o The Loan Amendment dated November 1, 2017 notes "The Obligors shall ensure that 100% of all sales commissions, less payments made to any unaffiliated or related co-operating real estate brokers (provided said percentage does not exceed 50%)" shall be directed to the Lender as repayment of the loan. It appears you are asserting that any of these amounts earned as commissions can be directed towards construction costs or other non-real estate broker costs.

- All real estate commissions earned on the 1 Bloor Project, net of only allowed payments to unaffiliated or related co-operating real estate brokers and nothing else, must be directed towards repayment of the Bridging loan. Any action to use these commissions for any purpose other than repayment of the Bridging loan is contrary to the Loan Agreement and constitutes an "Event of Default" under section 12.1(a) of the Loan Agreement for failing to observe or perform any term involving the payment of money.
 - Please indicate to us whether any earned commission amounts that are properly payable to Bridging have been diverted to other non-approved costs.
3. In lieu of the availability of certain audited financial statements, the Receiver is requesting any available financial information for each of the various borrowers and guarantors (and all subsidiaries of the guarantors). This could include *pro forma* or unaudited information from fiscal 2020. We have seen no evidence that any waivers for financial information have previously been provided by Bridging, and the Receiver's position is that it is entitled to recent financial information for all parties that have borrowed or guaranteed the Mizrahi loan facility.
4. With respect to the \$8,000,000 amount you have indicated was a credit:
- Bridging undertook an internal reallocation of the Mizrahi loan facility on December 4, 2020. This was not a credit, but instead a partial reallocation from Bridging Income Fund to Bridging SMA 2. An internal reallocation between Bridging funds certainly does not indicate that the amount was repaid or that amount is not still owing by the Mizrahi entities.
 - I attach the December 2020 monthly loan statements showing the internal reallocation; the amount outstanding at that point in time was the sum of the two subfacilities.
 - This \$8,000,000, in addition to the remaining loan balance, is still owing by the Mizrahi entities.

Please let me know if you have any further questions on the above. We look forward to your responses.

Thanks,

Tyler Ray, CPA, CA (he/him)

PwC | Senior Manager, Consulting & Deals

T: +1 416 687 8200

Email: tyler.ray@pwc.com

PricewaterhouseCoopers Inc. LIT

PwC Tower, 18 York Street, Suite 2600, Toronto ON M5J 0B2

On Wed, Sep 15, 2021 at 5:17 PM Mark Kilfoyle <mark@mizrahidevelopments.ca> wrote:

Good evening Tyler,

We write in response to your email dated September 3, 2021.

1. With respect to the information you have requested in connection with sections 9.1(i)(ii), 9.1(i)(v) and 9.1(i)(vi) of the Loan Agreement, we advise as follows:
 - The Project is complete such that there are no cashflow projections, sales reports or status reports beyond what was contained in the last Altus (Quantity Surveyor) report delivered to Bridging in July 2020, as per the attached email; and
 - The final payouts to Bridging were made on July 27, 2020 when the last unit closed, again as per the attached email. All payouts and funds released were approved and directed by Bridging.
2. With respect to sales commissions flowing from 1 Bloor:
 - The spreadsheet provided to you on August 31, 2021, shows that more sales commissions were earned but they were applied as against costs, leaving \$10,000 available for release to Bridging;
 - There are 90 units remaining with a value of \$562,259,450. The commissions expected are \$24,424,877 assuming the sales prices remain unchanged. However a significant portion of these commissions will likely be paid out in construction and selling costs. The quantum of those costs is unclear at this stage. The 1/3rd amount referred to in your email is expected at the closing of the units,

which we anticipate will occur in or around December 2023. With that said, given the current environment, it is challenging for us to provide any guarantees about timelines such that December 2023 is an anticipated, but not guaranteed, timeframe.

3. With respect to audited statements, the Bridging Credit Committee waived this requirements years ago because they were receiving monthly reporting, including from Altus (Quantity Surveyor), that were reviewed and approved by Bridging's credit committee. In light of this, and given that the project is now complete, we are not in a position to arrange for audited financial statements. To undertake this task will create a financial hardship to the project in circumstances where there is no money available given the Project is complete. We disagree with your assertion that the absence of audited financial statements is a default under the Loan Agreement, and any attempt to enforce what you describe as an "Event of Default" will be met with a strong response.
4. Finally, with respect to the \$8,000,000, you should make the necessary inquiries within Bridging as they would have in their possession the details of this amount. Our understanding is that it was counted as an additional credit in respect of the Dundonald property, which was financed by Bridging and fully repaid. Bridging recorded the transaction in their books and records. See the attached statement. In light of this, we are confused by your assertion that Bridging's records indicate that no payment was received. The \$8 million is a credit that is reflected on Bridging's own records, as attached.

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Notwithstanding your problematic assertions of default and attempts at after-the-fact technical contract compliance, we would like to work with you to find a solution and close out the Loan Agreement. Earlier this year, we had a without prejudice discussion about how best to proceed and, in light of that, we invite you to reach out to us to discuss options for a mutually acceptable commercial solution, including in respect of the issues we raised in our August 31 email but to which you have not responded.

We look forward to hearing from you.

Best regards
Mark



Building Futures.

Mark Kilfoyle
CFO and COO

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. [416.922.4200 ext.4220](tel:416.922.4200)

F. [1.866.300.0219](tel:1.866.300.0219)

E. Mark@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

On Sep 15, 2021, at 12:19 PM, Tyler Ray (CA) <tyler.ray@pwc.com> wrote:

Hi Sam,

I hope all is well with you & your family as well.

I am following up on the various requests from August 23rd and September 3rd. Please let me know if you have any questions, and when we can expect a response on these points.

Thanks,

Tyler Ray, CPA, CA (he/him)
PwC | Senior Manager, Consulting & Deals

F6

T: +1 416 687 8200
Email: tyler.ray@pwc.com
PricewaterhouseCoopers Inc. LIT
PwC Tower, 18 York Street, Suite 2600, Toronto ON M5J 0B2

633
F29

On Fri, Sep 10, 2021 at 5:13 PM Sam Mizrahi <sam@mizrahidevelopments.ca> wrote:

Good afternoon Tyler,

I trust you and your family are well.

We are in receipt of your email below.

Due to the Jewish holidays this past week, we have not had an opportunity to go through your requests.

We will get back to you next week.

Wishing you a restful weekend.

Sincerely,



Sam Mizrahi

President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. [416.922.4200](tel:416.922.4200) ext.4210

C. [416.818.5288](tel:416.818.5288)

F. [1.866.300.0219](tel:1.866.300.0219)

E. Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

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On Sep 3, 2021, at 12:36 PM, Tyler Ray (CA) <tyler.ray@pwc.com> wrote:

Hi Mark,

F6

Thanks very much for your response dated August 31, 2021.

With reference to the information required pursuant to section 9.1(i) of the Loan Agreement - we appreciate your confirmation that the borrower will begin providing these updates. We are not in a position to waive any defaults under this section or any other section of the Loan Agreement but note that the borrower has until September 23, 2021 to cure the defaults noted in our email dated August 24, 2021 before they constitute "events of default" under the Loan Agreement. We recognize that certain portions of section 9.1(i) are less relevant based on the current status of the project. In particular, we are requesting the following information:

- Cash flow projections (9.1(i)(ii))
- Sales reports for the Project (9.1(i)(v))
- Status report regarding construction of the Project and work completed to date (9.1(i)(vi))

Further, there are a few areas on the sales commission reporting where we would appreciate further clarification:

- A repayment was made on the loan in June 2018, which appears to be for commissions earned to that date (\$1,445,280.00). The schedule provided implies no further commissions have been earned (as evidenced by only \$10k remaining to be remitted). Have sales been made on the Project since June 2018?
- Can you please provide an accounting of remaining units, and the commissions expected to be earned on those units?
- When would the second tranche of commissions expect to be received on the units already sold (i.e., the 1/3 amount not accounted for on your listing)?

We have also compared the loan accounting you provided with the Bridging internal records. You have noted a payment of \$8,000,000 on December 4, 2020. Bridging's records indicate that no payment was received on that date. Could you please clarify and provide any documentation showing that the payment was made?

The above list is not meant to be exhaustive, and does not waive the Receiver's rights under the Loan Agreement to request other information noted in section 9.1(i) or any other information related to the financial position of the borrower or the business of the borrower that may be reasonably requested from time to time under section 9.1(m).

In addition to the reporting noted above, please provide audited financial statements for each fiscal year since 2018 for the borrower and each of the subsidiaries, including all of the guarantors and all subsidiaries of the guarantors pursuant to section 9.1(m) of the Loan Agreement. We note that the financial statements for the fiscal years 2018, 2019 and 2020 have not been provided in accordance with section 9.1(m) of the Loan Agreement. These are defaults under the Loan Agreement and will constitute "Events of Default" if they continue for a period of at least 30 days from today's date.

Thanks very much for your assistance. We are available to discuss.

Tyler Ray, CPA, CA (he/him)

PwC | Senior Manager, Consulting & Deals

T: +1 416 687 8200

Email: tyler.ray@pwc.com

PricewaterhouseCoopers Inc. LIT

PwC Tower, 18 York Street, Suite 2600, Toronto ON M5J 0B2

On Tue, Aug 31, 2021 at 1:57 PM Mark Kilfoyle <mark@mizrahidevelopments.ca> wrote:

Good afternoon Tyler,

We write in response to your email dated August 24, 2021.

We attach an excel sheet of the loan history accounting from the inception of the Project to July 31, 2021, which we understand accords with Bridging's records. The excel sheet also reflects the Bloor's sales commissions, which only a minor payment of approximately \$10,380 is outstanding. No marketing or advertising fees were paid by Bloor to MI that would be reimbursed to Bridging. The amount associated with the Bloor Sales Office and FF&E plus interest was paid out in July of 2020.

Your assertion that the required reporting has not been provided to Bridging is incorrect. The Credit Parties have consistently kept Bridging informed of the Project's status including financial reporting. Among other things:

1. Since 2012, we regularly met with Graham Marr, the senior portfolio manager at Bridging with whom PWC is currently working, to discuss and update him in respect of the Project. These meetings became increasingly frequent in 2019 and 2020 as the Project progressed towards completion. Based on our records, there were more than 35 such meetings over the life of the Project, as well as frequent tele-conferences during which the parties discussed the Project's status and finances in detail;
2. In addition to these meetings, we regularly provided Mr. Marr with written updates in respect of the Project, including:
 - o Altus reports, up to and including July 2020, which contain detailed financial and project information in respect of the Project's budget, capital costs, cost-to-complete, cashflows, sales and other financial information. These reports also attach as schedules the developer's General Ledger, Sales Reports, Progress Updates, and other information in respect of the status of the Project;
 - o Email exchanges setting out and discussing, in detail, trust reconciliations, commission payments, sales and closings, cashflows and costs-to-complete, draw requests, payment schedules and funds transfers;
3. We consistently provided Mr. Marr with timely responses to any and all information requests concerning the Project; and
4. More recently, following PWC's appointment as receiver and manager over Bridging, we have repeatedly spoke by tele-conference with members of the PWC team to apprise them of the Project's and Bloor's status and to facilitate their understanding of the Project's status and the credit facility.

At no time during any of these meetings, tele-conferences, email exchanges or otherwise, did Bridging or PWC indicate that the reporting provided by the Credit Parties was insufficient, incomplete or unsatisfactory. Nor has

there ever been any allegation of default under the Loan Agreement, which has been and continues to be serviced in accordance with its terms, as amended from time to time. Given the parties' history and practice, and the absence of any concerns expressed by Bridging at any time, we are surprised by PWC's assertion of default and request that you immediately withdraw it.

As you can appreciate, it is in the parties' respective interests that they cooperate and work together to identify avenues for reducing the outstanding loan balance. We also need to address the issues and losses caused by Bridging's breach of its written commitment in respect of the 180 Steeles Avenue Project, including that a \$50,000 deposit was paid to confirm that the funds would be advanced, and upon which the Mizrahi entities relied in making other commitments to third parties. In addition, Bridging has not removed the mortgage registration in respect of the 181 Davenport retail unit following full repayment of the loans in respect of the sales gallery and the 14 Dundonald property, despite its commitment to do so as confirmed by Mr. Marr and Bridging's counsel at Chaitons.

It is our hope that we can work together to resolve these various issues. As a starting point, we will undertake to provide you with written monthly reports, which will include the information required pursuant to section 9.1(i) of the Loan Agreement. However, given the Project is essentially at its conclusion, some of the information required by section 9.1(i) is no longer relevant and/or has been previously provided to Bridging, such as copies of material project agreements, zoning and permit status reporting, construction reports, etc.

We look forward to speaking with you once you have had an opportunity to review the enclosed information.

Best regards
Mark



Mark Kilfoyle
CFO and COO

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4220

F. 1.866.300.0219

E. Mark@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

On Aug 31, 2021, at 8:52 AM, Tyler Ray (CA) <tyler.ray@pwc.com> wrote:

Morning Sam,

Thanks very much for confirming receipt of my previous email. Let us know if we can expect to receive the requested information today, or if there is anything I can help clarify on this request.

Cheers,

Tyler Ray, CPA, CA (he/him)
PwC | Senior Manager, Consulting & Deals
T: +1 416 687 8200
Email: tyler.ray@pwc.com

PricewaterhouseCoopers Inc. LIT
PwC Tower, 18 York Street, Suite 2600, Toronto ON M5J 0B2

On Wed, Aug 25, 2021 at 9:07 AM Sam Mizrahi <sam@mizrahidevelopments.ca> wrote:

Good afternoon Tyler,

I confirm receipt of your email and will respond shortly to your email.

Sincerely,



Sam Mizrahi
President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. [416.922.4200](tel:416.922.4200) ext.4210

C. [416.818.5288](tel:416.818.5288)

F. [1.866.300.0219](tel:1.866.300.0219)

E. Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

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On Aug 24, 2021, at 2:54 AM, Tyler Ray (CA) <tyler.ray@pwc.com> wrote:

Hi Sam,

I hope all is well. Thanks for the call last month.

Further to our call and in accordance with section 9.1(i) of the Loan Agreement, please provide us with a detailed breakdown of any amounts received by Mizrahi Inc. or any of the other Credit Parties in respect of the Accounts (as defined in the

loan amendment dated November 1, 2017). The Accounts include, but are not limited to, the following items:

- sales commissions, less payments made to any unaffiliated or related co-operating real estate brokers;
- marketing and advertising fees; and
- reimbursement of all costs incurred in respect of the Presentation Gallery, including, without limitation, leasehold improvements and furniture.

Please provide us with the above-noted information, including a general ledger or other detailed accounting of all amounts received in respect of the Accounts from the inception of the Project until today's date, by no later than 5:00 p.m. (ET) on Tuesday, August 31, 2021.

Further, please note that the Credit Parties have not provided Bridging or the Receiver with the monthly reporting required under section 9.1(i) of the Loan Agreement, nor have the Credit Parties met with Bridging or the Receiver to provide monthly updates with respect to the Project. These are defaults under the Loan Agreement and will constitute "Events of Default" if they continue for a period of at least 30 days from today's date.

Please confirm receipt of this email and let us know if you have any questions or would like to jump on a call to discuss. We look forward to receiving the foregoing information.

Thanks,

Tyler Ray, CPA, CA (he/him)
PwC | Senior Manager, Consulting & Deals
T: +1 416 687 8200
Email: tyler.ray@pwc.com
PricewaterhouseCoopers Inc. LIT
PwC Tower, 18 York Street, Suite 2600, Toronto ON M5J 0B2

On Mon, Jul 26, 2021 at 4:37 PM Sam Mizrahi <sam@mizrahidevelopments.ca> wrote:

Good afternoon Tyler,

Wednesday at 4 PM works for Mark and I. Thanks in advance for the invite.

Sincerely,



Building Futures.

Sam Mizrahi
President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4210

C. 416.818.5288

F. 1.866.300.0219

E. Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

On Jul 26, 2021, at 10:12 PM, Tyler Ray (CA) <tyler.ray@pwc.com> wrote:

Thanks very much Sam. We're available tomorrow 1-3:30pm or Wednesday after 1:30pm. Let me know what works for you & your team and I can send an invite.

Cheers,

Tyler Ray, CPA, CA (he/him)

PwC | Senior Manager, Consulting & Deals

T: +1 416 687 8200

Email: tyler.ray@pwc.com

PricewaterhouseCoopers Inc. LIT

PwC Tower, 18 York Street, Suite 2600, Toronto ON M5J 0B2

On Mon, Jul 26, 2021 at 3:38 PM Sam Mizrahi

<sam@mizrahidevelopments.ca> wrote:

Good afternoon Tyler,

Thank you for your email.

Let me know some times and dates for a call thats convenient for all.

Thanks in advance.

Sincerely,

Sam Mizrahi
President

125 Hazelton Avenue



Building Futures.

Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4210

C. 416.818.5288

F. 1.866.300.0219

E. Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

On Jul 24, 2021, at 9:37 PM, Tyler Ray (CA) <tyler.ray@pwc.com> wrote:

Hi Sam,

Hope all is well. I am emailing on behalf of PwC, as Receiver of Bridging Finance Inc. and various related entities. As you are aware, PwC was appointed as Receiver and manager over various Bridging entities on April 30, 2021 pursuant to an order of the Ontario Superior Court of Justice (Commercial List).

We are hoping to schedule a call with you this upcoming week to discuss the status of the loans between Northern Citadel Capital Inc. (among others) and Bridging. In particular, we will be looking to discuss:

- avenues for reducing the outstanding loan balance
- further details on sales commission, marketing & advertising fees, and presentation gallery cost reimbursements earned thus far on the One Bloor project, as referenced in the November 2017 and May 2018 loan amendments
- updates from the PwC side on the impending Sale & Investor Solicitation Process the Receiver will be running for the Bridging business

Looking forward to discussing further. Thanks very much!

Tyler Ray, CPA, CA (he/him)

PwC | Senior Manager, Consulting & Deals

T: +1 416 687 8200

Email: tyler.ray@pwc.com

PricewaterhouseCoopers Inc. LIT

PwC Tower, 18 York Street, Suite 2600, Toronto ON

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destinataire par suite de décisions ou de mesures fondées sur le contenu de cette communication ou autrement. Si vous avez reçu ce courriel par erreur, veuillez communiquer avec son expéditeur et en détruire toutes les copies.

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<SMA2_Mizrahi_December 2020.pdf><BIF_Mizrahi_December 2020.pdf>

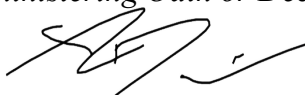
ne8One (2019-FS).pdf

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This is Exhibit "HH" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER



Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

646
F2940

Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

Grant B. Moffat
T: 416-304-0599
E: gmoffat@tgf.ca
File No. 507-058

November 2, 2021

PRIVATE & CONFIDENTIAL

VIA EMAIL

Mizrahi Development Group Inc.
125 Hazelton Avenue
Toronto, ON
M5R 2E4

Attention: Mark Kilfoyle

Dear Mark:

Re: Indebtedness of Northern Citadel Capital Inc., Mizrahi Inc., and 2495159 Ontario Inc. (collectively, the “Borrower”) to Bridging Finance Inc. (“BFI”) in its capacity as agent (in such capacity, the “Agent”) on behalf of Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) and the related investment funds from time to time acting as lender (the “Lender”)

We are the lawyers for PricewaterhouseCoopers Inc. in its capacity as the court-appointed receiver and manager (in such capacity, the “**Receiver**”) of all of the property, assets, and undertakings of BFI, the Lender, and certain related entities and investment funds (collectively, “**Bridging**”).

We refer to the non-revolving term credit facility (the “**Loan**”) made available to the Borrower by the Agent, on behalf of the Lender, pursuant to the loan agreement dated December 14, 2014 (the “**Original Loan Agreement**”), as amended by a first amending agreement dated February 24, 2015, a second amending agreement dated March 11, 2015, a third amending agreement dated April 10, 2015, a fourth amending agreement dated November 27, 2015, a fifth amending agreement dated June 30, 2016, a sixth amending agreement dated November 30, 2016 (the “**Sixth Amendment**”), a seventh amending agreement dated November 1, 2017 (the “**Seventh Amendment**”), an eighth amending agreement dated May 2, 2018, and a ninth amending agreement (the “**Ninth Amendment**”) dated December 31, 2020 (collectively, the “**Loan Agreement**”). Unless otherwise specified, each capitalized term used herein has the meaning given in the Loan Agreement.

We wish to address and confirm the Receiver’s position with respect to certain factual disputes and other issues referenced in the emails exchanged between the Credit Parties and the Receiver between July 24, 2021 and September 28, 2021.

Amount Outstanding Under the Loan

You suggest in your emails dated August 31, 2021, September 15, 2021, and September 28, 2021 that the principal amount of the Loan was reduced by \$8,000,000 on December 4, 2020. The transaction referenced in your emails was not a repayment or other reduction of the amount of the Obligations but the internal assignment or syndication of the principal amount of \$8,000,000 owing under the Loan from Bridging Income Fund LP to Bridging SMA 2 LP that took place on or around December 4, 2020 (the “**Syndication**”). Section 14.5 of the Original Loan Agreement expressly permits the assignment by the Lender of some or all of its rights under the Loan Agreement.

As a result of the Syndication, Bridging SMA 2 LP effectively acquired an \$8,000,000 interest in the Loan from Bridging Income Fund LP. As the Receiver has noted in its reports to the Court, this type of transaction was routinely carried out between the Bridging funds. We also note that the Ninth Amendment, which is dated after the Syndication, confirms that the amount outstanding under the Loan was \$45,892,107.79 as at December 31, 2020, which amount does not reflect the \$8,000,000 reduction to the Loan as suggested in your email.

Mizrahi Inc. and 2495159 Ontario Inc. Remain as Borrower

As noted in your email to the Receiver dated September 28, 2021, pursuant to the Sixth Amendment the definition of “Borrower” under the Loan Agreement was amended to include Mizrahi Inc. and 2495159 Ontario Inc. (“**249**”). Contrary to your email, however, neither Mizrahi Inc. nor 249 was removed from the definition of “Borrower” under the Ninth Amendment.

Section 5 of the Ninth Amendment confirms that all of the terms and conditions of the Loan Agreement (including the Sixth Amendment) continue in full force and effect, unless amended by the express provisions of the Ninth Amendment. Since the Ninth Amendment does not expressly amend the definition of “Borrower”, Mizrahi Inc. and 249, together with Northern Citadel Capital Inc., continue to comprise the Borrower pursuant to the Loan Agreement.

Request for Documents and Information

The Credit Parties are required by the Loan Agreement to provide certain reporting to the Lender, including monthly cash flow projections in respect of the Borrower (section 9.1(i)(ii) of the Original Loan Agreement), and, pursuant to section 9.1(m) of the Original Loan Agreement, annual financial statements of the Borrower and each of the Subsidiaries¹ (including a balance sheet and statements of income and retained earnings), and any other information concerning the financial position and business operations of the Borrower (including, but not limited to, the

¹ “Subsidiaries” is defined in the Loan Agreement to mean the Guarantors and any other subsidiary of such entities at any time or from time to time.

supporting schedules to the financial statements) which the Lender may from time to time request, acting reasonably.

As you know, since July 24, 2021, the Receiver has made multiple requests for certain documents and information that the Lender is entitled to receive under the Loan Agreement. In particular, the Receiver has requested: (i) an accounting with respect to all amounts received by Mizrahi Inc. or any of the other Credit Parties in respect of the Accounts (as defined in the Seventh Amendment); (ii) cash flow projections in respect of the Borrower; and (iii) financial statements and other general financial information in respect of each of the Credit Parties.

Notwithstanding the Receiver's requests and the requirements under the Loan Agreement, as of today's date, we understand that the Credit Parties have only provided the Receiver with the following three documents: (i) a spreadsheet setting out the outstanding amount under the Loan Agreement (incorrectly reflecting the \$8,000,000 reduction described above) and providing the total amount of sales commissions earned by Mizrahi Inc. in connection with the 1 Bloor Street West project (the "**1 Bloor Project**") but without sufficient detail or accounting information in support of such amounts; (ii) an Altus report from 2020, which was already delivered to Bridging in July 2020; and (iii) the 2019 unaudited financial statements of One8One Davenport Inc.

These three documents provide fragmented and incomplete information, and fall well short of satisfying the reporting requirements under the Loan Agreement. The Receiver has significant concerns regarding the apparent reluctance of Mizrahi Inc. and the other Credit Parties to provide basic financial reporting, particularly given the imminent Maturity Date.

Further to the Receiver's previous requests, we require the Credit Parties to deliver to the Receiver the following documents and information (collectively, the "**Reporting**") by no later than November 16, 2021. The basis upon which the Credit Parties are obligated to deliver the Reporting to the Lender is set out below:

1. **The Accounts.** Pursuant to the Sixth Amendment, Mizrahi Inc., granted to the Lender a security interest in the Accounts, which include, among other things, sales commissions, marketing fees and advertising fees earned and actually received by Mizrahi Inc. from Mizrahi Development Group (The One) Inc. ("**The One**") in connection with the 1 Bloor Project. Pursuant to the Sixth Amendment and the Seventh Amendment, the Obligors agreed that they would ensure the Accounts shall be directed to the Lender to be applied as a permanent reduction of the Loan.

As previously communicated to you, the spreadsheet provided to the Receiver by Mark Kilfoyle on August 31, 2021 only contains an overview of the sales commissions earned by Mizrahi Inc. in connection with the 1 Bloor Project and does not contain sufficient detail to allow the Receiver to independently verify the amount of the Accounts payable to the Lender. Accordingly, the Receiver requires the following: (i) a report detailing each sale or other transaction involving the 1 Bloor

Project to and including the date of your response; (ii) a detailed statement of all of the amounts comprising the Accounts to and including the date of your response, including, for certainty, all marketing fees and advertising fees paid to Mizrahi Inc., costs with respect to the Presentation Gallery reimbursed to Mizrahi Inc. and the parkland dedication costs in respect of the Dundonald Property reimbursed to Mizrahi Inc., in each case together with a reconciliation to the amount of such item as set out in the Budget (as defined in the Sixth Amendment); and (iii) a full accounting of all of the “costs” referred to in your email to the Receiver dated September 15, 2021, which apparently resulted in sales commissions of only \$10,000 payable to the Lender by Mizrahi Inc.

Although the Loan Agreement does not specifically require the Credit Parties to provide the foregoing information with respect to the Accounts, section 9.1(m) of the Original Loan Agreement provides that the Credit Parties must provide any information concerning the financial position and business operations of the Borrower not specifically referenced therein that the Lender may from time to time request, acting reasonably. The foregoing information is necessary for the Receiver to assess both the scope and value of the collateral subject to the Lender’s security and is consistent with the information regarding the Project (181 Davenport Road) that the Credit Parties are obligated to deliver to the Lender on a monthly basis pursuant to section 9.1(i) of the Original Loan Agreement. Accordingly, the foregoing information request satisfies the reasonableness requirement referenced above.

2. **Cash Flow Projections.** Pursuant to section 9.1(i)(ii) of the Original Loan Agreement, the Borrower (which, as noted above, includes Mizrahi Inc.) is obligated to provide cash flow projections to the Lender. Accordingly, the Receiver requires each of Northern Citadel Capital Inc., Mizrahi Inc. and 249 to deliver to the Lender cash flow projections for fiscal years 2021 and 2022. In particular, please provide an accounting with respect to all of the units at the 1 Bloor Project that have not yet been sold, an estimate of the commissions payable to Mizrahi Inc. from the sale of such units, and an estimate of the timing for such payments. In addition to the obligation to provide this information pursuant to section 9.1(i)(ii) of the Original Loan Agreement, the Borrower is also obligated to provide this information pursuant to section 9.1(m) of the Original Loan Agreement as the cash flow projections relate to the financial position and business operations of the Borrower. As with the information requested regarding the Accounts, the cash flow projections are necessary for the Receiver to assess both the scope and value of the collateral subject to the Lender’s security, with the result that this request satisfies the reasonableness requirement in section 9.1(m) of the Original Loan Agreement.
3. **Financial Statements.** Pursuant to section 9.1(m) of the Original Loan Agreement, each of Northern Citadel Capital Inc., Mizrahi Inc. and 249 is required to deliver to

the Lender its annual financial statements within 120 days of the close of its financial year, together with the annual financial statements for its Subsidiaries. We therefore require the annual financial statements for each of Northern Citadel Capital Inc., Mizrahi Inc. and 249, as well as each of its respective Subsidiaries, for each fiscal year since 2018. This includes financial statements for 2018, 2019, 2020, and 2021² for each of Mizrahi Inc., 249, Northern Citadel Capital Inc., Mizrahi Soaring Developments Inc., 181 Davenport Retail Inc., and One8One Davenport Inc., together with all other entities that are “Subsidiaries” under the Loan Agreement. If audited financial statements are unavailable, please provide *pro forma* or unaudited financial statements or other general financial information. If any such entity does not have any operations, assets, and liabilities, please so advise.

4. **List of Subsidiaries.** In accordance with section 9.1(m) of the Original Loan Agreement, please provide a list of all entities that are “Subsidiaries” under the Loan Agreement.

If the Credit Parties fail to provide the Reporting to the Receiver by November 16, 2021, the Receiver reserves its right to declare that a default has occurred under the Loan Agreement pursuant to section 12.1(b) of the Original Loan Agreement and, if such default is not remedied within the 30 day period referenced in section 12.2 of the Original Loan Agreement, to declare that an Event of Default has occurred.

Except as expressly waived in writing by the Receiver, no act or failure to act by the Receiver, nor anything said or done in any discussions, correspondence or other dealings among the Receiver and any of the Credit Parties or any of the Credit Parties’ respective shareholders, affiliates, subsidiaries, related parties, officers, directors, employees, agents or representatives shall be construed as a waiver of any breach, default or Event of Default under the Loan Agreement, or any of the rights or remedies of the Agent, the Lender or the Receiver. There is no agreement by the Receiver to forbear from enforcing any of the rights and remedies of the Receiver, the Agent or the Lender with respect to any breach, default or Event of Default under the Loan Agreement which has occurred or which may occur in the future. The Receiver reserves the right to immediately exercise all such rights and remedies at any time.

² To the extent available.

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6.

Yours truly,

Thornton Grout Finnigan LLP

A handwritten signature in black ink, appearing to read 'G. Moffat', with the initials 'G/M' written below it.

Grant B. Moffat

cc: Michael McTaggart, Christine Sinclair, Tyler Ray – PricewaterhouseCoopers Inc.

This is Exhibit "II" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Electronically issued
Délivré par voie électronique : 24-May-2022
Toronto

B E T W E E N:

(Court Seal)

CERIECO CANADA CORP.

Plaintiff

and

SAM MIZRAHI, JENNY COCO, BOSCO CHAN (a.k.a. Ye Chen), MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI COMMERCIAL (THE ONE) GP INC., MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., MIZRAHI INC., LIVESOLAR CAPITAL CORP., 10216267 CANADA CORP., COCO PAVING INC, 12823543 CANADA LTD. and SAM M INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: Coco Paving Inc
949 Wilson Ave
North York, ON M3K 1G2

AND TO: 12823543 Canada Ltd.
949 Wilson Ave
North York, ON M3K 1G2

AND TO: Bosco Chan (a.k.a. Ye Chen)
1015 Markwick Crescent
Ottawa, ON K4A 4X5

AND TO: Livesolar Capital Corp.
577 Somerset St. W
Ottawa, ON K1R 5K1

- AND TO: 10216267 Canada Corp.
c/o Bosco Chan a.k.a. Ye Chen
1 Yonge Street, Suite 1801
Toronto ON M5E 1W7
- AND TO: Sam Mizrahi
189 Forest Hill Road
Toronto, ON M5P 2N3
- AND TO: Jenny Coco
362 Russell Hill Road
Toronto, ON M4V 2T9
- AND TO: Mizrahi Commercial (The One) LP
189 Forest Hill Road
Toronto, ON M5P 2N3
- AND TO: Mizrahi Commercial (The One) GP Inc.
125 Hazelton Avenue
Toronto, ON M5R 2E4
- AND TO: Mizrahi Development Group (The One) Inc.
189 Forest Hill Road
Toronto, ON M5P 2N3
- AND TO: Mizrahi Inc.
189 Forest Hill Road
Toronto, ON M5P 2N3
- AND TO: Sam M Inc.
189 Forest Hill Road
Toronto, ON M5P 2N3

CLAIM

1. The Plaintiff, CERIECO Canada Corp. (“**CERIECO**”), claims the following against the Defendants, Sam Mizrahi (“**Sam**”), Jenny Coco (“**Jenny**”), Bosco Chan a.k.a. Ye Chen (“**Bosco**”), Coco Paving Inc. (“**Coco Paving**”), Mizrahi Commercial (The One) LP (“**MCLP**”), Mizrahi Commercial (The One) GP Inc. (“**MCGP**”), Mizrahi Development Group (The One) Inc. (“**Mizrahi Development Group**”), Mizrahi Inc., 12823543 Canada Ltd. (“**128 Canada**”), Sam M Inc. (“**SMI**”), 1021627 Canada Corp. (“**102 Canada**”) and Livesolar Capital Corp. (“**Livesolar**”):

- (a) damages for fraud, conspiracy, breach of fiduciary duty, knowing assistance in breach of fiduciary duty, knowing assistance of fraud, breach of trust and knowing receipt in an amount to be determined prior to trial;
- (b) the following relief under the oppression remedy provisions of the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16 (“**OBCA**”), and the *Canada Business Corporations Act*, R.S.C. 1985, c. C.44 (“**CBCA**”):
 - (i) a declaration that: (a) the acts or omissions of Sam, Jenny, Bosco, Coco Paving, MCGP, Mizrahi Development Group, Mizrahi Inc., 128 Canada, SMI, 102 Canada and Livesolar have effected a result, (b) the business or affairs of Coco Paving, MCGP, Mizrahi Development Group, Mizrahi Inc., 128 Canada, SMI, 102 Canada and Livesolar have been carried on or conducted in a manner, or (c) the powers of Sam, as a director of MCGP, Mizrahi Development Group, SMI and Mizrahi Inc.; Jenny, as a director of MCGP, Mizrahi Development Group, 128 Canada and Coco Paving; and Bosco, as a director of CERIECO, Livesolar and 102 Canada, have been

exercised in a manner, that is oppressive or unfairly prejudicial to and that unfairly disregards the interests of CERIECO;

- (ii) an order under the oppression remedy provisions of the OBCA and the CBCA directing an investigation into the conduct and affairs of Coco Paving, MCGP, 128 Canada, SMI, Mizrahi Development Group, Mizrahi Inc. 102 Canada and Livesolar with respect to the wrongful conduct described herein the full extent of which is within the Defendants' knowledge;
- (iii) In connection with the investigation referred to in subparagraph 1(b)(ii) above:
 - (1) an order appointing an independent and impartial inspector to conduct the investigation, and to issue a report to the Court as to the results of the investigation;
 - (2) an order authorizing the inspector to retain such legal or non-legal experts as may be necessary, in its discretion;
 - (3) an order fixing the compensation of the inspector and of such experts, in such amounts as the Court may consider just and appropriate, and requiring Coco Paving, MCGP, 128 Canada, SMI, Mizrahi Development Group, Mizrahi Inc., 102 Canada and Livesolar to pay such compensation;

- (c) an order pursuant to the oppression remedy provisions of the OBCA and CBCA, or otherwise, to set aside the Release, and the SCA Amendment (as defined below), both of which were signed by Bosco without the knowledge or approval of CERIECO, as a result of conduct on the part of the Defendants that was deceitful, unconscionable, misleading, oppressive, unfairly prejudicial and that unfairly disregarded CERIECO's interests;
- (d) damages for breach of contract as against SMI, 128 Canada, Coco Paving and Mizrahi Development Group in the amount of at least \$200,000,000.00, or such other amount to be determined prior to trial;
- (e) an order that the Defendants pay punitive damages to CERIECO in the amount of \$2,000,000.00;
- (f) pre-judgment and post-judgment interest at the contractual rate of 8 percent per annum, compounded annually;
- (g) in the alternative, pre-judgment and post-judgment interest in accordance with sections 128, 129 and 130 of the *Courts of Justice Act*, R.S.O. 1990, c. C.45, as amended;
- (h) the costs of this action on a full indemnity basis, plus all applicable taxes; and
- (i) such further and other relief as this Honourable Court deems just.

A. OVERVIEW

2. In 2017, the plaintiff CERIECO agreed to advance a contractor's loan in the amount of \$213,000,000 to MCLP in connection with the first stage of construction of "The One", a proposed 85-storey retail, hotel and residential tower that was to be constructed at the corner of Yonge St. and Bloor St. in downtown Toronto (defined herein as the "**Project**"). The Project was owned 50/50 by the defendants Sam Mizrahi and Jenny Coco (through the corporate defendants described herein).

3. This action relates to the wrongful, dishonest and oppressive conduct of Sam, Jenny, and Bosco Chan, as directors and controlling minds of the corporate defendants described herein (in Bosco's case, as a director of CERIECO) in connection with the contractor's loan.

4. In or around 2016, China-East Resources Import & Export Company ("**CERIECO China**") began looking for opportunities to participate in the development and construction of real estate projects in Canada. CERIECO China was introduced to Bosco, a Chinese and Canadian citizen living in Ottawa who held himself out as an individual with extensive business connections in Canada.

5. CERIECO China engaged Bosco to assist with locating suitable real estate projects in Toronto. Thereafter, Bosco presented CERIECO China with an opportunity to participate in the Project. Bosco explained to CERIECO China that the Project was to be developed by Sam, who Bosco said was a well-known and reputable real estate developer in Toronto. According to Bosco, Sam had purchased the Project lands and was looking to finance the first stage of construction.

6. In reliance on Bosco's representations, CERIECO China proceeded to negotiate the terms on which it would participate in the Project.

7. CERIECO China also incorporated the plaintiff CERIECO as a Canadian subsidiary to participate directly in the Project.

8. Long Hai Wang (“**Wang**”), the President of CERIECO China, was originally to be the only director of CERIECO. Legal counsel (Dentons in Ottawa) for CERIECO prepared and filed the incorporation documents, and recommended that CERIECO appoint Bosco as a second director to meet Canadian residency requirements.

9. Notwithstanding Bosco’s appointment as a director of CERIECO, it was at all times clearly communicated by CERIECO to legal counsel and Bosco that Bosco was not to have the authority to execute documents on behalf of CERIECO. Nor was Bosco permitted to hold himself out as having such authority.

10. As a result, Dentons drafted and CERIECO adopted the following provision as part of CERIECO’s By-Law No. 1:

Contracts, documents or instruments in writing requiring the signature of the Corporation **shall only be signed on behalf of the Corporation by Mr. Long Hai Wang.** [Emphasis added].

11. CERIECO’s participation in the Project is primarily as a contractor advancing trade credit to the owner (MCLP), while simultaneously paying advances to the subcontractor (Mizrahi Inc.) as construction work progressed.

12. CERIECO also participated in the project by way of a Profit-Sharing Agreement (the “**Profit Sharing Agreement**”) through which distributable cash generated by the Project was to be divided 55 percent to CERIECO, and 45 percent to MCLP’s limited partners (after the repayment of capital accounts and preferred returns to the limited partners).

13. During the course of the discussions and negotiations leading up to formalizing CERIECO's participation, it was made clear to MCLP and all of the individuals and other entities involved (including Sam and Jenny) that CERIECO China had strict, non-negotiable project evaluation criteria that must be satisfied in order for CERIECO to approve the contractor's loan. Such criteria included, among other things:

- (a) the granting of comprehensive security interests encumbering the Project lands in favour of CERIECO (defined below as the "**CERIECO Security**"); and
- (b) the provision of guarantees for the repayment of all present and future indebtedness and obligations of MCLP to CERIECO, in a form acceptable to CERIECO, in its sole discretion (defined below as the "**Guarantees**").

14. CERIECO's project evaluation criteria also required that additional guarantees be obtained from third parties with equity at book value equal to at least 2.0 times the value of the loan. This requirement was communicated to and understood by all parties.

15. In accordance with these mandatory requirements, Sam and Jenny, and the entities related to them, granted CERIECO comprehensive security interests encumbering the Project lands. Sam and Jenny also arranged for a number of parties to provide guarantees for the repayment of all present and future indebtedness from MCLP to CERIECO.

16. Jenny arranged for Coco Paving to provide such a guarantee in favour of CERIECO. However, because Coco Paving did not satisfy the required equity-to-loan value ratio on its own, Jenny was required to locate an additional guarantor. Jenny arranged for Bridging Income Fund LP ("**Bridging**"), an investment vehicle managed and promoted by Bridging Finance Inc.

(“**Bridging Finance**”), to act as the additional guarantor. Jenny was a part owner and a director of Bridging Finance. Bridging otherwise had nothing whatsoever to do with the Project, and it had no business reason to agree to the guarantee.

17. Bridging’s assets had significantly less value than was represented by Jenny and MCLP, and in any event, such assets are now subject to the Receivership Order, as defined and described below.

18. On or about August 24, 2017, Coco Paving, Bridging, Mizrahi Development Group and SMI executed the Joint and Several Guarantee (as defined below). Under the Joint and Several Guarantee, the parties unconditionally guaranteed, on a joint and several basis, payment and performance to CERIECO of all present and future indebtedness, liabilities and obligations owing to CERIECO by MCLP, forthwith on demand.

19. The Joint and Several Guarantee was signed by Natasha Sharpe, who purported to be a signing officer of an entity called Sprott Genpar Ltd., the general partner of Bridging. The Joint and Several Guarantee was also signed by Jenny on behalf of Coco Paving, and by Sam on behalf of SMI and Mizrahi Development Group.

20. The names of Coco Paving and Bridging were redacted from certain versions of the Joint and Several Guarantee, and these parties were instead referred to as the “**Confidential Guarantors**”. The signature pages for the Confidential Guarantors were also removed. The redactions (and removal of the signature pages) were not made at CERIECO’s request, and CERIECO has no knowledge of why this was done.

21. In June 2021, MCLP failed to repay the first installment due under the contractor's loan in the amount of \$61,337,287.67.

22. After sending several written demands for payment over a number of months, CERIECO attempted to enforce its rights under the guarantees. It then learned, for the first time, that Bosco had allegedly entered into agreements that had CERIECO purportedly releasing the Confidential Guarantors from their obligations under the guarantees (the "**Release**").

23. CERIECO did not authorize any such Release and had no knowledge of the Release prior to learning of it through the Confidential Guarantors. The Release was signed by Bosco, purportedly on behalf of CERIECO. To the knowledge of the defendants, Bosco did not have the authority to execute documents on CERIECO's behalf.

24. When confronted by CERIECO in 2022, Bosco admitted that he acted alone in connection with the purported Release, without the knowledge or authority of anyone at CERIECO, and without the involvement of any legal counsel acting on behalf of CERIECO.

25. Bosco also purported to execute an agreement in May 2021 (the "**SCA Amendment**") whereby Bosco (purportedly on behalf of 102 Canada as agent for CERIECO) agreed to sign the Release in exchange for a "release fee" of \$7,500,000.00 to be paid from Coco Paving to CERIECO. Bosco admitted that he acted alone and did not involve legal counsel in the negotiation and execution of the SCA Amendment.

26. None of the purported cash consideration for the Release was paid to CERIECO as provided under the SCA Amendment. Bosco admitted that he accepted a personal payment of \$4,500,000.00 in connection with signing the purported Release and SCA Amendment, and that

he directed a further \$3,000,000.00 (purportedly also owing to CERIECO) to be paid to Sam's personal bank account.

27. Bosco, Sam and Jenny (and their respective corporate alter egos described herein) have also, since at least 2019, conspired to use Bosco, without CERIECO's knowledge, to execute agreements and other documents (purportedly on CERIECO's behalf) that are highly prejudicial to CERIECO's interests as a creditor of the Project.

28. The Defendants had actual or constructive knowledge that Bosco lacked authority to bind CERIECO throughout this period, and actual or constructive knowledge of the fraud and misconduct described herein.

29. Among other things, at the same time that Sam and Jenny were negotiating the Release with Bosco (who they knew did not have the assistance of legal counsel), they were communicating separately with Wang in connection CERIECO's demands for payment and were urging CERIECO to forbear from enforcing the guarantees. They were also promising Wang that payment would be made within weeks (which it never was). No mention was ever made in any such communications regarding any purported release.

30. Once the Release was signed, Sam and Jenny stopped responding to CERIECO's demands for payment.

31. Further, Sam accepted a personal payment of \$3,000,000.00 that was to be paid to CERIECO in exchange for the purported Release. Sam knew that Bosco lacked authority, and he conspired with Bosco and Jenny to abuse this knowledge to enrich himself to CERIECO's detriment.

32. The Defendants' conduct as described in more detail herein is oppressive, unfairly prejudicial to and unfairly disregards CERIECO's interests as a creditor of the Project and the beneficiary of the guarantees, and as a party to the Profit Sharing Agreement. The purported Release and the underlying SCA Amendment were executed without CERIECO's knowledge or authority and should be set aside.

33. The full extent of Bosco's (and the Defendants') wrongful conduct is not known to CERIECO, and CERIECO continues to investigate these matters to the best of its ability.

34. CERIECO seeks an order to set aside the SCA Amendment and the purported release, and an order under the oppression remedy directing an investigation into the matters described herein. Such investigation may give rise to further claims, including with respect to the purported subordination of CERIECO's security interest in the Project as described below.

35. CERIECO also seeks damages under the oppression remedy, at common law and in equity for fraud, conspiracy, breach of fiduciary duty, knowing assistance in breach of fiduciary duty, knowing assistance of fraud and/or breach of trust, and knowing receipt.

A. THE PARTIES

i. The Plaintiff - CERIECO

36. CERIECO is a corporation incorporated under the CBCA, with its registered office in Markham, Ontario. CERIECO is wholly owned by CERIECO China, which is in turn wholly owned by China Machinery Engineering Corporation ("CMEC"). CMEC is a Chinese state-owned enterprise.

ii. The Individual Defendants

37. The Defendant, Bosco Chan (also known as Ye Chen) (“**Bosco**”), is an individual who resides in Ottawa. At all material times Bosco was the sole shareholder, director, officer and controlling mind of Livesolar and 102 Canada (all as defined below). Bosco was a director of CERIECO from on or around January 23, 2017, until he was removed from that position on February 25, 2022, as described herein.

38. The Defendant, Sam Mizrahi (“**Sam**”), is an individual and real estate developer who resides in Toronto. At all material times Sam was an officer, director and controlling mind of Mizrahi Development Group, SMI, Mizrahi Inc. and MCGP (all as defined below). At all material times Sam indirectly owned a 50 percent beneficial interest in the Project through his 100 percent interest in SMI.

39. The Defendant, Jenny Coco (“**Jenny**”), is an individual who resides in Toronto. At all material times Jenny was an officer, director and controlling mind of Coco Paving, Mizrahi Development Group and MCGP (all as defined below). At all material times she was also a director and controlling mind of 128 Canada. Jenny indirectly owns, or owned, a 50 percent beneficial interest in the Project through her 100 percent interest in 128 Canada.

iii. The Corporate and Partnership Defendants

40. The Defendant, Livesolar Capital Corp. (“**Livesolar**”), is a corporation incorporated under the CBCA, with its registered office in Ottawa.

41. The Defendant, 10216267 Canada Corp. (“**102 Canada**”), is a corporation incorporated under the CBCA, with its registered office in Ottawa.

42. The Defendant, Mizrahi Commercial (The One) LP (“**MCLP**”), is a limited partnership formed under the laws of Ontario that purports to be in the business of identifying, acquiring and developing real property located in Canada. At all material times MCLP was the registered owner of the Project, as described herein.

43. The Defendant, Mizrahi Commercial (The One) GP Inc. (“**MCGP**”), is a corporation incorporated under the OBCA. At all material times MCGP was the general partner of MCLP.

44. The Defendant, Sam M Inc. (“**SMI**”) is a corporation incorporated under the OBCA. At all material times SMI was a limited partner of MCLP and owned a 50 percent beneficial interest in the Project.

45. The Defendant, 12823543 Canada Ltd. (formerly 8891303 Canada Inc.) (together, “**128 Canada**”), is a corporation incorporated under the CBCA.¹ At all material times 128 Canada was a limited partner of MCLP and owned a 50 percent beneficial interest in the Project.

46. The Defendant, Mizrahi Development Group (The One) Inc. (“**Mizrahi Development Group**”), is a corporation incorporated under the OBCA, with its registered office in Toronto.

47. The Defendant, Mizrahi Inc., is a corporation incorporated under the OBCA, with its registered office in Toronto.

¹ 128 Canada was formed in 2021 through the amalgamation of 8891303 Canada Inc. (“889 Canada”) and 12787601 Canada Ltd. (“127 Canada”). Between 2014 and 2021, Jenny’s 50 percent interest in the Project was held through 889 Canada. To the best of CERIECO’s knowledge, such interest was transferred to 128 Canada in 2021 when 889 Canada amalgamated with 127 Canada and was continued as 128 Canada.

48. The Defendant, Coco Paving Inc. (“**Coco Paving**”), is a corporation incorporated under the OBCA, with its registered office in Toronto. Coco Paving is in the business of project and construction management, among other things.

49. SB Fund GP Inc. (“**SB Fund**”) is a corporation incorporated under the OBCA. At all material times since on or around July 28, 2017, SB Fund was the general partner of Bridging Income Fund LP (“**Bridging**”).

50. Bridging is a limited partnership formed under the laws of Ontario that is or was an investment vehicle managed and promoted by Bridging Finance Inc. (“**Bridging Finance**”). On April 30, 2021, the Ontario Superior Court of Justice granted an order appointing a receiver over all of the assets, undertakings and properties of Bridging Finance, including Bridging (the “**Receivership Order**”).

B. BACKGROUND – INTRODUCTION TO BOSCO

51. CERIECO China is in the business of, among other things, importing and exporting various types of industrial products and equipment, and participating in construction projects on an “engineering, procurement and construction” (“**EPC**”) basis.

52. In or around 2016, CERIECO China began looking for opportunities to participate in the development and construction of real estate projects in Canada. CERIECO China was introduced to Bosco, a Chinese and Canadian citizen living in Ottawa who held himself out as an individual with extensive business connections in Canada.

53. Bosco communicated with representatives of CERIECO in China, including Long Hai Wang (“**Wang**”), the President of CERIECO China. Bosco represented to Wang that he had significant knowledge of, and connections to, real estate developers in Canada.

54. CERIECO China agreed to engage Bosco to assist with locating suitable real estate projects in Toronto. Thereafter, Bosco presented CERIECO China with an opportunity to participate in the construction of a proposed 85-storey mixed use residential tower to be located at the south-west corner of Yonge Street and Bloor Street in downtown Toronto, marketed as “The One” (the “**Project**”).

55. Bosco explained to CERIECO China that the Project was to be developed by Jenny and Sam, who Bosco said were well-known and reputable businesspeople and real estate developers in Toronto. According to Bosco, Jenny and Sam had purchased the Project lands and were looking to finance the first stage of construction.

56. In reliance on Bosco’s representations, CERIECO China proceeded to negotiate the terms on which it would provide construction financing to the Project, as described below.

57. On Bosco’s introduction and recommendation, CERIECO retained legal counsel Philip Rimer (“**Rimer**”), a partner of Dentons Canada LLP (“**Dentons**”) in Ottawa, to act for it with respect to its participation in the Project.

58. CERIECO would later learn (in February 2022, as described below) that Bosco had a pre-existing relationship with Sam, with whom he socialized occasionally. CERIECO would also later learn that Bosco had a pre-existing professional relationship with Dentons and Rimer, either

personally or through Livesolar and 102 Canada, companies Bosco owned and controlled. None of Bosco, Sam or Rimer disclosed these relationships to CERIECO at the time.

C. THE FORMATION OF CERIECO

59. On or about January 23, 2017, CERIECO China incorporated CERIECO as a Canadian subsidiary to facilitate its participation in the Project. Dentons and Rimer prepared and filed the incorporation documents. CERIECO's registered office was listed as 99 Bank Street, Suite 1420, Ottawa, Ontario (the street address of Dentons' Ottawa office).

60. CERIECO intended to appoint Wang as the sole director of CERIECO. However, Rimer advised CERIECO that under Canadian law, at least one director had to be a Canadian resident (which Wang was not). Accordingly, CERIECO agreed to appoint Bosco as a second director, in addition to Wang.

61. Notwithstanding Bosco's appointment as a director of CERIECO, it was at all times clearly communicated by CERIECO to Rimer, Dentons and Bosco that Bosco was not to have the authority to execute documents on behalf of CERIECO, nor was Bosco permitted to hold himself out as having such authority.

62. In fact, CERIECO specifically advised Dentons and Bosco that the only individual who was authorized to bind CERIECO and execute documents on its behalf was Wang. Dentons drafted the following provision as part of CERIECO's By-Law No. 1:

Contracts, documents or instruments in writing requiring the signature of the Corporation **shall only be signed on behalf of the Corporation by Mr. Long Hai Wang.** [Emphasis added].

63. Wang executed By-Law No. 1 on or around January 23, 2017, and such By-Law has at all times remained in effect. At no time did Wang (or anyone at CERIECO) authorize Bosco, in any form whatsoever, to execute any documents purporting to bind CERIECO.

64. Notwithstanding By-Law No. 1, CERIECO reasonably expected that Bosco would at all times discharge his duties as a director of CERIECO honestly, in good faith and in the best interests of CERIECO (which he did not, as described below).

65. CERIECO also entered into a commission agreement with Bosco through which Bosco, directly or indirectly, received a commission for his involvement in the Project in the amount of approximately \$500,000.00. Such commission was the only compensation CERIECO agreed to pay Bosco for his involvement in the Project.

D. CERIECO'S PARTICIPATION IN THE PROJECT

66. By early 2017, CERIECO was in the process of negotiating the terms of its participation in the first stage of construction of the Project, which was expected to include 5 storeys below grade, and an approximately 11 storey podium above grade (the “**Complex Retail Phase**” of the Project).

67. CERIECO understood that the Project was owned by a limited partnership, MCLP, that was in turn owned 50 percent by Sam (through SMI), and 50 percent by Jenny (through what was then 889 Canada).

68. Dentons and Rimer acted for CERIECO during the negotiation and execution of the necessary documentation with MCLP and other parties.

69. CERIECO communicated to MCLP that its project evaluation criteria required the CERIECO's participation to be structured as an EPC contract, rather than as a passive investment. As a result, the parties executed two agreements: (i) a Prime Construction Contract for Complex Retail Phase between CERIECO and MCGP on behalf of MCLP, dated June 26, 2017 (the "PCC"), and (ii) a Subcontract for Construction of Complex Retail Phase between CERIECO and Mizrahi Inc. (the "Subcontract").

70. Under the PCC, CERIECO assumed the role of contractor for the construction of the Complex Retail Phase of the Project. However, under the Subcontract, Mizrahi Inc. assumed all of the construction-related obligations of CERIECO under the PCC (except for the obligation to advance trade credit to MCLP) in exchange for payment of the contract price.

71. Accordingly, CERIECO's financing of the Project is as a contractor advancing trade credit to the owner (MCLP), while simultaneously paying advances to the subcontractor (Mizrahi Inc.) as construction work progressed.

72. Under the PCC, CERIECO agreed to advance trade credit to MCLP in the total amount of \$213,000,000.00 (the "Credit Amount"). All advances were to be (and were) tracked and evidenced by promissory notes issued by MCLP to CERIECO, as described below.

73. MCLP and CERIECO also entered a Profit Sharing Agreement ("Profit Sharing Agreement") through which distributable cash generated by the Project was to be divided 55 percent to CERIECO, and 45 percent to MCLP's limited partners (after the repayment of capital accounts and preferred returns to the limited partners).

74. The Profit Sharing Agreement was required under CERIECO's project evaluation criteria, which required that the Complex Retail Phase of the Project achieve a minimum gross profit of 5 percent (plus 4 percent contingencies). The gross profit of the Complex Retail Phase was expected to fall below that threshold, so CERIECO required MCLP to pay additional amounts to CERIECO (via the Profit Sharing Agreement) to satisfy this condition.

75. Each of the PCC, Subcontract and Profit Sharing Agreement were negotiated and executed by Wang as the sole signing officer of CERIECO. Further, it was explicitly stated in the PCC and the Subcontract that all written notices thereunder were to be sent to Wang and other representatives of CERIECO's parent companies located in Beijing, China (or electronically to the same parties via e-mail).

76. Sam, Jenny, Rimer, Bosco and others travelled to China during negotiations and were hosted personally by Wang. All the individuals and entities involved in such negotiations knew at all times that Wang was the only representative of CERIECO with the authority to bind CERIECO.

77. At no time during the negotiation of CERIECO's participation in the Project was Bosco held out by CERIECO, directly or indirectly, as an individual having the actual or apparent authority to bind CERIECO.

E. THE CERIECO SECURITY

78. CERIECO also clearly communicated to MCLP and all the individuals and other entities involved in the negotiations that CERIECO China and CMEC had strict, non-negotiable project evaluation criteria that must be satisfied in order for CERIECO to approve the contractor's loan. Such criteria included, among other things:

- (a) the granting of comprehensive security interests encumbering the Project lands in favour of CERIECO (the “**CERIECO Security**”);
- (b) the provision of guarantees for the repayment of all present and future indebtedness and obligations of MCLP to CERIECO, in a form acceptable to CERIECO, in its sole discretion (the “**Guarantees**”); and
- (c) the execution by each Guarantor (as defined below) of a negative covenant agreement not to grant any further guarantees or indemnities so long as the Guarantees are outstanding (the “**Negative Pledges**”).

79. In 2017, in satisfaction of the CERIECO Security, the Guarantees and the Negative Pledges, MCLP executed, or caused to be executed, a number of documents, including the following:

- (a) A Debenture made by Mizrahi Development Group, as nominee, and MCLP by its general partner, MCGP, as beneficial owner, in favour of CERIECO (the “**Debenture**”);
- (b) A Pledge of Investment Collateral – Non-Public made by 889 Canada (now 128 Canada) in respect of its capital and partnership interest in MCGP and MCLP, in favour of CERIECO (the “**889 Pledge**”);
- (c) A Pledge of Investment Collateral – Non-Public made by SMI in respect of its capital and partnership interest in MCGP and MCLP, in favour of CERIECO (the “**SMI Pledge**”);

- (d) A Joint and Several Limited Guarantee and Indemnity Agreement from Coco Paving, Bridging, SMI and Mizrahi Development Group (collectively with 128 Canada, the “**Guarantors**”) in favour of CERIECO dated August 24, 2017 (“**Joint and Several Guarantee**”);
- (e) A Limited Recourse Guarantee from 889 Canada in favour of CERIECO dated 2017 (“**889 Limited Recourse Guarantee**”);
- (f) A Limited Recourse Guarantee from SMI in favour of CERIECO dated 2017 (“**SMI Limited Recourse Guarantee**”);
- (g) A Joint and Several Undertaking from 889 Canada and SMI in favour of CERIECO dated 2017 (“**Joint and Several Undertaking**”);
- (h) A Negative Pledge, Representation and Undertaking Agreement from Coco Paving in favour of CERIECO dated June 8, 2017 (“**Coco Negative Pledge**”); and
- (i) A Negative Pledge, Representation and Undertaking Agreement from Bridging in favour of CERIECO dated 2017 (“**Bridging Negative Pledge**”).

80. On or around June 29, 2017, Rimer and Dentons registered financing statements under the *Personal Property Security Act* (“**PPSA**”) reflecting the CERIECO Security. Rimer reported directly to Wang regarding the PPSA registrations.

81. On or around August 29, 2017, Rimer and Dentons registered the Debenture on title to the Project lands in the form of a charge in favour of CERIECO, in the principal sum of \$213,000,000.

82. CERIECO reasonably expected that the priority position of the CERIECO Security would be preserved in the event the Project obtained additional financing at a later date. CERIECO further expected that Dentons, Rimer and Bosco would not take steps to subordinate or otherwise prejudice CERIECO's security interest in favour of any other party, without CERIECO's express authorization through Wang.

F. THE CONFIDENTIAL GUARANTORS

83. CERIECO's project evaluation criteria also required that additional guarantees be obtained from third parties with equity at book value equal to at least 2.0 times the value of the loan. This requirement was communicated to and understood by all parties.

84. Jenny arranged for Coco Paving to provide a guarantee in favour of CERIECO. However, because Coco Paving did not satisfy the required equity-to-loan value ratio on its own, Jenny was required to locate an additional guarantor. Jenny arranged for Bridging, an investment vehicle managed and promoted by Bridging Finance, to act as the additional guarantor. Jenny was a part owner and a director of Bridging Finance. Bridging otherwise had nothing whatsoever to do with the Project, and it had no business reason to agree to the guarantee.

85. Bridging's assets had significantly less value than was represented by Jenny and MCLP, and in any event, such assets are now subject to the Receivership Order as described above.

86. On or about August 24, 2017, the Joint and Several Guarantee (as defined above) was executed by Coco Paving, Bridging, Mizrahi Development Group and SMI. Under the Joint and Several Guarantee, the parties unconditionally guaranteed, on a joint and several basis, payment and performance to CERIECO of all present and future indebtedness, liabilities and obligations owing to CERIECO by MCLP, forthwith on demand.

87. The Joint and Several Guarantee was signed by Natasha Sharpe, who purported to be a signing officer of an entity called Sprott Genpar Ltd., the general partner of Bridging. The Joint and Several Guarantee was signed by Jenny on behalf of Coco Paving, and by Sam on behalf of SMI and Mizrahi Development Group.

88. The names of Coco Paving and Bridging were redacted from certain versions of the Joint and Several Guarantee, and these parties were instead referred to as the “**Confidential Guarantors**”.

89. The signature pages of the Joint and Several Guarantee for the Confidential Guarantors were also removed, and it was specifically indicated that the agreement was to be accepted by the Confidential Guarantors under separate confidential agreement. The redactions (and removal of the signature pages) were not made at CERIECO’s request, and CERIECO has no knowledge of why this was done.

90. The involvement of the Confidential Guarantors in the financing was of critical importance to CERIECO. The Confidential Guarantors were held out to CERIECO as entities with assets available to satisfy the present and future indebtedness of MCLP to CERIECO, and thus to induce CERIECO to advance funds to the Project. CERIECO expected that the Confidential Guarantors would remain subject to the Joint and Several Guarantee at all times.

91. Further, Sam and Jenny knew at all times that the involvement of the Confidential Guarantors was necessary to satisfy CERIECO’s project evaluation criteria, and that a release of the Confidential Guarantors (without acceptable replacement) would be in breach of such criteria.

92. Under the Joint and Several Undertaking, MCGP also agreed (through 889 Canada and SMI) to appoint Wang as an officer and director of MCGP. Wang was also to be granted mandatory signing authority over the Project's bank accounts. SMI and 889 Canada have failed or refused to take any such steps.

G. THE OUTSTANDING INDEBTEDNESS

93. CERIECO has advanced a total of \$200,000,000.00 in accordance with the PCC (the "Outstanding Indebtedness"). The Outstanding Indebtedness bears interest at the rate of 8 percent per annum, compounded annually, in addition to certain fees payable to CERIECO.

94. MCLP has signed promissory notes in respect of the principal and interest owing for each advance it received.

95. Under the PCC, repayment of the Credit Amount (the sum of \$213,000,000, plus interest) to CERIECO was to be made according to the following schedule:

Repayment Date (from "Commencement Date")	Actual Repayment Date	Principal Amount Due (not including interest)
1460 days from Commencement Date (<i>i.e.</i> 4 years)	June 25, 2021	\$53,250,000.00
1825 days from Commencement Date (<i>i.e.</i> 5 years)	June 25, 2022	\$74,550,000.00
2190 days from Commencement Date (<i>i.e.</i> 6 years)	June 25, 2023	\$85,200,000.00
<u>TOTAL PRINCIPAL TO BE REPAID</u>	-	<u>\$213,000,000.00</u>

Fig. 1. CERIECO repayment schedule under Prime Construction Contract

96. As such, the first repayment in the principal amount of \$53,250,000.00 (plus interest) was due to CERIECO by June 25, 2021.

H. MCLP FAILS TO REPAY CERIECO

97. On May 6, 2021, Wang wrote on behalf of CERIECO to Sam and Jenny as principals of MCLP to remind them that the first repayment under the PCC was due on June 25, 2021, in the amount of \$61,337,287.67 (\$53,250,000.00 plus interest of \$8,087,287.67).

98. MCLP never responded to Wang's letter and failed to make repayment on June 25, 2021.

99. On August 25, 2021, Wang wrote to MCLP again to demand repayment. On September 9, 2021, MCLP responded, acknowledging that the first repayment due on June 25, 2021 had been missed, and asking for an extension until September 24, 2021.

100. On September 27, 2021, MCLP again wrote to CERIECO asking for a further extension until October 30, 2021.

101. On October 1, 2021, Wang wrote to MCLP (with a copy to Coco Paving and Bridging) stating that if CERIECO did not receive repayment by October 30, 2021, CERIECO intended to take legal action for recovery of all indebtedness and liabilities owed to CERIECO, including legal action against the Guarantors jointly and severally.

102. On October 29, 2021, MCLP wrote to CERIECO asking that CERIECO forbear from taking enforcement steps and requesting a further extension until November 30, 2021.

103. On November 2, 2021, Wang wrote to MCLP (copying Coco Paving and Bridging) again demanding repayment and stating that CERIECO had retained counsel to take further action.

104. CERIECO never received a response to its November 2, 2021 letter.

105. None of MCLP, Sam, Jenny, Coco Paving or Bridging ever mentioned, in any way, the SCA Amendment or a “release” of the Confidential Guarantors during the course of the above described communications in 2021 concerning payment of the amounts due and owing in June 2021.

106. CERIECO would later learn that at or around the same time MCLP was urging CERIECO (through Wang) to forbear from taking enforcement steps, it was in the process of improperly and oppressively purporting to negotiate such a release through Bosco (in the absence of legal counsel), as described below. MCLP had also purportedly already obtained Bosco’s commitment (purportedly on behalf of CERIECO) to deliver the release under the SCA Amendment.

I. CERIECO DISCOVERS THE PURPORTED RELEASE

107. On February 22, 2022, CERIECO wrote to Coco Paving through counsel to assert CERIECO’s rights under the Joint and Several Guarantee, and to request information about a possible pending sale transaction involving Coco Paving.

108. In response, Coco Paving informed CERIECO, for the first time, that CERIECO had “released” Coco Paving and Bridging from their obligations under the Joint and Several Guarantee. Thereafter, CERIECO obtained a copy of a document dated November 3, 2021 purporting to be such release (the “**Release**”).

109. The Release purports to be executed by 102 Canada as “agent” for and on behalf of CERIECO. Bosco is the sole officer, director and controlling mind of 102 Canada. Bosco

purported to sign the Release on behalf of 102 Canada and on behalf of CERIECO. Bosco acted without any involvement of legal counsel.

110. CERIECO had no knowledge whatsoever of the Release prior to learning of its existence in February 2022. At no time did Wang authorize the release of Coco Paving and/or Bridging from the Joint and Several Guarantee (nor did Wang authorize Bosco or 102 Canada to do so).

111. The Release is inconsistent with CERIECO's project evaluation criteria (including the loan-to-equity ratio requirements for the guarantees as described above) and Bosco, Sam and Jenny knew, or ought to have known, that CERIECO would not have approved it.

112. The timing of the Release is suspicious on its face. It is dated November 3, 2021, just one day after CERIECO wrote to Sam and Jenny (through MCLP, Coco Paving and Bridging) notifying them that it had retained counsel to enforce its rights against the Guarantors. CERIECO would not have, on the one hand, informed Sam and Jenny that it intended to take legal action against the Confidential Guarantors (on November 2, 2021), but on the other, agree to release the Confidential Guarantors from their obligations (on November 3, 2021).

113. Jenny and Sam knew that Bosco was not communicating with Wang regarding the Release. Among other things, Jenny and Sam continued to write to Wang in September and October 2021 (promising that payment would be made within weeks, which it never was), while they worked with Bosco alone (who had no legal counsel) to obtain the Release. Sam and Jenny structured their communications in this way to deliberately deceive and avoid detection by CERIECO.

J. THE \$7.5 MILLION PAYMENTS TO SAM AND BOSCO

114. Further, as described above, CERIECO later discovered that Bosco had also signed an Amendment to Supplier Credit Agreement Regarding Release of Confidential Guarantors dated May 12, 2021 (as defined above, the “**SCA Amendment**”), and had directed millions of dollars, purportedly to be paid to CERIECO under the SCA Amendment, to instead be paid to himself and Sam personally.

115. Under the SCA Amendment, Bosco (purportedly on behalf of 102 Canada as agent for CERIECO) agreed to sign the Release in exchange for a “release fee” of \$7,500,000.00 to be paid by Coco Paving or an affiliated entity to CERIECO in two tranches: \$5,000,000.00 upon execution of the SCA Amendment, and \$2,500,000.00 at a future date. The Release was to be signed at the time of the SCA Amendment and held in escrow pending delivery of the funds.

116. Bosco acted alone and did not involve legal counsel in the negotiation and execution of the SCA Amendment.

117. The parties to the SCA Amendment were MCLP, Mizrahi Development Group, 128 Canada, SMI, 102 Canada (as agent for CERIECO) and CERIECO. Neither Coco Paving nor Bridging were parties to the SCA Amendment.

118. The timing of the execution of the SCA Amendment is also suspicious, as it was signed on May 12, 2021, just six days after Wang wrote to Sam and Jenny as principals of MCLP to remind them of the upcoming repayment due date of June 25, 2021 under the PCC.

119. In any event, none of the purported cash consideration for the Release was paid to CERIECO as provided under the SCA Amendment. CERIECO later learned that the entirety of

the \$7,500,000.00 was disbursed from the trust account of McCarter Grespan Beynon Weir PC (the Mizrahi parties' counsel) in accordance with a direction provided by Bosco, as follows:

- (a) \$3,000,000.00 was paid to personal bank accounts belonging to Sam on or around May 13, 2021;
- (b) \$2,000,000.00 was paid to the trust account of Bosco's personal lawyer, Peter Liston, on or around May 13, 2021; and
- (c) A further \$2,500,000.00 was paid to Mr. Liston's trust account on or around November 3, 2021.

120. The SCA Amendment and the Release were executed by Bosco alone (with no involvement of legal counsel) and without the knowledge or authority of CERIECO. These agreements are invalid and of no force and effect, and the \$7,500,000.00 "release fee" advanced by Coco Paving should be returned to it.

K. CERIECO CONFRONTS BOSCO

121. CERIECO confronted Bosco upon learning of the Release and the SCA Amendment. Bosco admitted that he acted without CERIECO's authority, entirely of his own initiative and without the knowledge or approval of anyone else at CERIECO, and that he did not engage legal counsel.

122. CERIECO immediately called an emergency shareholders' meeting and terminated Bosco as a director of CERIECO and any other position with CERIECO he may declare himself to hold, effective February 25, 2022.

123. Bosco told CERIECO that he acted on Sam’s directions, and that Sam “persuaded” him to personally accept the \$4,500,000.00 payment that was supposed to be paid to CERIECO.

124. Bosco also admitted that he had directed \$3,000,000.00 to be paid to Sam personally.

125. Bosco admitted that he had instructed his personal lawyer, Mr. Liston, to disburse the remaining \$4,500,000.00 to his personal bank account. Bosco claimed that such amounts were ultimately paid to third parties, purportedly on behalf of CERIECO. For instance, Bosco claimed he paid over \$1,600,000.00 to an entity called “Console and Partners” for consulting fees.

126. Bosco also claimed that he paid \$300,000 to an entity called Callian Capital (“Callian”) and a further \$360,000.00 to Callian’s law firm, Gowling WLG (Canada) LLP.

127. Bosco was asked to produce to CERIECO copies of any written agreements or other documents substantiating the payments he says he made on CERIECO’s behalf, but he has failed or refused to do so.

128. Bosco claimed to have disbursed the balance of the funds he received to pay for expenses associated with a number of proposed transactions he purported to have been negotiating on behalf of CERIECO, again without the knowledge or approval of Wang or anyone else at CERIECO. CERIECO is continuing to investigate these matters and trace the funds to the best of its ability.

L. THE SUBORDINATION AGREEMENTS

129. CERIECO has also since discovered that Bosco has, since at least 2019, entered into several other agreements purportedly on CERIECO’s behalf that have prejudiced CERIECO’s interest in the Project, in favour of MCLP or other lenders, and have thereby potentially caused significant damage to CERIECO.

130. These agreements include a Priority, Subordination and Standstill Agreement between (among others) 102 Canada as agent for CERIECO, KEB Hana Bank Canada (“**KEB**”) and MCLP dated August 30, 2019 (the “**KEB Subordination Agreement**”) and a Priority Agreement between (among others) 102 Canada as agent for CERIECO and Aviva Insurance Company of Canada (“**Aviva**”) dated July 11, 2019 (the “**Aviva Subordination Agreement**”; together with the KEB Subordination Agreement, the “**Subordination Agreements**”).

131. As a result of the Subordination Agreements, CERIECO understands that the CERIECO Security (which otherwise would have ranked ahead of KEB and Aviva) has now been contractually subordinated behind charges over the Project lands in the amount of at least \$957,000,000.00 (in favour of KEB) and \$210,000,000.00 (in favour of Aviva).

132. Bosco also executed other documents purporting to give himself the authority to sign agreements on CERIECO’s behalf, without requiring Wang’s authorization. Such documents include an Agency Agreement between CERIECO and 102 Canada dated July 11, 2019 (“**Agency Agreement**”) and an Authorization and Direction from CERIECO to MCLP dated July 11, 2019 (“**102 Canada Authorization**”).

133. Pursuant to the Agency Agreement and the 102 Authorization, CERIECO purportedly appointed 102 Canada as its exclusive “agent” with respect to the SCA, and authorized MCLP to deal exclusively with 102 Canada with respect to the SCA and “all other documents entered into by the Agent, as agent for CERIECO, until further written notice is delivered by CERIECO”.

134. The Agency Agreement and the 102 Authorization were executed by Bosco alone on behalf of CERIECO. Bosco never reported to Wang regarding the Agency Agreement or the 102

Authorization, and CERIECO had no knowledge of these agreements whatsoever until learning of their existence in connection with the discovery of Bosco's wrongful conduct, as described herein.

M. DENTONS' AND RIMER'S PURPORTED JOINT RETAINER

135. Dentons and Rimer purported to act jointly for the Project and CERIECO during the negotiation and execution of the Subordination Agreements in connection with the larger financing transaction in 2019 (the "**Joint Retainer**").

136. Dentons and Rimer retroactively documented the terms of the Joint Retainer in a letter dated September 26, 2019 addressed to Sam (with a copy to Bosco). Dentons did not report to Wang (or anyone else at CERIECO, other than Bosco) regarding the change in the terms of its representation.

137. Dentons' September 26, 2019 letter does not explain the conflict of interest between MCLP, on the one hand (who wanted to attract new lenders to the Project) and CERIECO, on the other (who would not have wanted to subordinate its priority in favour of new lenders).

138. Dentons' September 26, 2019 letter also explicitly stated that Dentons would accept instructions from anyone at CERIECO with "apparent authority" regarding the matter, unless "you" (*i.e.* Sam) instruct us otherwise. This is contrary to Wang's instructions and the specific directive in CERIECO's by-laws (that Dentons itself drafted).

139. At no time did Dentons or Rimer report to Wang regarding the Joint Retainer. Dentons and Rimer knew that CERIECO (through Wang) would not have consented to the Joint Retainer.

140. Bosco also admitted that he and Rimer had discussed that if the particulars of the SCA and the Subordination Agreements were reported to Wang and other representatives of CERIECO and

CMEC in China, such agreements would not be approved, as they did not satisfy CERIECO's project evaluation criteria and other restrictions imposed by CMEC.

141. According to Bosco, Rimer and Dentons drafted the Agency Agreement and 102 Authorization specifically so that Bosco could purport to obtain the authority to execute documents on CERIECO's behalf on his own, without the need for approval from Wang (or any other CERIECO representatives in China).

N. THE UNAUTHORIZED RESOLUTIONS

142. CERIECO also learned that Bosco signed several Resolutions of the Board of Directors of CERIECO, purporting to grant any single officer or director of CERIECO the authority to execute documents on CERIECO's behalf (the "**Unauthorized Resolutions**"), including the Agency Agreement, the 102 Authorization, the Subordination Agreements and other documents.

143. The Unauthorized Resolutions were presented by Bosco as having been signed by Wang (and Bosco).

144. At no time were any of the Unauthorized Resolutions sent to, reviewed by, or signed by Wang. The signatures purporting to be Wang's have been forged or were otherwise improperly affixed to the signature block above Wang's name. Some of Wang's signatures appear to be an image or picture. Such Unauthorized Resolutions are invalid and have no force and effect.

145. When confronted by CERIECO, Bosco admitted that he never sent the Unauthorized Resolutions to Wang, and Wang did not sign them.

146. CERIECO reasonably expected that Dentons and Rimer would have taken steps to communicate with Wang or other representatives of CERIECO to confirm Wang's authorization and the authenticity of Wang's signature (which Dentons and Rimer did not).

O. THE UNAUTHORIZED LOAN TRANSACTIONS

147. Bosco was also attempting to enter into a number of additional unauthorized transactions purportedly on CERIECO's behalf between late 2020 and February 2022 (when CERIECO discovered the Release and Bosco's other misconduct).

148. The potential transactions would have involved the Project obtaining additional financing from several purported lenders (the "**Unauthorized Loan Transactions**"), including, among others, an entity called Discernment LLC, an entity called Cirrus Real Estate Partners, an individual named Alistair Sean Jeffries, and an individual named Walter Castillo (collectively, the "**Lenders**").

149. Bosco purported to retain Stephen Morris, a partner of DLA Piper (Canada) LLP ("**DLA Piper**") to act for CERIECO on the Unauthorized Loan Transactions. Some or all the Lenders were represented by Mark Ledwell of Gowling WLG.

150. The structure of the Unauthorized Loan Transactions purportedly included the creation of a special purpose vehicle of CERIECO called Callian CCC Capital Ltd. ("**Callian CCC**"), which was jointly owned 50/50 by Bosco and Michael Decaunti ("**Decaunti**"), Callian's principal.

151. Under the Unauthorized Loan Transactions, the Lenders were to advance funds to Callian CCC. Callian CCC would in turn lend the same funds to CERIECO and other entities associated with the Project. Sam and Bosco purportedly intended to use some of the funds to repay some of

the amounts owing to CERIECO under the PCC. A portion of such funds were also purportedly to be used to pay a “subordination fee” to CERIECO, on behalf of MCLP, in the amount of \$6,875,000.00.

152. To the best of CERIECO’s knowledge, none of the Unauthorized Loan Transactions closed, and no funds were advanced to CERIECO (or anyone else) by the Lenders. However, some of the Lenders purported to charge CERIECO “good faith” or “underwriting” fees of hundreds of thousands of dollars. Bosco used CERIECO’s funds to pay all such fees, which the Lenders never returned to CERIECO after they simply walked away and disappeared.

153. The Unauthorized Loan Transactions were part of an ongoing scheme designed to have Bosco advance funds (on behalf of CERIECO) to the Lenders on the false pretense that such Lenders were going to loan money to the Project (which they never did). Sam, DLA Piper, Decaunti, Ledwell and Gowling knew or ought to have known that the Lenders were not bona fide and had no intention of closing the Unauthorized Loan Transactions.

154. Bosco also used CERIECO’s money to pay other parties’ legal fees in connection with the Unauthorized Loan Transactions or otherwise, including \$360,000.00 paid to Gowling WLG (counsel to the Lenders) and \$250,000.00 paid to McCarter Grespan Beynon Weir (counsel to Sam and the other Mizrahi entities). When confronted by CERIECO, Bosco was unable to explain why CERIECO was or should be responsible for paying for legal services purportedly rendered to other parties.

P. THE CALLIAN GUARANTEES

155. CERIECO has further learned that Bosco (purportedly on behalf of CERIECO) also executed certain guarantee agreements pursuant to which CERIECO guaranteed the payment and

performance of significant liabilities owed by Callian to third parties (the “**Callian Guarantees**”).

The Callian Guarantees include:

- (a) A Relief from Forfeiture and Release of Claims agreement dated March 27, 2021 (“**Relief Agreement**”) and an Indemnity Agreement dated March 29, 2021 (“**Indemnity Agreement**”) in favour of FCP (BOPC) Ltd., ARI FCP Holdings Inc. and CPPIB FCP Holdings Inc. (collectively, the “**Landlord**”), pursuant to which CERIECO guaranteed the payment of all rent to the Landlord (Callian’s landlord for its offices in Toronto); and
- (b) A Demand Promissory Note dated April 7, 2021, whereby CERIECO guaranteed repayment of a loan in the amount of USD \$600,000.00 purportedly advanced to Callian from an entity called G Builders LLC (“**G Builders**”).

156. Bosco entered into the Callian Guarantees without the knowledge or authority of anyone at CERIECO. There is no business reason why CERIECO would have agreed to guarantee Callian’s obligations to its Landlord or to G Builders.

157. CERIECO learned of the Callian Guarantees for the first time after being served with a Notice of Garnishment (from the Landlord) and a demand letter (from G Builders) in or around April 2022.

158. CERIECO also learned that the Landlord had commenced an application in the Ontario Superior Court of Justice against CERIECO and Callian on or about May 31, 2021, seeking to enforce its rights under the Relief Agreement and Indemnity Agreement. The application was heard by a judge, and decided without any involvement or knowledge of CERIECO.

159. CERIECO is taking steps to preserve and enforce its rights with respect to the Callian Guarantees.

160. CERIECO is continuing to investigate Bosco's unauthorized and improper conduct. The full extent of Bosco's conduct is within his knowledge.

Q. LIABILITY OF THE DEFENDANTS

i. Fraud, Knowing Assistance

161. The Defendants are liable to CERIECO for knowing assistance in the commission of a fraud and the other misconduct described herein.

162. Sam and Jenny (and their respective corporate alter egos) at all times knew, or ought to have known, that Bosco had no authority to execute documents on CERIECO's behalf. Among other things:

- (a) **Knowledge of CERIECO investment criteria:** Sam and Jenny (and thus, Coco Paving and Bridging) were well aware of the significance of the Guarantees to CERIECO. It was clearly understood by all parties that CERIECO China would not extend the credit facility without guarantors that met the required equity-to-loan ratio. After extended negotiations on this issue in 2017, the Defendants knew or ought to have known that a single director of CERIECO lacked the authority to abrogate project evaluation criteria imposed by CERIECO's parent companies in China;
- (b) **Timing of communications:** Sam and Jenny communicated with Bosco in secret, while they continued to communicate separately with CERIECO (through Wang),

including repeatedly promising Wang that payments would be made (which they never were), and urging Wang to forbear from enforcing the guarantees. Once the Release was signed by Bosco, Sam and Jenny stopped responding to CERIECO's demands for payment;

- (c) **Lack of legal representation:** Sam and Jenny knew that Bosco did not engage or involve legal counsel at all during the negotiation of the SCA Amendment and Release;
- (d) **Fraud:** Sam accepted a personal payment of \$3,000,000.00 that he knew was intended to be paid to CERIECO in exchange for the purported Release. Sam knew that Bosco had no authority, and he abused this knowledge to personally enrich himself to CERIECO's detriment;
- (e) **No business reason for release:** It made no sense for CERIECO to simply "release" the Confidential Guarantors, without any replacement, for a purported payment of \$7,500,000.00 (that Sam and Jenny knew CERIECO never received), and at a time when the Project was experiencing significant financial difficulties (making the involvement of the Confidential Guarantors even more essential for CERIECO's protection);
- (f) **Lopsided deal:** Even if CERIECO had received the \$7,500,000.00 in exchange for the Release (which it did not), the purported consideration was unconscionable (just 3.5 percent of the amount of the credit facility) in relation to the rights CERIECO was purportedly giving up, at a time when MCLP had already been in default of its obligations to CERIECO for months. The deal was so obviously lopsided that Coco

Paving and Bridging knew that no CERIECO director acting in good faith could have accepted it.

163. By working with Bosco to negotiate and execute the Release, the SCA Amendment and the other purported agreements described herein, the Defendants knowingly assisted and/or participated in the breach of fiduciary duties owed by Bosco and the commission of a fraud. CERIECO has accordingly suffered damages, for which the Defendants are jointly and severally liable.

ii. Oppression

164. The Defendants' conduct as described above is oppressive, unfairly prejudicial to and unfairly disregards CERIECO's interests as a creditor of the Project and a party to the Profit Sharing Agreement.

165. CERIECO reasonably expected, among other things:

- (a) That it would be treated fairly, honestly and in good faith by the Defendants;
- (b) That Bosco would discharge his duties as a director of CERIECO honestly, in good faith and in the best interests of CERIECO;
- (c) That the priority position of the CERIECO Security would be preserved in the event the Project obtained additional financing;
- (d) That the Defendants would not take steps to subordinate or otherwise prejudice CERIECO's security interest in favour of any other party, without CERIECO's clear and express authorization (through Wang);

- (e) That the Confidential Guarantors would remain subject to the Joint and Several Guarantee at all times until the credit facility was fully repaid to CERIECO;
- (f) That MCLP would repay CERIECO according to the payment schedule set out in the PCC;
- (g) That the Defendants would not misappropriate (for their own enrichment) funds that they knew were intended to be paid to CERIECO; and
- (h) That the Defendants would not conspire to prejudice CERIECO's interests in the Project and otherwise.

166. The Defendants' conduct is contrary to each of CERIECO's reasonable expectations. CERIECO is entitled, pursuant to section 241 of the CBCA and section 248 of the OBCA, to the remedies sought in paragraph 1 above.

iii. Conspiracy

167. The Defendants are also liable to CERIECO for the tort of conspiracy.

168. The Defendants participated and co-conspired in the fraud and other misconduct alleged herein and entered into agreements, including but not limited to the SCA Amendment and the Release, which facilitated or directly resulted in the commission of the fraud.

169. The Defendants further acted in concert and/or with a common design or intention. Such conduct was directed towards CERIECO, and the Defendants knew or ought to have known that injury to CERIECO was likely to result.

170. As a result of the Defendants' conduct, CERIECO has suffered actual harm and injury.

iv. Knowing Assistance in Breach of Fiduciary Duties

171. The Defendants are further liable to CERIECO for knowing assistance in the breach of fiduciary duties owed by Bosco to CERIECO.

172. The Defendants at all times knew that Bosco owed fiduciary duties to CERIECO. The Defendants further knew or were wilfully blind to the fact that Bosco was in breach of his fiduciary duties to CERIECO in perpetrating the fraud and the other misconduct described herein.

173. By improperly working with Bosco (alone and without any involvement of legal counsel) to negotiate and execute the Release, the SCA Amendment and the other agreements described above, the Defendants knowingly assisted and/or participated in the breach of fiduciary duties. The Defendants are accordingly liable to CERIECO for the harm caused by Bosco's conduct.

v. Knowing Receipt

174. Sam, SMI, Bosco, 102 Canada and Livesolar are also liable to CERIECO for the tort of knowing receipt.

175. Sam and Bosco (and their corporate alter egos) received at least \$7,500,000.00 that was intended to be paid to CERIECO in exchange for the purported Release. Sam and Bosco accepted such funds with actual or constructive knowledge the fraud.

176. Sam and Bosco (and their corporate alter egos) received a benefit in connection with their receipt of the funds described above and were thereby unjustly enriched at CERIECO's expense.

177. CERIECO is accordingly entitled to recover the amount of its loss from Sam, SMI, Bosco, 102 Canada, Livesolar, and such other Defendants who received such funds (if the Release is not set aside).

vi. The Release, SCA and SCA Amendment Should be Set Aside

178. To the knowledge of the Defendants, the Release and SCA Amendment were entered into by Bosco without the knowledge or authority of CERIECO.

179. As described above, the circumstances of the execution of the Release and SCA Amendment raised obvious red flags that did or should have put the Defendants on notice that further inquiries were required before relying on Bosco's purported authority to execute such agreements.

180. In the alternative, even if the Defendants did not have actual knowledge that Bosco lacked authority to bind CERIECO (which they did), the Defendants were wilfully blind to the fact that in entering such agreements, they were participating in a fraud or breach of fiduciary duties.

181. Accordingly, the SCA Amendment and Release should be set aside, and any amounts purportedly advanced by Coco Paving in exchange for the Release should be returned to it.

vii. Investigation

182. The full extent of the Defendants' conduct is solely within the Defendants' knowledge. The Defendants have concealed their behaviour from CERIECO. In the circumstances, CERIECO is entitled to an order directing an investigation into the conduct and affairs of Coco Paving, MCGP, 128 Canada, SMI, Mizrahi Development Group, Mizrahi Inc. 102 Canada and Livesolar with respect to the wrongful conduct described herein, and to all of the relief sought at paragraph 1(b)(ii) and (iii) above.

viii. Breach of Contract

183. MCLP has breached its contractual obligations to CERIECO under the PCC as described above. Under the Guarantees, Coco Paving, 128 Canada and Mizrahi Development Group guaranteed the payment and performance of MCLP's obligations to CERIECO under the PCC.

184. As a result of MCLP's breaches, CERIECO has suffered damages in the sum of at least \$200,000,000.00, for which Coco Paving, 128 Canada and Mizrahi Development Group are liable.

ix. Punitive Damages

185. The Defendants' conduct towards CERIECO, as described herein, was reprehensible, egregious and illustrated a callous disregard for common decency and CERIECO's rights.

186. Ordinary damages are not sufficient to compensate CERIECO in respect of the Defendants' conduct and to deter the Defendants from acting similarly in the future. Nor are they sufficient to censure the Defendants for such conduct, which offends ordinary standards of decency and morality in the community.

187. CERIECO therefore requests an award of punitive, aggravated and exemplary damages in the amount of \$2,000,000.00.

x. Other Matters

188. CERIECO relies on s. 18(2) of the *CBCA*.

189. CERIECO proposes that this action be tried in Toronto.

May 20, 2022

BABIN BESSNER SPRY LLP
185 Frederick St., Suite 101
Toronto, ON M5A 4L4

Edward J. Babin (LSO#: 27195H)
Tel: 416-637-3294
ebabin@babinbessnerspry.com

Cynthia L. Spry (LSO#: 52045N)
Tel: 416-637-3295
cspry@babinbessnerspry.com

Michael Bookman (LSO#: 65047W)
Tel: 647-725-2604
mbookman@babinbessnerspry.com

Brendan Monahan (LSO#: 72319W)
Tel: 416-637-3296
bmonahan@babinbessnerspry.com

Tel: 416-637-3244
Fax: 416-637-3243

Lawyers for the Plaintiff

CO CANADA CORP. and SAM MIZRAHI et al.
Plaintiff

Defendants Court File No.

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

BABIN BESSNER SPRY LLP
185 Frederick St., Suite 101
Toronto, ON M5A 4L4

Edward J. Babin (LSO#: 27195H)

Cynthia L. Spry (LSO#: 52045N)

Michael Bookman (LSO#: 65047W)

Brendan Monahan (LSO#: 72319W)

Tel: 416-637-3244

Fax: 416-637-3243

Lawyers for the Plaintiff

This is Exhibit "JJ" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

701
F2995

Message

From: Jenny Coco [JCoco@cocogroup.com]
Sent: 4/21/2017 7:33:29 PM
To: N Sharpe [NSharpe@bridgingfinance.ca]
Subject: Fw: This morning discussions

Thanks!
Jenny

Jenny Coco, CEO
Coco Group

----- Original Message -----

Subject: Re: This morning discussions
From: Jenny Coco
To: Sam Mizrahi
CC:

Hi Sam,

First of all, thank you for the discussion.

Yes, we agree as outlined!

Secondly, we need to get China repaid within 18 months!!

Have a good weekend!

Thanks!
Jenny

Jenny Coco, CEO
Coco Group

----- Original Message -----

Subject: This morning discussions
From: Sam Mizrahi
To: Jenny Coco
CC:

Hi Jenny,

Great to see you this morning.

Just to recap what you confirmed to me this morning in regards to your new proposal for us on The One.

F727

702
F2996

1. My development fees of the \$30 Million, of which \$10 Million was already received, and balance of the \$20 Million are fully earned and With no issues regarding Apple Condition etc. This has always been and has already been agreed to.
2. You and I are 50/50 as we have always been.
3. The 5% share being given to Natasha is for Bridging/Sprott putting up its balance sheet and guarantees so that we can get rid of China in the next 18 month period we have with them and that would allow us as discussed to have full 100% ownership and you and I having 47.5% each and Natasha having 5%, respectively.
4. No voting rights for Natasha's 5%. 2.5% coming from me and 2.5% coming from you. And all decisions stay as per the original and current agreements, being just you and I.

Just wanted to confirm. Have a great weekend!

Sincerely,



Sam Mizrahi
President
[125 Hazelton Avenue](#)
[Toronto, Ontario M5R 2E4](#)
T. [416.922.4200 ext. 4210](#)
C. [416.818.5288](#)
F. [1.866.300.0219](#)
Sam@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

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 system.

F728

This is Exhibit “KK” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER



Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

704
F2998

Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

Grant B. Moffat
T: 416-304-0599
E: gmoffat@tgf.ca
File No. 507-058

May 2, 2022

PRIVATE & CONFIDENTIAL

VIA EMAIL

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, ON
M5P 2N3

Attention: Sam Mizrahi

Dear Sir:

Re: Indebtedness of Northern Citadel Capital Inc., Mizrahi Inc., and 2495159 Ontario Inc. (collectively, the “Borrower”) to Bridging Finance Inc. (“BFI”) in its capacity as agent (in such capacity, the “Agent”) on behalf of Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) and the related investment funds from time to time acting as lender (collectively, the “Lender”)

We are the lawyers for PricewaterhouseCoopers Inc. in its capacity as court-appointed receiver and manager (in such capacity, the “**Receiver**”) of all of the property, assets, and undertakings of the Agent, the Lender, and certain related entities and investment funds (collectively, “**Bridging**”).

We refer to the non-revolving term credit facility (the “**Loan**”) made available to the Borrower by the Agent, on behalf of the Lender, pursuant to the loan agreement dated December 14, 2014 (the “**Original Loan Agreement**”), as amended by a first amending agreement dated February 24, 2015, a second amending agreement dated March 11, 2015, a third amending agreement dated April 10, 2015, a fourth amending agreement dated November 27, 2015, a fifth amending agreement dated June 30, 2016, a sixth amending agreement dated November 30, 2016, a seventh amending agreement dated November 1, 2017, an eighth amending agreement dated May 2, 2018, and a ninth amending agreement dated December 31, 2020 (collectively, the “**Loan Agreement**”). All capitalized terms not expressly defined herein are defined in the Loan Agreement.

Notice of Default

As you are aware, pursuant to the Loan Agreement, the Term of the Loan expired on April 30, 2022. Pursuant to section 3.4 of the Original Loan Agreement, the full amount of the outstanding principal together with accrued interest shall be due and payable on the expiry of the Term. The

Borrower failed to repay the full amount outstanding under the Loan on the expiry of the Term, contrary to section 3.4 of the Original Loan Agreement (the “**Payment Default**”). The Payment Default is continuing as at the date hereof. The Receiver has not waived the Payment Default.

Pursuant to section 12.1(a) of the Original Loan Agreement, an Event of Default occurs if the Borrower fails to observe or perform any term, condition, covenant, or undertaking involving the payment of money under the Loan Agreement or the other Loan Documents. Pursuant to section 12.2 of the Original Loan Agreement, a default referred to under section 12.1 shall not constitute an Event of Default unless, in the case of default in payment of money, it has continued for at least 10 days after the due date for payment.

The Payment Default constitutes a default in payment of money under section 12.1(a) of the Original Loan Agreement. Pursuant to section 12.2 of the Original Loan Agreement, the Payment Default will constitute an Event of Default if the Borrower fails to repay the full amount outstanding under the Loan within 10 days of expiry of the Term.

In the event that the Credit Parties fail to repay the full amount outstanding under the Loan within 10 days of expiry of the Term, the Receiver reserves its right to immediately exercise all of the rights and remedies of the Agent and the Lender pursuant to the Loan Agreement or otherwise, including, without limitation, immediately taking steps to register any or all of the Security (including the security interest granted by Mizrahi Inc. in respect of the Accounts) and immediately taking steps to enforce the Security.

Except as expressly waived in writing by the Receiver, no act or failure to act by the Receiver, nor anything said or done in any discussions, correspondence or other dealings among the Receiver and any of the Credit Parties or any of the Credit Parties’ respective shareholders, affiliates, subsidiaries, related parties, officers, directors, employees, agents or representatives shall be construed as a waiver of any breach, default (including the Payment Default) or Event of Default under the Loan Agreement, or any of the rights or remedies of the Agent, the Lender or the Receiver. There is no agreement by the Receiver to forbear from enforcing any of the rights and remedies of the Receiver, the Agent or the Lender with respect to any breach, default (including the Payment Default) or Event of Default under the Loan Agreement which has occurred or which may occur in the future. The Receiver reserves the right to immediately exercise all such rights and remedies at any time.

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F3000



Thornton Grout Finnigan LLP

Yours truly,

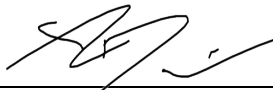
Thornton Grout Finnigan LLP

A handwritten signature in black ink, appearing to be 'G. Moffat'. The signature is stylized and includes the initials 'C/O' at the end.

Grant B. Moffat

cc: Michael McTaggart, Christine Sinclair, Tyler Ray – PricewaterhouseCoopers Inc.

This is Exhibit "LL" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER



Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

708
F3002

Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

Grant B. Moffat
T: 416-304-0599
E: gmoffat@tgf.ca
File No. 507-058

May 12, 2022

PRIVATE & CONFIDENTIAL

VIA EMAIL

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, ON
M5P 2N3

Northern Citadel Capital Inc.
189 Forest Hill Road
Toronto, ON
M5P 2N3

Attention: Sam Mizrahi

Dear Sir:

Re: Indebtedness of Northern Citadel Capital Inc., Mizrahi Inc., and 2495159 Ontario Inc. (collectively, the “Borrower”) to Bridging Finance Inc. (“BFI”) in its capacity as agent (in such capacity, the “Agent”) on behalf of Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) and the related investment funds from time to time acting as lender (collectively, the “Lender”)

We are the lawyers for PricewaterhouseCoopers Inc. in its capacity as court-appointed receiver and manager (in such capacity, the “**Receiver**”) of all of the property, assets, and undertakings of the Agent, the Lender, and certain related entities and investment funds (collectively, “**Bridging**”).

The Loan Agreement & Security

We refer to the non-revolving term credit facility (the “**Loan**”) made available to Northern Citadel Capital Inc. (“**NCCI**”) and the other entities that comprise the Borrower by the Agent, on behalf of the Lender, pursuant to the loan agreement dated December 14, 2014 (the “**Original Loan Agreement**”), as amended by a first amending agreement dated February 24, 2015, a second amending agreement dated March 11, 2015, a third amending agreement dated April 10, 2015, a fourth amending agreement dated November 27, 2015, a fifth amending agreement dated June 30, 2016, a sixth amending agreement dated November 30, 2016, a seventh amending agreement dated November 1, 2017, an eighth amending agreement dated May 2, 2018, and a ninth amending agreement dated December 31, 2020 (collectively, the “**Loan Agreement**”). All capitalized terms not expressly defined herein are defined in the Loan Agreement.

NCCI and the other Credit Parties are indebted to the Lender under the Loan in the amount of \$53,995,059.27 as at the date hereof as set out at **Schedule “A”** hereto (the “**Indebtedness**”).

As security for all of the present and future indebtedness and obligations of NCCI to the Lender under the Loan, NCCI granted to the Agent and the Lender, among other things, security over all of its personal property, assets, and undertakings pursuant to a general security agreement dated December 17, 2014 (the “GSA”).

Event of Default & Registration of Security

As described in our letter dated May 2, 2022, the Term of the Loan expired on April 30, 2022. NCCI and the other Credit Parties failed to repay the full amount outstanding under the Loan on the expiry of the Term, contrary to section 3.4 of the Original Loan Agreement (the “**Payment Default**”). The Payment Default is continuing as at the date hereof. The Receiver has not waived the Payment Default.

Pursuant to section 12.1(a) of the Original Loan Agreement, an Event of Default occurs if the Borrower fails to observe or perform any term, condition, covenant, or undertaking involving the payment of money under the Loan Agreement or the other Loan Documents. Pursuant to section 12.2 of the Original Loan Agreement, a default referred to under section 12.1 shall not constitute an Event of Default unless, in the case of default in payment of money, it has continued for at least 10 days after the due date for payment.

As at the date hereof, the Payment Default, which constitutes a default in payment of money under section 12.1(a) of the Original Loan Agreement, has continued for at least 10 days after the due date for payment. As such, pursuant to section 12.2 of the Original Loan Agreement, the Payment Default constitutes an Event of Default under the Loan Agreement.

Pursuant to section 5.1(d) of the Original Loan Agreement, upon the occurrence of an Event of Default, which has not been remedied, the Lender shall be permitted to register in respect of all of the Credit Parties under the PPSA. We confirm that the Receiver, on behalf of the Agent and the Lender, has made a registration against NCCI pursuant to the PPSA.

Demand for Payment

In accordance with section 12.1 of the Original Loan Agreement, the Indebtedness is immediately due and payable as a result of the occurrence of the Event of Default described above. On behalf of the Receiver, the Agent and the Lender, we hereby demand payment from NCCI of \$53,995,059.27 in respect of the Indebtedness, together with interest thereon and all costs, including all legal, consultant and other agent fees and disbursements incurred by the Receiver, the Agent, and/or the Lender to the date of payment in accordance with the terms of the Loan Agreement. Pursuant to the Loan Agreement, interest accrues on the Indebtedness at the rate of 12% per annum. As at May 12, 2022, interest is accruing on the Indebtedness at the rate of \$17,682.04 per day.

We also enclose at this time a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act* (Canada) together with a consent thereto (the “**Consent**”). If NCCI consents



Thornton Grout Finnigan LLP

to the Receiver, on behalf of the Agent and the Lender, enforcing its rights and remedies without further delay, please date and execute one copy of the Consent and return same to the undersigned by e-mail forthwith.

In the event that NCCI fails to pay the sum indicated, the Receiver, on behalf of the Agent and the Lender, shall pursue all of its rights and remedies against NCCI.

Yours truly,

Thornton Grout Finnigan LLP

A handwritten signature in black ink, appearing to read 'G. Moffat', with 'c/o' written below it.

Grant B. Moffat

cc: Michael McTaggart, Christine Sinclair, Tyler Ray – PricewaterhouseCoopers Inc.

Schedule “A”

**Indebtedness of Northern Citadel Capital Inc.
to the Agent and the Lender as at May 12, 2022**

Facility	Principal Balance	Accrued Interest¹ & Fees	Total	Per Diem on Principal
Non-Revolving Credit Facility	\$53,782,874.77	\$212,184.49	\$53,995,059.27	\$17,682.04

¹ Interest accrues at the rate of 12% per annum.

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

TO: NORTHERN CITADEL CAPITAL INC. (“NCCI”)

Take notice that:

1. Pursuant to a loan agreement dated as of December 17, 2014 (as amended from time to time, the “**Loan Agreement**”), Bridging Finance Inc., in its capacity as agent (in such capacity, the “**Agent**”) on behalf of Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) and the related investment funds from time to time acting as lender (collectively, the “**Lender**”), made available to NCCI and certain related entities a non-revolving term credit facility.
2. By orders of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 30, 2021, May 3, 2021, and May 14, 2021 (collectively, the “**Appointment Orders**”), PricewaterhouseCoopers Inc. was appointed as receiver and manager (in such capacity, the “**Receiver**”) of the Agent, the Lender, and certain related entities and investment funds (as defined in the Appointment Orders, the “**Respondents**”).
3. The Receiver, on behalf of the Agent and the Lender, each a secured creditor of NCCI (together, the “**Secured Creditors**”), intends to enforce the Secured Creditors’ security on NCCI’s property described below:
 - (a) all present and after-acquired personal property of NCCI; and
 - (b) all proceeds of the foregoing collateral.
4. The security that is to be enforced is in the form of a general security agreement dated as of December 17, 2014 (the “**Security**”).
5. As at May 12, 2022, the total amount of the indebtedness secured by the Security is \$53,995,059.27 (the “**Indebtedness**”), plus interest accruing thereafter and all costs incurred by or charged to the Agent or the Lender, including, without limitation, legal and consultant fees and disbursements. Interest accrues on the Indebtedness at the rate of 12% per annum. As at today’s date, interest is accruing on the Indebtedness in the amount of \$17,682.04 per day.
6. The Receiver, on behalf of the Agent and the Lender, will not have the right to enforce the Security until the expiry of the 10-day period after this notice is sent, unless NCCI consents to an earlier enforcement.

Dated at Toronto, Ontario, this 12th day of May, 2022.

PRICEWATERHOUSECOOPERS INC., solely in its capacity as court-appointed receiver and manager of the Agent, the Lender, and the other Respondents (each as defined herein), and not in its personal capacity, by Thornton Grout Finnigan LLP, its solicitors herein



Per:

Grant B. Moffat

CONSENT

TO: PRICEWATERHOUSECOOPERS INC., in its capacity as court-appointed receiver and manager of the Agent, the Lender, and the other Respondents (the “Receiver”)

FROM: NORTHERN CITADEL CAPITAL INC. (“NCCI”)

NCCI acknowledges receipt of a Notice of Intention to Enforce Security delivered by the Receiver, on behalf of the Agent and the Lender (together, the “**Secured Creditors**”) on May 12, 2022 (the “**Notice**”).

For consideration received, the receipt and sufficiency of which are hereby irrevocably acknowledged, NCCI hereby consents to the immediate enforcement by the Receiver of the Security (as defined in the Notice), and for the same consideration waives completely all rights to any delay by or any further notice from the Receiver with respect to the enforcement of the Security and the exercise of any other remedies of the Agent and the Lender against NCCI.

DATED at _____ this _____ day of May, 2022.

NORTHERN CITADEL CAPITAL INC.

Per: _____
Name:
Title:

I have the authority to bind the corporation.

715
F3009

F741



Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

716
F3010

Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

Grant B. Moffat
T: 416-304-0599
E: gmoffat@tgf.ca
File No. 507-058

May 12, 2022

PRIVATE & CONFIDENTIAL

VIA EMAIL

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, ON
M5P 2N3

One8One Davenport Inc.
125 Hazelton Avenue
Toronto, ON
M5R 2E4

Attention: Sam Mizrahi

Dear Sir:

Re: Indebtedness of Northern Citadel Capital Inc., Mizrahi Inc., and 2495159 Ontario Inc. (collectively, the “Borrower”) to Bridging Finance Inc. (“BFI”) in its capacity as agent (in such capacity, the “Agent”) on behalf of Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) and the related investment funds from time to time acting as lender (collectively, the “Lender”)

We are the lawyers for PricewaterhouseCoopers Inc. in its capacity as court-appointed receiver and manager (in such capacity, the “**Receiver**”) of all of the property, assets, and undertakings of the Agent, the Lender, and certain related entities and investment funds (collectively, “**Bridging**”).

The Loan Agreement

We refer to the non-revolving term credit facility (the “**Loan**”) made available to the Borrower by the Agent, on behalf of the Lender, pursuant to the loan agreement dated December 14, 2014 (the “**Original Loan Agreement**”), as amended by a first amending agreement dated February 24, 2015, a second amending agreement dated March 11, 2015, a third amending agreement dated April 10, 2015, a fourth amending agreement dated November 27, 2015, a fifth amending agreement dated June 30, 2016, a sixth amending agreement dated November 30, 2016 (the “**November 2016 Amendment**”), a seventh amending agreement dated November 1, 2017, an eighth amending agreement dated May 2, 2018, and a ninth amending agreement dated December 31, 2020 (collectively, the “**Loan Agreement**”). All capitalized terms not expressly defined herein are defined in the Loan Agreement.

The Borrower and the other Credit Parties are indebted to the Lender under the Loan in the amount of \$53,995,059.27 as at the date hereof as set out at **Schedule “A”** hereto (the “**Indebtedness**”).

The Guarantee & Security

We also refer to the unlimited joint and several guarantee by One8One Davenport Inc. (“**One8One**”)¹ and 181 Davenport Retail Inc. (“**181 Retail**”)² of the “Obligations”³ of the Borrower under the Loan Agreement dated December 17, 2014, as amended from time to time (the “**Guarantee**”). The indebtedness and obligations of One8One pursuant to the Guarantee are secured by a general security agreement granted by the Borrower and One8One to the Agent, on behalf of the Lender, dated December 17, 2014 (the “**GSA**”).

Pursuant to section 4.1 of the Guarantee: (i) the Lender shall be entitled to make demand upon One8One at any time upon the occurrence of any Event of Default (as defined in the Loan Agreement) and upon such Event of Default the Lender may treat all Obligations as due and payable and may forthwith collect from One8One the total amount guaranteed thereunder whether or not such Obligations are yet due and payable at the time of demand for payment; and (ii) One8One shall make payment to the Lender of the total amount guaranteed thereunder forthwith after demand therefor is made and One8One shall pay all reasonable costs and expenses incurred by the Lender in enforcing the Guarantee.

Event of Default & Registration of Security

As described in our letter dated May 2, 2022, the Term of the Loan expired on April 30, 2022. The Borrower and the other Credit Parties failed to repay the full amount outstanding under the Loan on the expiry of the Term, contrary to section 3.4 of the Original Loan Agreement (the “**Payment Default**”). The Payment Default is continuing as at the date hereof. The Receiver has not waived the Payment Default.

¹ The former One8One Davenport Inc. (Ontario Corporation Number: 1912202) (“**191**”) amalgamated with Mizrahi Soaring Developments Inc. (Ontario Corporation Number: 1822736) (“**182**”) on January 1, 2015 to create One8One Davenport Inc. (Ontario Corporation Number: 1927751), which is defined and referred to herein as “One8One”. Each of 191 and 182 is a “Guarantor” under the Guarantee and a “Debtor” under the GSA. The Guarantee is binding on One8One as a successor to 191 and 182 pursuant to section 6.1 of the Guarantee. The GSA is binding on One8One as a successor to 191 and 182 pursuant to section 5.8 of the GSA.

² Pursuant to section 2 of the November 2016 Amendment, 181 Retail was added as a Guarantor of the Loan on a joint and several basis as though it were an original party to the Loan Agreement and the Existing Security (which is defined to include, among other things, the Guarantee dated December 17, 2014). Pursuant to section 4 of the November 2016 Amendment, 181 Retail acknowledged and agreed that it received a copy of the Loan Agreement and the Existing Security and agreed to be bound by same as though it were an original party thereto.

³ “Obligations” is defined in the Guarantee to mean all of the debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Lender or remaining unpaid by the Borrower to the Lender together with interest thereon as provided in the Loan Agreement.

Pursuant to section 12.1(a) of the Original Loan Agreement, an Event of Default occurs if the Borrower fails to observe or perform any term, condition, covenant, or undertaking involving the payment of money under the Loan Agreement or the other Loan Documents. Pursuant to section 12.2 of the Original Loan Agreement, a default referred to under section 12.1 shall not constitute an Event of Default unless, in the case of default in payment of money, it has continued for at least 10 days after the due date for payment.

As at the date hereof, the Payment Default, which constitutes a default in payment of money under section 12.1(a) of the Original Loan Agreement, has continued for at least 10 days after the due date for payment. As such, pursuant to section 12.2 of the Original Loan Agreement, the Payment Default constitutes an Event of Default under the Loan Agreement.

Pursuant to section 5.1(d) of the Original Loan Agreement, upon the occurrence of an Event of Default, which has not been remedied, the Lender shall be permitted to register in respect of all of the Credit Parties under the PPSA. We confirm that the Receiver, on behalf of the Agent and the Lender, has made a registration against One8One pursuant to the PPSA.

Demand for Payment

In accordance with section 4.1 of the Guarantee, the Indebtedness is immediately due and payable as a result of the occurrence of the Event of Default described above. On behalf of the Receiver, the Agent and the Lender, we hereby demand payment from One8One of \$53,995,059.27 in respect of the Indebtedness, together with interest thereon and all costs, including all legal, consultant and other agent fees and disbursements incurred by the Receiver, the Agent, and/or the Lender to the date of payment in accordance with the terms of the Loan Agreement. Pursuant to the Loan Agreement, interest accrues on the Indebtedness at the rate of 12% per annum. As at May 12, 2022, interest is accruing on the Indebtedness at the rate of \$17,682.04 per day.

We also enclose at this time a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act* (Canada) together with a consent thereto (the “**Consent**”). If One8One consents to the Receiver, on behalf of the Agent and the Lender, enforcing its rights and remedies without further delay, please date and execute one copy of the Consent and return same to the undersigned by e-mail forthwith.

In the event that One8One fails to pay the sum indicated, the Receiver, on behalf of the Agent and the Lender, shall pursue all of its rights and remedies against One8One.

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F3013

4.



Thornton Grout Finnigan LLP

Yours truly,

Thornton Grout Finnigan LLP

A handwritten signature in black ink, appearing to read 'Grant B. Moffat'. The signature is stylized and includes a small 'c/o' mark at the end.

Grant B. Moffat

cc: Michael McTaggart, Christine Sinclair, Tyler Ray – PricewaterhouseCoopers Inc.

Schedule “A”

**Indebtedness of Northern Citadel Capital Inc.
to the Agent and the Lender as at May 12, 2022**

Facility	Principal Balance	Accrued Interest⁴ & Fees	Total	Per Diem on Principal
Non-Revolving Credit Facility	\$53,782,874.77	\$212,184.49	\$53,995,059.27	\$17,682.04

⁴ Interest accrues at the rate of 12% per annum.

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

TO: ONE8ONE DAVENPORT INC. (“One8One”)

Take notice that:

1. Pursuant to a loan agreement dated as of December 17, 2014 (as amended from time to time, the “**Loan Agreement**”), Bridging Finance Inc., in its capacity as agent (in such capacity, the “**Agent**”) on behalf of Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) and the related investment funds from time to time acting as lender (collectively, the “**Lender**”) made available to Northern Citadel Capital Inc. and certain related entities (collectively, the “**Borrower**”) a non-revolving term credit facility (the “**Loan**”).
2. One8One has guaranteed the indebtedness and obligations of the Borrower to the Agent and the Lender under the Loan.
3. By orders of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 30, 2021, May 3, 2021, and May 14, 2021 (collectively, the “**Appointment Orders**”), PricewaterhouseCoopers Inc. was appointed as receiver and manager (in such capacity, the “**Receiver**”) of the Agent, the Lender, and certain related entities and investment funds (as defined in the Appointment Orders, the “**Respondents**”).
4. The Receiver, on behalf of the Agent and the Lender, each a secured creditor of One8One (together, the “**Secured Creditors**”), intends to enforce the Secured Creditors’ security on One8One’s property described below:
 - (a) all present and after-acquired personal property of One8One; and
 - (b) all proceeds of the foregoing collateral.
5. The security that is to be enforced is in the form of a general security agreement dated as of December 17, 2014 (the “**Security**”).
6. As at May 12, 2022, the total amount of the indebtedness secured by the Security is \$53,995,059.27 (the “**Indebtedness**”), plus interest accruing thereafter and all costs incurred by or charged to the Agent or the Lender, including, without limitation, legal and consultant fees and disbursements. Interest accrues on the Indebtedness at the rate of 12% per annum. As at today’s date, interest is accruing on the Indebtedness in the amount of \$17,682.04 per day.

7. The Receiver, on behalf of the Agent and the Lender, will not have the right to enforce the Security until the expiry of the 10-day period after this notice is sent, unless One8One consents to an earlier enforcement.

Dated at Toronto, Ontario, this 12th day of May, 2022.

PRICEWATERHOUSECOOPERS INC., solely in its capacity as court-appointed receiver and manager of the Agent, the Lender, and the other Respondents (each as defined herein), and not in its personal capacity, by Thornton Grout Finnigan LLP, its solicitors herein



Per:

Grant B. Moffat

CONSENT

TO: PRICEWATERHOUSECOOPERS INC., in its capacity as court-appointed receiver and manager of the Agent, the Lender, and the other Respondents (the “Receiver”)

FROM: ONE8ONE DAVENPORT INC. (“One8One”)

One8One acknowledges receipt of a Notice of Intention to Enforce Security delivered by the Receiver, on behalf of the Agent and the Lender (together, the “**Secured Creditors**”) on May 12, 2022 (the “**Notice**”).

For consideration received, the receipt and sufficiency of which are hereby irrevocably acknowledged, One8One hereby consents to the immediate enforcement by the Receiver of the Security (as defined in the Notice), and for the same consideration waives completely all rights to any delay by or any further notice from the Receiver with respect to the enforcement of the Security and the exercise of any other remedies of the Agent and the Lender against One8One.

DATED at _____ this _____ day of May, 2022.

ONE8ONE DAVENPORT INC.

Per: _____
Name:
Title:

I have the authority to bind the corporation.

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F3018

F750



Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

725
F3019

Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

Grant B. Moffat
T: 416-304-0599
E: gmoffat@tgf.ca
File No. 507-058

May 12, 2022

PRIVATE & CONFIDENTIAL

VIA EMAIL

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, ON
M5P 2N3

181 Davenport Retail Inc.
189 Forest Hill Road
Toronto, ON
M5P 2N3

Attention: Sam Mizrahi

Dear Sir:

Re: Indebtedness of Northern Citadel Capital Inc., Mizrahi Inc., and 2495159 Ontario Inc. (collectively, the “Borrower”) to Bridging Finance Inc. (“BFI”) in its capacity as agent (in such capacity, the “Agent”) on behalf of Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) and the related investment funds from time to time acting as lender (collectively, the “Lender”)

We are the lawyers for PricewaterhouseCoopers Inc. in its capacity as court-appointed receiver and manager (in such capacity, the “**Receiver**”) of all of the property, assets, and undertakings of the Agent, the Lender, and certain related entities and investment funds (collectively, “**Bridging**”).

The Loan Agreement

We refer to the non-revolving term credit facility (the “**Loan**”) made available to the Borrower by the Agent, on behalf of the Lender, pursuant to the loan agreement dated December 14, 2014 (the “**Original Loan Agreement**”), as amended by a first amending agreement dated February 24, 2015, a second amending agreement dated March 11, 2015, a third amending agreement dated April 10, 2015, a fourth amending agreement dated November 27, 2015, a fifth amending agreement dated June 30, 2016, a sixth amending agreement dated November 30, 2016 (the “**November 2016 Amendment**”), a seventh amending agreement dated November 1, 2017, an eighth amending agreement dated May 2, 2018, and a ninth amending agreement dated December 31, 2020 (collectively, the “**Loan Agreement**”). All capitalized terms not expressly defined herein are defined in the Loan Agreement.

The Borrower and the other Credit Parties are indebted to the Lender under the Loan in the amount of \$53,995,059.27 as at the date hereof as set out at **Schedule “A”** hereto (the “**Indebtedness**”).

The Guarantee & Security

We also refer to the unlimited joint and several guarantee by 181 Davenport Retail Inc. (“**181 Retail**”)¹ and One8One Davenport Inc. (“**One8One**”)² of the “Obligations”³ of the Borrower under the Loan Agreement dated December 17, 2014, as amended from time to time (the “**Guarantee**”). The indebtedness and obligations of 181 Retail pursuant to the Guarantee are secured by a general security agreement granted by 181 Retail to the Agent, on behalf of the Lender, dated May 2, 2018 (the “**GSA**”). In accordance with section 14(a)(ii) of the November 2016 Amendment, the Agent made a registration against 181 Retail pursuant to the PPSA.

Pursuant to section 4.1 of the Guarantee: (i) the Lender shall be entitled to make demand upon 181 Retail at any time upon the occurrence of any Event of Default (as defined in the Loan Agreement) and upon such Event of Default the Lender may treat all Obligations as due and payable and may forthwith collect from 181 Retail the total amount guaranteed thereunder whether or not such Obligations are yet due and payable at the time of demand for payment; and (ii) 181 Retail shall make payment to the Lender of the total amount guaranteed thereunder forthwith after demand therefor is made and 181 Retail shall pay all reasonable costs and expenses incurred by the Lender in enforcing the Guarantee.

Event of Default

As described in our letter dated May 2, 2022, the Term of the Loan expired on April 30, 2022. The Borrower and the other Credit Parties failed to repay the full amount outstanding under the Loan on the expiry of the Term, contrary to section 3.4 of the Original Loan Agreement (the “**Payment Default**”). The Payment Default is continuing as at the date hereof. The Receiver has not waived the Payment Default.

¹ Pursuant to section 2 of the November 2016 Amendment, 181 Retail was added as a Guarantor of the Loan on a joint and several basis as though it were an original party to the Loan Agreement and the Existing Security (which is defined to include, among other things, the Guarantee dated December 17, 2014). Pursuant to section 4 of the November 2016 Amendment, 181 Retail acknowledged and agreed that it received a copy of the Loan Agreement and the Existing Security and agreed to be bound by same as though it were an original party thereto.

² The former One8One Davenport Inc. (Ontario Corporation Number: 1912202) (“**191**”) amalgamated with Mizrahi Soaring Developments Inc. (Ontario Corporation Number: 1822736) (“**182**”) on January 1, 2015 to create One8One Davenport Inc. (Ontario Corporation Number: 1927751), which is defined and referred to herein as “One8One”. Each of 191 and 182 is a “Guarantor” under the Guarantee and a “Debtor” under the GSA. The Guarantee is binding on One8One as a successor to 191 and 182 pursuant to section 6.1 of the Guarantee. The GSA is binding on One8One as a successor to 191 and 182 pursuant to section 5.8 of the GSA.

³ “Obligations” is defined in the Guarantee to mean all of the debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Lender or remaining unpaid by the Borrower to the Lender together with interest thereon as provided in the Loan Agreement.

Pursuant to section 12.1(a) of the Original Loan Agreement, an Event of Default occurs if the Borrower fails to observe or perform any term, condition, covenant, or undertaking involving the payment of money under the Loan Agreement or the other Loan Documents. Pursuant to section 12.2 of the Original Loan Agreement, a default referred to under section 12.1 shall not constitute an Event of Default unless, in the case of default in payment of money, it has continued for at least 10 days after the due date for payment.

As at the date hereof, the Payment Default, which constitutes a default in payment of money under section 12.1(a) of the Original Loan Agreement, has continued for at least 10 days after the due date for payment. As such, pursuant to section 12.2 of the Original Loan Agreement, the Payment Default constitutes an Event of Default under the Loan Agreement.

Demand for Payment

In accordance with section 4.1 of the Guarantee, the Indebtedness is immediately due and payable as a result of the occurrence of the Event of Default described above. On behalf of the Receiver, the Agent and the Lender, we hereby demand payment from 181 Retail of \$53,995,059.27 in respect of the Indebtedness, together with interest thereon and all costs, including all legal, consultant and other agent fees and disbursements incurred by the Receiver, the Agent, and/or the Lender to the date of payment in accordance with the terms of the Loan Agreement. Pursuant to the Loan Agreement, interest accrues on the Indebtedness at the rate of 12% per annum. As at May 12, 2022, interest is accruing on the Indebtedness at the rate of \$17,682.04 per day.

We also enclose at this time a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act* (Canada) together with a consent thereto (the “**Consent**”). If 181 Retail consents to the Receiver, on behalf of the Agent and the Lender, enforcing its rights and remedies without further delay, please date and execute one copy of the Consent and return same to the undersigned by e-mail forthwith.

In the event that 181 Retail fails to pay the sum indicated, the Receiver, on behalf of the Agent and the Lender, shall pursue all of its rights and remedies against 181 Retail.

Yours truly,

Thornton Grout Finnigan LLP



Grant B. Moffat

cc: Michael McTaggart, Christine Sinclair, Tyler Ray – PricewaterhouseCoopers Inc.

Schedule “A”

**Indebtedness of Northern Citadel Capital Inc.
to the Agent and the Lender as at May 12, 2022**

Facility	Principal Balance	Accrued Interest⁴ & Fees	Total	Per Diem on Principal
Non-Revolving Credit Facility	\$53,782,874.77	\$212,184.49	\$53,995,059.27	\$17,682.04

⁴ Interest accrues at the rate of 12% per annum.

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

TO: 181 DAVENPORT RETAIL INC. (“181 Retail”)

Take notice that:

1. Pursuant to a loan agreement dated as of December 17, 2014 (as amended from time to time, the “**Loan Agreement**”), Bridging Finance Inc., in its capacity as agent (in such capacity, the “**Agent**”) on behalf of Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) and the related investment funds from time to time acting as lender (collectively, the “**Lender**”) made available to Northern Citadel Capital Inc. and certain related entities (collectively, the “**Borrower**”) a non-revolving term credit facility (the “**Loan**”).
2. 181 Retail has guaranteed the indebtedness and obligations of the Borrower to the Agent and the Lender under the Loan.
3. By orders of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 30, 2021, May 3, 2021, and May 14, 2021 (collectively, the “**Appointment Orders**”), PricewaterhouseCoopers Inc. was appointed as receiver and manager (in such capacity, the “**Receiver**”) of the Agent, the Lender, and certain related entities and investment funds (as defined in the Appointment Orders, the “**Respondents**”).
4. The Receiver, on behalf of the Agent and the Lender, each a secured creditor of 181 Retail (together, the “**Secured Creditors**”), intends to enforce the Secured Creditors’ security on 181 Retail’s property described below:
 - (a) all present and after-acquired personal property of 181 Retail; and
 - (b) all proceeds of the foregoing collateral.
5. The security that is to be enforced is in the form of a general security agreement dated as of May 2, 2018 (the “**Security**”).
6. As at May 12, 2022, the total amount of the indebtedness secured by the Security is \$53,995,059.27 (the “**Indebtedness**”), plus interest accruing thereafter and all costs incurred by or charged to the Agent or the Lender, including, without limitation, legal and consultant fees and disbursements. Interest accrues on the Indebtedness at the rate of 12% per annum. As at today’s date, interest is accruing on the Indebtedness in the amount of \$17,682.04 per day.

7. The Receiver, on behalf of the Agent and the Lender, will not have the right to enforce the Security until the expiry of the 10-day period after this notice is sent, unless 181 Retail consents to an earlier enforcement.

Dated at Toronto, Ontario, this 12th day of May, 2022.

PRICEWATERHOUSECOOPERS INC., solely in its capacity as court-appointed receiver and manager of the Agent, the Lender, and the other Respondents (each as defined herein), and not in its personal capacity, by Thornton Grout Finnigan LLP, its solicitors herein



Per: _____

Grant B. Moffat

CONSENT

TO: PRICEWATERHOUSECOOPERS INC., in its capacity as court-appointed receiver and manager of the Agent, the Lender, and the other Respondents (the “Receiver”)

FROM: 181 DAVENPORT RETAIL INC. (“181 Retail”)

181 Retail acknowledges receipt of a Notice of Intention to Enforce Security delivered by the Receiver, on behalf of the Agent and the Lender (together, the “**Secured Creditors**”) on May 12, 2022 (the “**Notice**”).

For consideration received, the receipt and sufficiency of which are hereby irrevocably acknowledged, 181 Retail hereby consents to the immediate enforcement by the Receiver of the Security (as defined in the Notice), and for the same consideration waives completely all rights to any delay by or any further notice from the Receiver with respect to the enforcement of the Security and the exercise of any other remedies of the Agent and the Lender against 181 Retail.

DATED at _____ this _____ day of May, 2022.

181 DAVENPORT RETAIL INC.

Per: _____
Name:
Title:

I have the authority to bind the corporation.

This is Exhibit “MM” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

Court File No. CV-22_____ -00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and
in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended*

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC., and 181
DAVENPORT RETAIL INC.**

Respondents

CONSENT
(Appointment of Receiver)

Richter Inc. (“**Richter**”) hereby consents to act as the court-appointed receiver and manager of all of the assets, properties and undertaking of each of Northern Citadel Capital Inc., One8One Davenport Inc., and 181 Davenport Retail Inc. in accordance with an order substantially in the form requested by the Applicant, or as such order may be amended in a manner satisfactory to Richter.

Dated at Toronto this 5th day of August, 2022

RICHTER INC.

By:



Name: Adam Sherman

Title: Senior Vice President

This is Exhibit "NN" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

735
F3029

Message

From: Kevin Skells [KSkells@cocogroup.com]
Sent: 3/12/2015 6:28:33 PM
To: N Sharpe [NSharpe@bridgingfinance.ca]
Subject: RE: Return of investor funds

Hi Natasha,

Here's what we're going to do:

- 1) Invest \$101,137.72 into 8891303, the Yonge-Bloor venture. This will bring your investment up to 5%, or \$1,500,000.
- 2) Inject \$31,000 into Bridging Finance. This will then have your investment in this company at the 33% level to the Cococo's 66%.

Let me know if you have any questions.

Kevin

From: N Sharpe [mailto:NSharpe@bridgingfinance.ca]
Sent: March-12-15 9:29 AM
To: Kevin Skells
Subject: Re: Return of investor funds

Do whatever Jenny wants and then just put it in an email to me for your records. Thanks
Natasha Sharpe
CEO & Chief Investment Officer
Bridging Finance Inc.
77 King St W | Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 909-0301
nsharpe@bridgingfinance.ca

From: Kevin Skells [mailto:KSkells@cocogroup.com]
Sent: Thursday, March 12, 2015 09:26 AM
To: N Sharpe
Subject: RE: Return of investor funds

Thanks Natasha,

I'll be moving the funds returned around today to bring your investment in 1 Bloor up to the 5%, and Bridging Finance to 33%, but will seek your approval for all transactions.

Kevin

From: N Sharpe [mailto:NSharpe@bridgingfinance.ca]
Sent: March-12-15 9:23 AM
To: Kevin Skells
Subject: Re: Return of investor funds

Approved
Natasha Sharpe
CEO & Chief Investment Officer
Bridging Finance Inc.

F761

736
F3030

77 King St W | Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 909-0301
nsharpe@bridgingfinance.ca

From: Kevin Skells [<mailto:KSkells@cocogroup.com>]
Sent: Thursday, March 12, 2015 08:57 AM
To: N Sharpe
Subject: Return of investor funds

Hi Natasha,

Please find attached a bank transfer request for your approval returning the Northern Citadel funds received yesterday to Cococo. And Sharpeco. In a 95-5% fashion. Amounts have been deducted to cover the Chaiton's invoices which we are paying today.

Let me know if you have any questions, otherwise I await your approval.

Kevin Skells, CPA, CA
Director, Finance



949 Wilson Avenue
Toronto, ON M3K 1G2
Phone: 1-416-633-9670
Mobile: 1-416-888-5909
Fax: 1-416-633-8801
Email: kskells@cocogroup.com

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This message has been scanned for viruses and dangerous content by [MailScanner](#), and is believed to be clean.

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This message has been scanned for viruses and dangerous content by [MailScanner](#), and is believed to be clean.

F762

737
F3031

COCO GROUP OF COMPANIES

Date: 12-Mar-15

TO: BANK OF MONTREAL
ATTENTION: Joan Ogletree
FROM: Kevin Skells
RE: PLEASE TRANSFER

TODAY'S DATE

31,000.00 CDN FROM 8156379 Canada 2-1974-525 TO Bridging Finance 2-1952-588

N. Sharpe

F763

738
F3032

COCO GROUP OF COMPANIES

Date: 11-Mar-15

TO: BANK OF MONTREAL
ATTENTION: Joan Ogletree
FROM: Kevin Skells
RE: PLEASE TRANSFER

TODAY'S DATE

101,137.72 CDN FROM 8156379 Canada 2-1974-525 TO 2333065 Ontario 2-1974-533

N. Sharpe

F764

739
F3033

COCO GROUP OF COMPANIES

Date: 11-Mar-15

TO: BANK OF MONTREAL
ATTENTION: Joan Ogletree
FROM: Kevin Skells
RE: PLEASE TRANSFER

TODAY'S DATE

101,137.72 CDN FROM 2333065 Ontario 2-1974-533 TO 8891303 Canada 2-1974-525

N. Sharpe

F765

This is Exhibit "OO" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario this 8th day of August 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits

ADAM DRIEDGER

741
F3035

Message

From: N Sharpe [NSharpe@bridgingfinance.ca]
Sent: 12/6/2016 6:56:08 PM
To: Jenny Coco [jcoco@cocogroup.com]
Subject: RE: FW: 14 Dundonald

Okay I wasn't sure what you had in mind but wanted to have a viable plan developed. Will pursue.
Natasha

On Tue, Dec 6, 2016 at 6:54 PM -0500, "Jenny Coco" <JCoco@cocogroup.com> wrote:

Precisely!

Natasha, he only advised today of the inability to secure an extension...he is disorganized!
I am going to share a story from Sam Ciccolini upon my return...thankfully Sam wants our project to succeed, but we need a builder on site and good CFO!

Jenny Coco*Chief Executive Officer***Coco Group**

949 Wilson Avenue
Toronto, ON M3K 1G2
Phone: 1-416-633-9670
Fax: 1-416-633-6765
Email: jcoco@cocogroup.com

From: N Sharpe [mailto:NSharpe@bridgingfinance.ca]
Sent: December 6, 2016 6:38 PM
To: Jenny Coco <JCoco@cocogroup.com>
Subject: Re: FW: 14 Dundonald

I have thought about that and asked Sam to procure term sheets for mortgage financing. He is unable to find someone who can close in six days so I think the only alternative is for bridging to bridge to a new mortgage provider.

I expect him to use a mortgage broker to find term sheets from known lenders. Hopefully he will have something to show you by your return.

Is this what you had in mind? I did not expect you to want me to reach out to Fiera and this was the only alternative i could come up with for the timing.

On Tue, Dec 6, 2016 at 6:31 PM -0500, "Jenny Coco" <JCoco@cocogroup.com> wrote:

Hi Natasha,

F767

Alternative financing shall need to be secured as we are unable to obtain from Coco.

Jenny

Jenny Coco

Chief Executive Officer



Coco Group

949 Wilson Avenue

Toronto, ON M3K 1G2

Phone: 1-416-633-9670

Fax: 1-416-633-6765

Email: jjcoco@cocogroup.com

THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

<p>PRICEWATERHOUSECOOPERS INC. solely in its capacity as court-appointed receiver and manager of Investing Finance Inc. and certain related entities and investment funds)</p> <p style="text-align: right;">Applicant</p>	<p>- and -</p>	<p>NORTHERN CITADEL CAPITAL INC., ONE8 DAVENPORT INC., and 181 DAVENPORT RE INC.</p> <p style="text-align: right;">Respo</p>
		<p>Court File No. CV-22-_____</p>
		<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceedings commenced at Toronto, Ontario</p>
		<p style="text-align: center;">AFFIDAVIT OF TYLER RAY</p>
		<p>Thornton Grout Finnigan LLP TD West Tower, Toronto-Dominion Centre 3200 –100 Wellington Street West Toronto, ON M5K 1K John L. Finnigan (LSO# 24040L) Email: jfinnigan@tgf.ca</p> <p>Grant B. Moffat (LSO# 32380L) Email: gmoffat@tgf.ca</p> <p>Adam Driedger (LSO# 77296F) Email: adriedger@tgf.ca</p> <p>Tel: 416-304-1616</p> <p>Lawyers for the Applicant</p>

TAB 3

Court File No. CV-22 _____-00CL

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,
as amended*

THE HONOURABLE)
)
CHIEF JUSTICE MORAWETZ) DAY OF SEPTEMBER, 2022

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.
(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC., and 181
DAVENPORT RETAIL INC.**

Respondents

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by PricewaterhouseCoopers Inc., solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds (in such capacity, the “**Applicant**”), for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), appointing Richter

Inc. (“**Richter**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of each of Northern Citadel Capital Inc. (“**Northern Citadel**”), One8One Davenport Inc. (“**One8One**”), and 181 Davenport Retail Inc. (“**181 Retail**”) and together with Northern Citadel and One8One, the “**Respondents**”), was heard this day by videoconference.

ON READING the Affidavit of Tyler Ray sworn August 8, 2022 and the Exhibits thereto (the “**Ray Affidavit**”), and on hearing the submissions of counsel for the Applicant, counsel for the proposed Receiver, and such other parties listed on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Adam Driedger sworn ►, 2022, and on reading the consent of Richter to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record of the Applicant is hereby abridged and validated such that this Application is properly returnable today, further service thereof is hereby dispensed with, and substitute service thereof via electronic mail is authorized.

INTERPRETATION

2. **THIS COURT ORDERS** that all references herein to the “**Respondents**” shall mean the Respondents or any one or more of the Respondents.

APPOINTMENT

3. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Richter is hereby appointed Receiver, without security, of all of the present and future

assets, undertakings, and properties of each of the Respondents acquired for, or used in relation to the business carried on by the Respondents, and all proceeds thereof (collectively, the “Property”).

RECEIVER’S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories of the Property, accessing and taking control of the Respondents’ bank accounts and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Respondents (the “**Business**”), including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the Business, or disclaim or cease to perform any contracts of the Respondents or in respect of the Property;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, insurance brokers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the Business or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Respondents and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents and to apply for and collect any tax refund owing;
- (g) to settle, extend or compromise any indebtedness owing to the Respondents;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Respondents, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Respondents, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to undertake any investigations considered appropriate by the Receiver with respect to the Business or the Property, including, without limitation, with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may consider appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business as follows:
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver considers advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondents;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any Property owned or leased by the Respondents;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Respondents may have;
- (s) to examine under oath any person the Receiver reasonably considers to have knowledge of the Property or the affairs of the Respondents in accordance with Rule 34 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194 (the “**Rules of Civil Procedure**”), including, without limitation, any current or former directors or officers of the Respondents or any other entities that have (or at any time had) any liabilities or obligations in respect of the Loan (as defined in the Ray Affidavit);

- (t) if considered appropriate by the Receiver, to cause the Respondents to file an application for bankruptcy under the BIA and Richter shall be authorized and empowered, but not obligated, to act as trustee in bankruptcy; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to the Respondents,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Respondents, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Respondents; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, financial advisors and shareholders, and all other persons acting on their instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Business, the Property, or the affairs of the Respondents, and any computer programs, computer tapes, computer disks, or

other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver’s intention to remove any fixtures from any leased premises at least

seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Respondents, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided

that nothing in this paragraph shall: (i) empower the Receiver or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on; (ii) exempt the Receiver or the Respondents from compliance with statutory or regulatory provisions relating to health, safety, or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

Respondents or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental**

Legislation”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

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

RECEIVER’S ACCOUNTS

19. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property and any funds held by the Receiver on account of the Receiver’s Borrowings (as defined below), as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or

otherwise, in favour of any Person (collectively, “**Encumbrances**”), but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable (the “**Receiver’s Borrowings**”), provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures and the fees and expenses of the Receiver and its counsel. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the Receiver’s Borrowings, together with interest and charges thereon, in priority to

all Encumbrances, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any Receiver's Borrowings pursuant to this Order.

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

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following

URL: <https://www.richter.ca/insolvencycase/northern-citadel-capital-inc--one8one-davenport-inc--and-181-davenport-retail-inc/>.

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

GENERAL

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

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondents.

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

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

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

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

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

34. **THIS COURT ORDERS** that the Receiver, its counsel and counsel for the Applicant may serve or distribute this Order, or any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the creditors or any other stakeholders or other interested parties of the Respondents and their advisors (if any). For greater certainty, any such distribution or

service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

SCHEDULE "A"

Receiver's Certificate

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Richter Inc., the receiver and manager (the "**Receiver**") of the assets, undertakings and properties of each of Northern Citadel Capital Inc. ("**Northern Citadel**"), One8One Davenport Inc. ("**One8One**"), and 181 Davenport Retail Inc. ("**181 Retail**" and together with Northern Citadel and One8One, the "**Respondents**"), acquired for, or used in relation to a business carried on by the Respondents (collectively, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ► of September, 2022 (the "**Order**") made in an application having Court File No. CV-22-_____-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ ►, being part of the total principal sum of \$500,000 which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the

Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

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

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

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

DATED the _____ day of MONTH, 2022.

Richter Inc., solely in its capacity as Receiver of the Property of the Respondents, and not in its personal capacity

Per: _____
Name:
Title:

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*MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the
ptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended*

WaterhouseCoopers Inc. (solely in its capacity as receiver and manager - and - **Northern Citadel Capital Inc., One8One Daven
ridging Finance Inc. and certain related entities and investment funds)** **Inc., and 181 Davenport Retail Inc.**

Applicant

Respo

Court File No. CV-22_____

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

Proceedings commenced at Toronto, Ontario

**ORDER
(Appointing Receiver)**

Thornton Grout Finnigan LLP

TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7
Fax: (416) 304-1313

John L. Finnigan (LSO# 24040L)
Email: jfinnigan@tgf.ca

Grant B. Moffat (LSO# 32380L)
Email: gmoffat@tgf.ca / Tel: (416) 304-0599

Adam Driedger (LSO #77296F)
Email: adriedger@tgf.ca / Tel: (416) 304-1152
F7

Lawyers for the Applicant

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TAB 4

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Revised: January 21, 2014
~~s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver~~

Court File No. — CV-22 — 00CL

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

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,
as amended

THE HONOURABLE)	WEEKDAY , THE #
JUSTICE)	DAY OF MONTH, 20YR
)	
<u>CHIEF JUSTICE MORAWETZ</u>)	<u>DAY OF SEPTEMBER, 2022</u>

B E T W E E N:

PLAINTIFF[†]

Plaintiff

PRICEWATERHOUSECOOPERS INC.
(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

DEFENDANT

Defendant

[†]~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC., and 181 DAVENPORT RETAIL INC.

Respondents

ORDER
(~~appointing~~ Appointing Receiver)

THIS ~~MOTION~~ APPLICATION made by ~~the Plaintiff~~ PricewaterhouseCoopers Inc., solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds (in such capacity, the "Applicant"), for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA"), appointing ~~[RECEIVER'S NAME]~~ Richter Inc. ("Richter") as receiver ~~{and manager}~~ (in such ~~capacities~~ capacity, the "Receiver"), without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME] (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor~~ each of Northern Citadel Capital Inc. ("Northern Citadel"), One8One Davenport Inc. ("One8One"), and 181 Davenport Retail Inc. ("181 Retail" and together with Northern Citadel and One8One, the "Respondents"), was heard this day ~~at 330 University Avenue, Toronto, Ontario~~ by videoconference.

ON READING the ~~affidavit~~ Affidavit of ~~[NAME]~~ Tyler Ray sworn ~~[DATE]~~ August 8, 2022 and the Exhibits thereto (the "Ray Affidavit"), and on hearing the submissions of counsel for ~~[NAMES]~~ the Applicant, counsel for the proposed Receiver, and such other parties listed on

² Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

the counsel slip, no one else appearing ~~for~~ [NAME] although duly served as appears from the ~~affidavit~~ Affidavit of ~~service~~ Service of [NAME] Adam Driedger sworn [DATE], 2022, and on reading the consent of ~~[RECEIVER'S NAME]~~ Richter to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Motion~~ Application and the ~~Motion~~ Application Record of the Applicant is hereby abridged and validated³ ~~so~~ such that this ~~motion~~ Application is properly returnable today ~~and hereby dispenses with~~, further service thereof is hereby dispensed with, and substitute service thereof via electronic mail is authorized.

INTERPRETATION

2. **THIS COURT ORDERS** that all references herein to the “Respondents” shall mean the Respondents or any one or more of the Respondents.

APPOINTMENT

3. ~~2-~~ **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~ Richter is hereby appointed Receiver, without security, of all of the present and future assets, undertakings, and properties of each of the ~~Debtor~~ Respondents acquired for, or used in relation to the business carried on by the ~~Debtor, including~~ Respondents, and all proceeds thereof (collectively, the “Property”).

³ ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories of the Property, accessing and taking control of the Respondents' bank accounts and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the ~~Debtor~~ Respondents (the "Business"), including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the ~~business~~ Business, or disclaim or cease to perform any contracts of the ~~Debtor~~ Respondents or in respect of the Property;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, insurance brokers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise

of the Receiver's powers and duties, including, without limitation, those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the ~~business of the Debtor~~Business or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the ~~Debtor~~Respondents and to exercise all remedies of the ~~Debtor~~Respondents in collecting such monies, including, without limitation, to enforce any security held by the ~~Debtor~~Respondents and to apply for and collect any tax refund owing;
- (g) to settle, extend or compromise any indebtedness owing to the ~~Debtor~~Respondents;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the ~~Debtor~~Respondents, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the ~~Debtor~~Respondents, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ The authority hereby conveyed shall extend to such appeals or

~~⁴ This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(j) to undertake any investigations considered appropriate by the Receiver with respect to the Business or the Property, including, without limitation, with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;

(k) ~~(j)~~ to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may ~~deem~~consider appropriate;

(l) ~~(k)~~ to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business; as follows:

(i) without the approval of this Court in respect of any transaction not exceeding \$~~_____~~100,000, provided that the aggregate consideration for all such transactions does not exceed \$~~_____~~500,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~f~~or section 31 of the Ontario *Mortgages Act*, as the case

may be,⁵ shall not be required, ~~and in each case the Ontario Bulk Sales Act shall not apply;~~

(m) ~~(h)~~ to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) ~~(m)~~ to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver ~~deems~~considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver ~~deems~~considers advisable;

(o) ~~(n)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) ~~(o)~~ to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the ~~Debtor~~Respondents;

(q) ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the ~~Debtor~~Respondents, including, without limiting the generality of the

⁵ ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

foregoing, the ability to enter into occupation agreements for any ~~property~~Property owned or leased by the ~~Debtor~~Respondents;

(r) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the ~~Debtor~~Respondents may have;

(s) to examine under oath any person the Receiver reasonably considers to have knowledge of the Property or the affairs of the Respondents in accordance with Rule 34 of the Rules of Civil Procedure, R.R.O. 1990, Reg 194 (the “Rules of Civil Procedure”), including, without limitation, any current or former directors or officers of the Respondents or any other entities that have (or at any time had) any liabilities or obligations in respect of the Loan (as defined in the Ray Affidavit);

(t) if considered appropriate by the Receiver, to cause the Respondents to file an application for bankruptcy under the BIA and Richter shall be authorized and empowered, but not obligated, to act as trustee in bankruptcy; and

(u) ~~(r)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to the Respondents,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. ~~4.~~ **THIS COURT ORDERS** that (i) the ~~Debtor,~~Respondents; (ii) all of ~~its~~their current and former directors, officers, employees, agents, accountants, legal counsel, financial advisors and shareholders, and all other persons acting on ~~its~~their instructions or behalf~~s~~; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons") and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. ~~5.~~ **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the ~~business~~Business, the Property, or the affairs of the ~~Debtor~~Respondents, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph ~~56~~ or in paragraph 67 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. ~~6.~~ **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. ~~7.~~ **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE ~~DEBTOR~~RESPONDENTS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

11. ~~10.~~ **THIS COURT ORDERS** that all rights and remedies against the ~~Debtor~~Respondents, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Receiver or the ~~Debtor~~Respondents to carry on any business which the ~~Debtor is~~Respondents are not lawfully entitled to carry on; (ii) exempt the Receiver or the ~~Debtor~~Respondents from compliance with statutory or regulatory provisions relating to health, safety, or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

14. ~~13.~~ **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order

from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

PIPEDA

16. ~~15.~~ **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver ~~shall~~may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such

information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~Respondents, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

19. ~~18.~~ **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property and any funds held by the Receiver on account of the Receiver's Borrowings (as defined below), as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (collectively, "Encumbrances"), but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁶

⁶ ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

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

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

FUNDING OF THE RECEIVERSHIP

22. ~~21.~~ **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable (the "Receiver's Borrowings"), provided that the outstanding principal amount does not exceed \$ ~~_____~~ 500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures and the fees and expenses of the Receiver and its counsel. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the ~~monies borrowed~~ Receiver's Borrowings, together with interest and charges thereon, in priority to all ~~security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person~~ Encumbrances, but subordinate in

priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

24. ~~23.~~ **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the **"Receiver's Certificates"**) for any ~~amount borrowed by it~~ Receiver's Borrowings pursuant to this Order.

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

SERVICE AND NOTICE

26. ~~25.~~ **THIS COURT ORDERS** that the ~~E-Service Protocol of the~~ Guide Concerning Commercial List E-Service (the **"Protocol"**) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at ~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>~~ <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the

Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.richter.ca/insolvencycase/northern-citadel-capital-inc--one8one-davenport-inc--and-181-davenport-retail-inc/>.

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

GENERAL

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

29. ~~28.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the ~~Debtor~~Respondents.

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

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

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

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

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

34. THIS COURT ORDERS that the Receiver, its counsel and counsel for the Applicant may serve or distribute this Order, or any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the creditors or any other stakeholders or other interested parties of the Respondents and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

SCHEDULE "A"

Receiver's Certificate

~~RECEIVER CERTIFICATE~~

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~Richter Inc., the receiver and manager (the "Receiver") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ of each of Northern Citadel Capital Inc. ("Northern Citadel"), One8One Davenport Inc. ("One8One"), and 181 Davenport Retail Inc. ("181 Retail" and together with Northern Citadel and One8One, the "Respondents"), acquired for, or used in relation to a business carried on by the ~~Debtor, including all proceeds thereof~~ Respondents (collectively, the "Property"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of ___ September, 20__2022 (the "Order") made in an action application having Court ~~file number~~ CL File No. CV-22- _____ -00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____500,000 which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

~~2~~
2

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

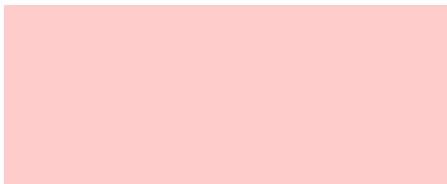
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

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

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

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

DATED the _____ day of _____ MONTH, ~~20~~2022.



[RECEIVER'S
NAME] Richter
Inc., solely in its
capacity as
Receiver of the

~~3~~
3

Property of the Respondents, and not in its personal capacity

Per _____
:

Name: _____
Title: _____

MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the
Trustee and Insolvency Act, R.S.C. 1985, c. B-3, as amended

WaterhouseCoopers Inc. (solely in its capacity as receiver and manager of the assets of
Mortgage Finance Inc. and certain related entities and investment funds) - and - Northern Citadel Capital Inc., One8One Davenport
Inc., and 181 Davenport Retail Inc.

Applicant

Respondent

Court File No. CV-22

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto, Ontario

ORDER
(Appointing Receiver)

Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7
Fax: (416) 304-1313

John L. Finnigan (LSO# 24040L)
Email: jfinnigan@tgf.ca

Grant B. Moffat (LSO# 32380L)
Email: gmoffat@tgf.ca / Tel: (416) 304-0599

Adam Driedger (LSO #77296F)
Email: adriedger@tgf.ca / Tel: (416) 304-1152

Lawyers for the Applicant

Document comparison by Workshare Compare on Monday, August 8, 2022 5:38:58 PM

Input:	
Document 1 ID	iManage://tgf-mobility-ca.imatech.com/CLIENT/5219572/1
Description	#5219572v1<tgf-mobility-ca.imatech.com> - Model receivership order EN
Document 2 ID	iManage://tgf-mobility-ca.imatech.com/CLIENT/5160737/5
Description	#5160737v5<tgf-mobility-ca.imatech.com> - Appointment Order [August 8, 2022]
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	290
Deletions	257
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	547

E MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

DEWATERHOUSECOOPERS INC.

in its capacity as court-appointed receiver and manager of
ing Finance Inc. and certain related entities and investment funds)

Applicant

- and - **NORTHERN CITADEL CAPITAL INC., ONE80N
DAVENPORT INC., and 181 DAVENPORT RETAIL
INC.**

Respo

Court File No. CV-22-_____

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

Proceedings commenced at Toronto, Ontario

APPLICATION RECORD

Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
3200 – 100 Wellington Street West
Toronto, ON M5K 1K7

John L. Finnigan (LSO# 24040L)
Email: jfinnigan@tgf.ca

Grant B. Moffat (LSO# 32380L)
Email: gmoffat@tgf.ca

Adam Driedger (LSO# 77296F)
Email: adriedger@tgf.ca

Tel: 416-304-1616

Lawyers for the Applicant

This is Exhibit "B" referred to in the Affidavit of Khashayar Khavari affirmed by Khashayar Khavari at the City of Toronto, in the Province of Ontario, before me on October 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Sean Pierce

Commissioner for Taking Affidavits (or as may be)

SEAN PIERCE

Court File No. CV-22-00685200-00CL

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

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

Applicant

and

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC. and 181
DAVENPORT RETAIL INC.**

Respondents

RESPONDENTS' APPLICATION RECORD

October 13, 2022

HENEIN HUTCHISON LLP

235 King Street East, First Floor
Toronto, ON M5A 1J9

Tel: (416) 368-5000

Scott C. Hutchison (LSO: 29912J)
shutchison@hhllp.ca

Ewa Krajewska (LSO: 57704D)
ekrajewska@hhllp.ca

David Postel (LSO: 78102E)
dpostel@hhllp.ca

Lawyers for the Respondents

TO: Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
3200 – 100 Wellington Street West
Toronto, ON M5K 1K7

Tel: (416) 304-1616

John L. Finnigan (LSO# 24040L)
jfinnigan@tgf.ca

Grant B. Moffat (LSO# 32380L)
gmoffat@tgf.ca

Adam Driedger (LSO# 77296F)
adriedger@tgf.ca

Lawyers for the Applicant, PricewaterhouseCoopers Inc., in its capacity as Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds

AND TO: PRICEWATERHOUSE COOPERS INC.
18 York Street, Suite 2600
Toronto, ON M5J 0B2

Tel: (416) 687-8200

Greg Prince
gregory.n.prince@pwc.com

Michael McTaggart
michael.mctaggart@pwc.com

Christine Sinclair
christine.l.sinclair@pwc.com

Tyler Ray
tyler.ray@pwc.com

Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds

AND TO: OSLER, HOSKIN & HARCOURT LLP
100 King Street West – Suite 6200

Toronto, ON M5K 1K8

Tel: (416) 862-5672

John MacDonald
jmacdonald@osler.com

Blair McRadu
bmcradu@osler.com

Lawyers for Richter Inc. as Proposed Receiver

AND TO: RICHTER INC.
181 Bay Street, Suite 3320
Bay Wellington Tower
Toronto, ON M5J 2T3

Tel: (416) 488-2345

Adam Sherman
asherman@richter.ca

Megha Sharma
Email: msharma@richter.ca
Tel: (416) 646-8378

Proposed Receiver

AND TO: KEB HANA BANK
627 Bloor Street West
Toronto, ON M6G 1K8

Tel: (416) 227-5570

Theo Ikonomou
t.ikonomou@hanafn.com

PPSA registrant with respect to 181 Davenport Retail Inc.

AND TO: LAX O'SULLIVAN LISUS GOTTLIEB LLP
Suite 2750, 145 King Street West

Toronto, ON M5H 1J8

Tel: (416) 642-3134

Nadia Champion
ncampion@lolg.ca

Matthew Law
mlaw@lolg.ca

Lawyers for Mizrahi Inc. and 2495159 Ontario Inc.

AND TO: DEPARTMENT OF JUSTICE (CANADA)

Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1

Diane Winters
diane.winters@justice.gc.ca

**AND TO: HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO
AS REPRESENTED BY THE MINISTER OF FINANCE
INSOLVENCY UNIT**

6th Floor, 33 King Street West
Oshawa, ON L1H 8H5

Tel: (905) 433-5657

Leslie Crawford
leslie.crawford@ontario.ca

Insolvency Unit
insolvency.unit@ontario.ca

Index

Tab	Description
1	Affidavit of Sam Mizrahi sworn October 13, 2022
A	E-Mail from Graham Marr dated June 22, 2020
B	E-Mail from Phil Taylor dated June 30, 2020
C	E-Mail from David Sharpe dated June 9, 2020
D	E-Mail from Phil Rimer dated May 14, 2021
E	E-Mail from Graham Marr dated April 23, 2021

Court File No. CV-22-00685200-00CL

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

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

Applicant

and

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC. and 181
DAVENPORT RETAIL INC.**

Respondents

AFFIDAVIT OF SAM MIZRAHI

I, Sam Mizrahi, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I was previously a director and officer of the respondents, Northern Citadel Capital Inc. (“**NCCI**”), One8One Davenport Inc. (“**One8One**”) and 181 Davenport Retail Inc. (“**181 Retail**”), and as such have knowledge of the matters contained in this affidavit.
2. I make this affidavit on behalf of 181 Retail. 181 Retail opposes the appointment of a receiver for two reasons. First, there is no indebtedness owing from 181 Retail to Bridging Finance Inc. (“**BFI**”). Second, pursuant to an agreement between BFI and 181 Retail, the security registered by BFI against 181 Retail should have been discharged prior to the appointment of PricewaterhouseCoopers Inc. (“**PwC**”) as receiver over BFI on April 30, 2021.

3. NCCI and One8One do not oppose the appointment of a receiver, although they do object to the scope of the appointment order, in particular the investigative powers, sought by PwC. This is an issue that counsel will discuss in legal argument.

4. I have reviewed the affidavit of Tyler Ray, sworn August 8, 2022 (the “**Ray Affidavit**”), and Mr. Ray’s supplementary affidavit, sworn September 20, 2022 (the “**Supplementary Ray Affidavit**”). I will not address each and every assertion made by Mr. Ray. This affidavit is limited to 181 Retail and its response to this application. However, the fact that this affidavit does not respond to all of Mr. Ray’s assertions should not be taken to mean that I agree with the contents of his affidavits.

The BFI Loan to NCCI for the 181 Davenport Project

5. The circumstances giving rise to this application relate to a loan made by BFI in respect of a condominium project defined in the Ray Affidavit as the “**181 Davenport Project**”, which is a luxury residential condominium project in Toronto.

6. In 2012, Bridging Capital Inc. advanced approximately \$16 million to NCCI. The purpose of this loan was to finance the 181 Davenport Project. Construction of the project commenced in 2013 and continued for several years until initial occupancy in 2017. During this period, further advances were made by BFI to NCCI pursuant to a loan agreement dated December 17, 2014 (the “**Loan Agreement**”), and subsequent amending agreements dated February 24, 2015; March 11, 2015; April 10, 2015; November 27, 2015; and June 30, 2016. A copy of the Loan Agreement and these amendments are attached as Exhibits A–F, respectively, to the Supplementary Ray Affidavit.

7. Together, the amounts advanced totalled approximately \$25,000,000, exclusive of interest and costs (the “**Loan**”). Although the Loan was guaranteed by One8One and Mizrahi Soaring Developments Inc. (“**Soaring Developments**”), NCCI was the only Borrower as defined in the Loan Agreement. Soaring Developments amalgamated with One8One on January 1, 2015, and continued as One8One.

8. 181 Retail was not a party to the Loan Agreement or any of the amending agreements referred to at paragraph 6 above. 181 Retail was incorporated on October 13, 2015, for the sole purpose of holding title to a retail unit (defined and discussed further below) within the 181 Davenport property. 181 Retail has never owned any other assets, nor has it ever held any interest in the 181 Davenport Project, NCCI, or One8One.

The BFI Loans to 2495159 Ontario Inc. and 181 Retail for the One Bloor Project

9. In late 2016, I approached BFI to obtain financing for two purposes unrelated to the 181 Davenport Project:

- (a) improvements to a retail unit located at 181 Davenport Road to be used as a sales and presentation gallery (the “**One Bloor Gallery**”) for a development at 1 Bloor West in Toronto (the “**One Bloor Project**”); and
- (b) the purchase by 2495159 Ontario Inc. (“**249**”) of real property located at 14 Dundonald Street in Toronto (the “**Dundonald Property**”) to be dedicated to the City of Toronto as parklands as part of the One Bloor Project. 249 is a single purpose corporation created solely for the purpose of holding the Dundonald Property.

10. Originally, David Sharpe (BFI's CEO), Graham Marr (who held various posts at BFI over the years) and I discussed entering into a separate agreement for this new financing given that its purpose related to the One Bloor Project and not to the 181 Davenport Project. The framework for this new financing is set out in an email I sent to Mr. Marr on November 19, 2016, a copy of which is attached as Exhibit "R" to the Ray Affidavit.

11. Subsequent to this email, Mr. Sharpe and Mr. Marr told me that BFI preferred to provide this new financing by way of an amending agreement for the Loan Agreement. They believed it would be easier and faster to advance the requested funding pursuant to an amendment, rather than a new loan agreement. I deferred to their preference.

12. Consistent with this, on November 30, 2016, the parties entered into an amending agreement (the "**Bloor-Related Agreement**") pursuant to which BFI advanced \$6,556,500 (the "**Bloor-Related Financing**"), of which \$2,500,000 was used for improvements to the One Bloor Gallery; \$4,000,000 was used to purchase the Dundonald Property; and the remaining amount was used for legal fees.

13. 249 and Mizrahi Inc. were identified as Borrowers for the limited purpose of the Bloor-Related Financing. It was always intended that, upon repayment of the Bloor-Related Financing, 249 and Mizrahi Inc. would be released as Borrowers. A copy of the Bloor-Related Agreement is attached as Exhibit "G" to the Ray Supplementary Affidavit.

14. Pursuant to section 14 of the Bloor-Related Agreement, it was agreed that the Bloor-Related Financing would be secured against a variety of assets, including the One Bloor Gallery

owned by 181 Retail, the Dundonald Property, and the “Accounts” as defined in section 18 of the agreement (collectively, the “**Security**”). The purpose of the Security was not to secure the Loan, which was already guaranteed, but rather to secure the Bloor-Related Financing. The intention and understanding of the parties was that, upon repayment of the Bloor-Related Financing, the Security would be discharged, and Mizrahi Inc. and 249 would be released as Borrowers.

15. At the time of the Bloor-Related Agreement, 181 Retail did not own legal title to the One Bloor Gallery. It was party to an agreement of purchase and sale in respect of the One Bloor Gallery. KEB Hana Bank Canada (“**KEB Bank**”) advanced \$4.5 million to close the purchase of the One Bloor Gallery in exchange for a first priority *PPSA* registration and a first mortgage registration against the One Bloor Gallery.

16. The purchase and sale of the One Bloor Gallery did not close until 2018, at which time 181 Retail executed a general security agreement in favour of BFI. BFI subsequently registered a second mortgage and completed a second *PPSA* registration against the One Bloor Gallery, as shown in Exhibit “I” to the Ray Affidavit.

The \$1.44 Million Payment to BFI in June 2018

17. Mr. Ray correctly notes, at paragraph 21 of the Ray Affidavit, that there was a repayment of approximately \$1,445,280 million to BFI in June 2018, made from the Accounts (as defined in the Bloor-Related Agreement).

18. This payment was intended to be deducted from the balance of the Bloor-Related Financing. However, when it came time to repay the Bloor-Related Financing so that we could transfer the Dundonald Property to the City and discharge the One Bloor Gallery, Mr. Sharpe did

not want to deduct the \$1,445,280 from the Bloor-Related Financing. Instead, he suggested that this amount be credited to a separate transaction, already in contemplation, related to 180 Steeles Avenue West. I agreed to this, in part because we were under pressure to transfer the Dundonald Property and time was of the essence. At no time, though, was it ever intended by the parties that the Accounts would be used to secure the original Loan Agreement. It was always intended that the Security would be limited to the Bloor-Related Financing.

Repayment of the Bloor-Related Financing

19. By mid-2020, it was time for the One Bloor Project to transfer the Dundonald Property to the City of Toronto as dedicated parklands, free and clear of all encumbrances. As a result, the funds that had been advanced pursuant to the Bloor-Related Agreement needed to be repaid to BFI in order to obtain a discharge of the Security.

20. On July 9, 2020, the sum of \$10,062,593.99 (being the total amount of the Bloor-Related Financing plus accrued interest and fees) was repaid to BFI. It was understood that this repayment was a full repayment of the Bloor-Related Financing:

- (a) On June 22, 2020, Mr. Marr asked me by email if everything was “going according to plan with the payout”, i.e., the full repayment of the Bloor-Related Financing. I answered in the affirmative. A copy of these communications is attached to this affidavit as **Exhibit “A”**.
- (b) From March to June 2020, 249 and 181 Retail’s counsel, Harris Shaeffer LLP, communicated extensively with BFI’s counsel, Chaitons LLP, about the exact amount owed for the full repayment of the Bloor-Related Financing (taking into

account the daily interest owed on the sum). A copy of these communications is attached to this affidavit as **Exhibit "B"**.

- (c) On July 9, the date of the repayment, I wrote to Mr. Sharpe and Mr. Marr to advise that BFI "should be in funds today for both the [Dundonald Property] discharge and the [One Bloor Gallery]". In his response, Mr. Sharpe confirmed this concluded the transaction concerning the Bloor-Related Financing: "Let's get together soon and discuss our **next project** together." My emphasis. He reiterated this in a follow-up message: "look forward to our **next project**". Again, my emphasis. A copy of these communications is attached to this affidavit as **Exhibit "C"**.

21. Based on these communications and my discussions with Mr. Sharpe and Mr. Marr, it was understood by all that the \$10,062,593.99 repayment of the Bloor-Related Financing was for both the Dundonald Property and the One Bloor Gallery and that the repayment relieved 181 Retail, Mizrahi Inc. and 249 of their obligations arising from the Bloor-Related Agreement.

22. Simultaneous with this repayment, BFI discharged the Security over the Dundonald Property. BFI also removed Mizrahi Inc. and 249 as Borrowers pursuant to an amending agreement dated December 31, 2020. A copy of this amendment is attached as Exhibit "J" to the Supplementary Ray Affidavit. To the best of my knowledge, this amendment, like the Loan Agreement and all its other amendments, was approved by BFI's Credit Committee.

23. Due to an oversight, BFI left signature lines for both 181 Retail and Soaring Developments on the December 2020 agreement. This was likely the result of BFI creating the December 2020

amending agreement from an earlier amending agreement that contained those signature lines and failing to remove them in the December 2020 agreement.

24. In any event, I did not sign the December 2020 amending agreement for either of these entities because Soaring Developments no longer existed due to its 2015 amalgamation with One8One and 181 Retail was supposed to have been discharged in exchange for the repayment.

25. In fact, although I initially signed a version of the December 2020 amending agreement for 249 and 181 Retail, as shown at Exhibit "AA" to the Ray Affidavit, Mr. Marr told me that that version had the wrong date on it and he sent a revised version of the agreement, as shown at Exhibit "BB" to the Ray Affidavit. By that time, I realized that I had accidentally signed for 249 and 181 Retail. I explained to Mr. Sharpe and Mr. Graham that I would not be signing for 249 or 181 Retail for the reasons given above. Neither Mr. Sharpe nor Mr. Graham disputed my rationale. As a result, I left those signature lines blank.

Discharge for 181 Retail not Obtained due to Oversight

26. In summer 2020, there was urgency in obtaining the discharge in respect of the Dundonald Property due to significant time pressures imposed by the City of Toronto in connection with the transfer of the property as dedicated parklands. As a result, the parties and their lawyers were focussed on discharging the Security in respect of the Dundonald Property.

27. Overlooked, in this urgency, was the discharge for 181 Retail in respect of the One Bloor Gallery. This came to my attention on April 21, 2021, when a representative from KEB Bank, which held and still holds the first security over the One Bloor Gallery, sent me an email inquiry about the status of the charge registered in favour of BFI. I forwarded this inquiry to Mr. Marr on the

same day given that it was always the intention of the parties and their lawyers that the security in respect of the One Bloor Gallery would be discharged as part of the repayment of the Bloor-Related Financing.

28. Two days later, April 23, I contacted Mr. Sharpe and Mr. Marr about the discharge issue, and they both verbally confirmed that the registration against 181 Retail would be discharged.

29. Immediately after receiving this confirmation, I sent an email responding to KEB Bank's inquiry and stated: "There is no default with Bridging Finance Inc. I have spoken to Bridging Finance and they will be deleting the registered mortgage charge off title of the property next week." By "they", I was referring to Mr. Sharpe and Mr. Marr, and by "property", I was referring to the One Bloor Gallery. A copy of an email thread containing this email is attached as **Exhibit "D"**.

30. That same day, Mr. Marr sent an email to me in which he confirmed his intention to speak with "Phil", who is Phil Taylor at Chaitons, then counsel for BFI. A copy of this email is attached as **Exhibit "E"**. I understood from this that Mr. Marr would be instructing Mr. Taylor to discharge the security over the One Bloor Gallery.

31. Unfortunately, the registration against 181 Retail was not discharged prior to April 30, 2021, when PwC was appointed as receiver over BFI.

32. This was, in part, because Mr. Taylor had planned to effect the discharge on Friday, April 30, but he ultimately did not attend the office that day and instead went to the cottage for the

weekend with the intent of attending to the matter the following Monday, May 3. Unfortunately, in the intervening period, PwC was appointed as receiver over BFI.

33. In the wake of PwC's appointment, a tele-conference was convened between me, Mr. Taylor, and Phil Rimer of Dentons Canada LLP, who acts as counsel to various Mizrahi entities.

During that tele-conference, Mr. Taylor:

- (a) confirmed that Mr. Marr had instructed him to discharge the registration against 181 Retail and that Mr. Marr had advised PwC of this fact;
- (b) said that the discharge of the registration against 181 Retail was in progress and that PwC was aware of this fact; and
- (c) explained that the delay in discharging the registration against 181 Retail was, in part, due to the closing of another transaction.

34. I have an audio recording of this tele-conference that can be made available upon request.

35. On May 4, just after PwC was appointed as receiver, I communicated by email with KEB Bank about BFI's failure to discharge the mortgage in time. I copied Mr. Taylor on this email. I wrote that BFI's counsel "were instructed by Bridging Finance approximately 10 days ago to remove the 2nd mortgage charge position off title, and their counsel copied here had drafted the mortgage discharge documents, etc to provide a copy of the discharge as well." Mr. Taylor did not dispute this. This email is contained in **Exhibit "D"**.

36. On May 11, I confirmed again that “we were in the process with Bridging’s counsel Philip Taylor copied here to have the registration deleted”. As indicated, Mr. Taylor was copied on this email. Again, Mr. Taylor did not dispute this. This is contained in **Exhibit “D”**.

37. On May 14, Mr. Rimer wrote to KEB Bank to confirm his understanding that the mortgage should have been discharged:

The loan relating to the 181 Davenport (1 Bloor Sales Gallery,) was to have been discharged. However the discharge was not completed as a consequence of the intervening Court appointment of PwC as Receiver of BFI. Indeed Chaitons LLP, BFI counsel, has confirmed to the undersigned (and had previously advised our client,) that the security was to have been discharged but same was not completed once PwC was appointed Receiver. We further understand that Mr. Mizrahi has had initial conversations with PwC to arrange for the discharge of the BFI security which we confirm remains subordinate to the security interest in favour of KEB Hana.

38. This email is contained in **Exhibit “D”**.

Security over 181 Retail Should be Discharged

39. At all material times, Mr. Sharpe and Mr. Marr repeatedly confirmed that 181 Retail would be discharged upon repayment of the Bloor-Related Financing, plus accrued interest and fees. There is no dispute that the Bloor-Related Financing was paid back in full. This should have resulted in the Security registered against 181 Retail being discharged fully, as it was with respect to 249.

40. I have since requested PWC to discharge 181 Retail. However, it has refused to do so notwithstanding that there is no indebtedness owed by 181 Retail to BFI. Instead, PWC seeks the

appointment of a receiver to 181 Retail's detriment and to the detriment of the secured first lender, KEB Bank.

41. I respectfully request this Honourable Court to direct PWC to discharge BFI's security registration over the One Bloor Gallery and to dismiss its application for the appointment of a receiver over 181 Retail.

The "Cerico Claim"

42. Paragraphs 81–86 of the Ray Affidavit discuss a separate matter, referred to as the "Cerico Claim", concerning a BFI investment fund's guarantee of an approximately \$213 million loan in respect of the One Bloor Project made by the plaintiff in that matter, Cerico Canada Corp. The Ray Affidavit correctly states that Cerico alleges that the BFI guarantor was improperly released from its guarantee and that Cerico is challenging the validity of that release.

43. I am a defendant to the Cerico Claim. The Bridging Receiver is not a party. No defences have been delivered yet because a motion to stay or dismiss the action is currently under reserve with Justice Kimmel. In the event I must deliver a defence, my defence may state that the release of the BFI guarantor is not effective because it was premised on the closing of a transaction wherein a holding company of mine would buy out the interest of my partner in the One Bloor Project, Jenny Coco (and family). (We each, respectively, through our holding companies own 50% of the Project.) That transaction has not closed, and Ms. Coco no longer appears interested in closing it.

SWORN remotely by Sam Mizrahi at the City of Toronto in the Province of Ontario before me on October 13, 2022 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.



David Postel
(LSO# 78102E)

Commissioner for Taking Affidavits
(or as may be)



SAM MIZRAHI

815
F3109

**THIS IS EXHIBIT "A" TO THE AFFIDAVIT OF SAM MIZRAHI
SWORN REMOTELY BEFORE ME ON OCTOBER 13, 2022**

A handwritten signature in grey ink, appearing to read "David Postel", written over a horizontal line.

David Postel (LSO# 78102E)

A Commissioner etc.

F841

RE: Philip Chaiton 14 Dundonald

1 message

Graham Marr <GMarr@bridgingfinance.ca>
To: Sam Mizrahi <sam@mizrahidevelopments.ca>

Mon, Jun 22, 2020 at 9:10 PM

Thanks, Sam – and same to you

Graham Marr, CPA, CA, CFA

Senior Managing Director | **Bridging Finance Inc.**

77 King St W, Suite 2925 | Toronto | ON | M5K 1K7

T: (416) 777-1794 | C: (416) 906-0395

E: gmarr@bridgingfinance.ca

From: Sam Mizrahi <sam@mizrahidevelopments.ca>
Sent: June 22, 2020 4:46 PM
To: Graham Marr <GMarr@bridgingfinance.ca>
Subject: Re: Philip Chaiton 14 Dundonald

Yes, thanks Graham.

Happy Belated fathers day by the way.



Sam Mizrahi
President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4210
C. 416.818.5288
F. 1.866.300.0219
E. Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

On Jun 22, 2020, at 4:44 PM, Graham Marr <GMarr@bridgingfinance.ca> wrote:

Hi Sam, yes, will have it done for AM. Just circulating my update memo this evening and you should have it in hand by morning. Everything else going according to play with the payout?

F842

11/11/21, 3:40 PM

Mizrahi Developments Mail - RE: Philip Chaiton 14 Dundonald

Graham Marr, CPA, CA, CFA

Senior Managing Director | **Bridging Finance Inc.**

77 King St W, Suite 2925 | Toronto | ON | M5K 1K7

T: (416) 777-1794 | C: (416) 906-0395

E: gmarr@bridgingfinance.ca

817
F3111

From: Sam Mizrahi <sam@mizrahidevelopments.ca>

Sent: June 22, 2020 4:43 PM

To: Graham Marr <GMarr@bridgingfinance.ca>

Subject: Philip Chaiton 14 Dundonald

Hi Graham,

Just a friendly reminder to have Philip At Chaitons to send to Harris Sheaffer the revised updated discharge statement. Thanks.



Sam Mizrahi
President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4210

C. 416.818.5288

F. 1.866.300.0219

E. Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

F843

**THIS IS EXHIBIT "B" TO THE AFFIDAVIT OF SAM MIZRAHI
SWORN REMOTELY BEFORE ME ON OCTOBER 13, 2022**

A handwritten signature in grey ink, appearing to read "D Postel", written over a horizontal line.

David Postel (LSO# 78102E)

A Commissioner etc.

From: Philip L. Taylor [mailto:Philip@chaitons.com]
Sent: June 30, 2020 12:26 PM
To: Melissa McKenzie; Jeffrey Silver
Cc: Denise Borzi; Jeffrey Silver
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

I have confirmed with BFI that you can add another 2 days per diem if after 2pm today (as tomorrow is a holiday). So it would be \$10,039,552.37 CAD plus 7 days at \$3,291.66 for \$23,041.62 for a total of \$10,062,593.99 to BFI plus our legal fees. Please let us know once funds are wired.

Philip L. Taylor | Partner*
*Denotes Professional Corporation
Chaitons LLP | T: 416.218.1125

From: Melissa McKenzie <mmckenzie@harris-sheaffer.com>
Sent: Tuesday, June 30, 2020 11:58 AM
To: Philip L. Taylor <Philip@chaitons.com>; Jeffrey Silver <jsilver@harris-sheaffer.com>
Cc: Denise Borzi <Denise@chaitons.com>; Jeffrey Silver <jsilver@harris-sheaffer.com>
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

Hi

Can you please provide an updated discharge amount as of today, together with the per diem amount.

Thanks.

From: Melissa McKenzie
Sent: June 30, 2020 10:10 AM
To: 'Philip L. Taylor'; Jeffrey Silver
Cc: Denise Borzi; Jeffrey Silver
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

I will ask Jeff and get back to you.

From: Philip L. Taylor [<mailto:Philip@chaitons.com>]
Sent: June 30, 2020 7:15 AM
To: Melissa McKenzie; Jeffrey Silver
Cc: Denise Borzi; Jeffrey Silver
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

Further to my note below, please advise as to the status of this matter.

Philip L. Taylor | Partner*
*Denotes Professional Corporation
Chaitons LLP | T: 416.218.1125

From: Philip L. Taylor <Philip@chaitons.com>
Sent: Monday, June 29, 2020 8:57 AM
To: Melissa McKenzie <mmckenzie@harris-sheaffer.com>; Jeffrey Silver <jsilver@harris-sheaffer.com>
Cc: Denise Borzi <Denise@chaitons.com>; Jeffrey Silver <jsilver@harris-sheaffer.com>
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

Please advise as to status and if you still anticipate funds being wired by 2pm today.
Thanks,

Philip L. Taylor | Partner*
*Denotes Professional Corporation
Chaitons LLP | T: 416.218.1125

From: Philip L. Taylor <Philip@chaitons.com>
Sent: Friday, June 26, 2020 3:32 PM
To: Melissa McKenzie <mmckenzie@harris-sheaffer.com>; Jeffrey Silver <jsilver@harris-sheaffer.com>
Cc: Denise Borzi <Denise@chaitons.com>; Jeffrey Silver <jsilver@harris-sheaffer.com>
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

No problem.
Pt

Philip L. Taylor | Partner*
*Denotes Professional Corporation
Chaitons LLP | T: 416.218.1125

From: Melissa McKenzie <mmckenzie@harris-sheaffer.com>
Sent: Friday, June 26, 2020 3:31 PM
To: Philip L. Taylor <Philip@chaitons.com>; Jeffrey Silver <jsilver@harris-sheaffer.com>
Cc: Denise Borzi <Denise@chaitons.com>; Jeffrey Silver <jsilver@harris-sheaffer.com>
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

Thanks
Sorry about that I forgot we had it 😊

From: Philip L. Taylor [<mailto:Philip@chaitons.com>]
Sent: June 26, 2020 3:30 PM
To: Melissa McKenzie; Jeffrey Silver
Cc: Denise Borzi; Jeffrey Silver
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

Graham Marr.
pt

Philip L. Taylor | Partner*
*Denotes Professional Corporation
Chaitons LLP | T: 416.218.1125

From: Melissa McKenzie <mmckenzie@harris-sheaffer.com>
Sent: Friday, June 26, 2020 3:30 PM
To: Philip L. Taylor <Philip@chaitons.com>; Jeffrey Silver <jsilver@harris-sheaffer.com>
Cc: Denise Borzi <Denise@chaitons.com>; Jeffrey Silver <jsilver@harris-sheaffer.com>
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

Sorry that is correct
My apologies
Who signed I can't read the signature

From: Philip L. Taylor [<mailto:Philip@chaitons.com>]
Sent: June 26, 2020 3:29 PM
To: Melissa McKenzie; Jeffrey Silver
Cc: Denise Borzi; Jeffrey Silver
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

Didn't you prepare it? It is not my form of A&D...

Philip L. Taylor | Partner*
*Denotes Professional Corporation
Chaitons LLP | T: 416.218.1125

From: Melissa McKenzie <mmckenzie@harris-sheaffer.com>
Sent: Friday, June 26, 2020 3:24 PM
To: Philip L. Taylor <Philip@chaitons.com>; Jeffrey Silver <jsilver@harris-sheaffer.com>
Cc: Denise Borzi <Denise@chaitons.com>; Jeffrey Silver <jsilver@harris-sheaffer.com>
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

Thank you
Would you be able to message the discharge to me in Teraview and not sign until you have the funds?

From: Philip L. Taylor [<mailto:Philip@chaitons.com>]
Sent: June 26, 2020 3:16 PM
To: Melissa McKenzie; Jeffrey Silver
Cc: Denise Borzi; Jeffrey Silver
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

I am not at my desk and will be slow to reply. See attached in escrow pending BFI confirming receipt of funds. As it is after 2, you need to add the per diem of \$3,291.66 (to be clear per day) until Monday. If it will be after 2 Monday, you need to contact us for further instructions. Our fees from Dec to date are \$1,350 plus HST for a total of \$1,525.50. Please let us know when the wires are done and we will follow-up with BFI so you can register.

Philip L. Taylor | Partner*
*Denotes Professional Corporation
Chaitons LLP | T: 416.218.1125

From: Melissa McKenzie <mmckenzie@harris-sheaffer.com>
Sent: Friday, June 26, 2020 3:06 PM
To: Jeffrey Silver <jsilver@harris-sheaffer.com>; Philip L. Taylor <Philip@chaitons.com>
Cc: Denise Borzi <Denise@chaitons.com>; Jeffrey Silver <jsilver@harris-sheaffer.com>
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

Can you please message me the Discharge in Teraview.
Upon receipt of the funds you can sign the Discharge.

Please confirm.

Thanks.

From: Melissa McKenzie
Sent: June 26, 2020 2:47 PM
To: Jeffrey Silver; Philip L. Taylor
Cc: Denise Borzi; Jeffery Silver
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario
Importance: High

Sorry is the per diem per day from June 25 or do you mean it is included until Monday. We are hoping to do this today.

Do you have a signed copy of the Discharge.
Please get back to us ASAP as we want to start today.

We will advance the funds directly to Bridging non the understanding that you have the Discharge.

Please let us know your legal fees.

Thanks.

From: Jeffrey Silver
Sent: June 26, 2020 2:24 PM
To: Philip L. Taylor
Cc: Melissa McKenzie; Denise Borzi
Subject: Re: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

Hi Phil

824
F3118

We have to try and coordinate the closing and pay out with you. Melissa who I am copying will also hopefully assist.

I have not been in contact with you directly on this but can you let me know if you have the executed discharge in hand. Thinking that if all goes as planned funds would be wired as per your message and we coordinate on the registration of the discharge.

I am remote and actually on the road now and will be in further contact with Melissa. Let me have any suggestions or comments.

Jeff

Sent from my iPhone

On Jun 24, 2020, at 8:56 PM, Philip L. Taylor <Philip@chaitons.com> wrote:

Assuming the payment is received tomorrow (June 25th) the payout will be \$10,039,552.37 CAD plus \$3,291.66 per diem from 2:00pm valid until Monday plus legal fees TBD. The BFI wire information is attached. Denise will forward our wire information. I can have the A&D by noon. What escrow arrangements are proposed?

Philip L. Taylor | Partner*
*Denotes Professional Corporation
Chaitons LLP | T: 416.218.1125

From: Melissa McKenzie <mmckenzie@harris-sheaffer.com>
Sent: Monday, June 22, 2020 4:17 PM
To: Philip L. Taylor <Philip@chaitons.com>
Cc: Denise Borzi <Denise@chaitons.com>; Jeffrey Silver <jsilver@harris-sheaffer.com>
Subject: RE: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

Hi

Can you please confirm the required amount as of today's date.

F850

Hope you are both doing well.

Thanks so much.

From: Philip L. Taylor [<mailto:Philip@chaitons.com>]
Sent: April 2, 2020 3:31 PM
To: Melissa McKenzie
Cc: Melissa McKenzie; Denise Borzi
Subject: FW: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

Melissa – the amount required for a discharge will be \$15,000,000. Please let us know the anticipated closing date.

Thanks,
Pt

Philip L. Taylor
Partner | Chaitons LLP | Tel: 416.218.1125

From: Denise Borzi <Denise@chaitons.com>
Sent: Wednesday, April 1, 2020 8:03 AM
To: Philip L. Taylor <Philip@chaitons.com>
Subject: FW: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

Denise Borzi
Law Clerk/Assistant to Philip Taylor and Katharine Ho | Chaitons LLP | Tel:
416.218.1755

From: Melissa McKenzie <mmckenzie@harris-sheaffer.com>
Sent: Tuesday, March 31, 2020 4:21 PM
To: Denise Borzi <Denise@chaitons.com>
Cc: Jeffrey Silver <jsilver@harris-sheaffer.com>
Subject: BRIDGING FINANCE INC. loan to 2495159 Ontario Inc.-14 Dundonald Street, Toronto, Ontario

Hi Denise

We are the solicitors for 2495159 Ontario Inc. In this regard, our client is conveying the above-noted Property to the City of Toronto. A copy of the Transfer is enclosed for your records. In connection with the conveyance, the City requires a Discharge of your

clients Charge. In this regard, I am enclosing an Acknowledgement and Direction in connection with the Discharge to be signed and returned to us upon receipt of any amounts owing. Please provide us with your Discharge Statement for Discharge purposes. It can be currently dated.

We look forward to hearing from you.

Thanks.

<image001.jpg>

Melissa McKenzie

Law Clerk

Tel. (416) 250-2853

Email: mmckenzie@harris-sheaffer.com

Yonge Corporate Centre

4100 Yonge Street, Suite 610, Toronto, ON M2P 2B5

Tel.:(416) 250-5800

Fax:(416) 250-5300

www.harris-sheaffer.com

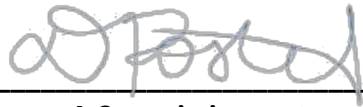
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<BIF CAD wire instructions.pdf>

**THIS IS EXHIBIT "C" TO THE AFFIDAVIT OF SAM MIZRAHI
SWORN REMOTELY BEFORE ME ON OCTOBER 13, 2022**



David Postel (LSO# 78102E)

A Commissioner etc.

11/17/21, 2:44 PM

Mizrahi Developments Mail - Re: Discharge

828
F3122

Re: Discharge

1 message

David Sharpe <dsharpe@bridgingfinance.ca>
To: Sam Mizrahi <sam@mizrahidevelopments.ca>
Cc: Graham Marr <GMarr@bridgingfinance.ca>

Thanks Sam, your friendship is so appreciated. All the very best to you and family and look forward to discussing our next project.

David

David Sharpe, LLB, LL.M, MBA
Chief Executive Officer | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
C: (647) 981 5658
Web: www.bridgingfinance.ca
Canada's Premier Private Debt Provider

On Jul 9, 2020, at 5:34 PM, Sam Mizrahi <sam@mizrahidevelopments.ca> wrote:

My pleasure David, and thank you again for your friendship and continued support.

Amen! To our next project together. I will get this put together soon and look forward to getting together.

We are getting 181 Davenport PH closed as well shortly this month and getting you funds for that as well.

Wishing you and your family continued good health.



Sam Mizrahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T: 416.922.4200 ext.4210
C: 416.818.5288
F: 1.866.300.0219
E: Sam@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

On Jul 9, 2020, at 5:32 PM, David Sharpe <dsharpe@bridgingfinance.ca> wrote:

Thanks Sam! Let's get together soon and discuss our next project together.

David

David Sharpe, LLB, LL.M, MBA
Chief Executive Officer | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
C: (647) 981 5658
Web: www.bridgingfinance.ca
Canada's Premier Private Debt Provider

On Jul 9, 2020, at 5:06 PM, Sam Mizrahi <sam@mizrahidevelopments.ca> wrote:

Good afternoon David and Graham,

Just wanted to let you know that two wires were sent to your account. You should be in funds today for both the 14 Dundonald discharge and the presentation gallery as well as for the per diem interest.

Thank you again and wishing you a great afternoon.



Sam Mizrahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T: 416.922.4200 ext.4210
C: 416.818.5288
F: 1.866.300.0219
E: Sam@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

On Jun 30, 2020, at 9:49 AM, David Sharpe <dsharpe@bridgingfinance.ca> wrote:

Thanks Sam, I greatly appreciate all of your efforts and friendship.

Please keep us updated,

David

David Sharpe, LLB, LL.M, MBA
Chief Executive Officer | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
C: (647) 981 5658
Web: www.bridgingfinance.ca
Canada's Premier Private Debt Provider

On Jun 30, 2020, at 9:36 AM, Sam Mizrahi <sam@mizrahidevelopments.ca> wrote:

Good morning David, I am pushing this through as fast as possible and have navigated every obstacle that has been put in front of me. As you know, Its been delayed this for months, as I would have this completed 30-45 days ago, if it was not for her delays and disruption. I have had to go to Arbitration with her

F854

and that took months and costs as well.

Thank you for your continued support and friendship.



Building Futures.

Sam Mizrahi
President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T: 416.922.4200 ext.4210

C: 416.818.5288

F: 1.866.300.0219

E: Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

On Jun 30, 2020, at 6:31 AM, David Sharpe <dsharpe@bridgingfinance.ca> wrote:

Sam, please make it this week. I know there are always challenges and we stepped up and support you and your business. Please try and push through these obs

Thank you,

David

David Sharpe, LLB, LL.M, MBA

Chief Executive Officer | **Bridging Finance Inc.**

77 King St W, Suite 2925 | Toronto | ON | M5K 1K7

C: (647) 981 5658

Web: www.bridgingfinance.ca

Canada's Premier Private Debt Provider

On Jun 29, 2020, at 10:00 PM, Sam Mizrahi <sam@mizrahidevelopments.ca> wrote:

I'm trying for this week. Worse case next week.

Sincerely,



Building Futures.

Sam Mizrahi
President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T: 416.922.4200 ext.4210

C: 416.818.5288

F: 1.866.300.0219

E: Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

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On Jun 29, 2020, at 9:03 PM, Graham Marr <GMarr@bridgingfinance.ca> wrote:

Thanks Sam

Is there a chance this falls to next week or can we make it happen this week?

Graham Marr, CPA, CA, CFA

Senior Managing Director | Bridging Finance Inc.

77 King St W, Suite 2925 | Toronto | ON | M5K 1K7

T: (416) 777-1794 | C: (416) 906-0395

E: gmarr@bridgingfinance.ca

www.bridgingfinance.ca

Canada's Premier Private Debt Provider

From: Sam Mizrahi <sam@mizrahidevelopments.ca>

Sent: Monday, June 29, 2020 9:33:20 AM

To: Graham Marr <GMarr@bridgingfinance.ca>

Cc: David Sharpe <dsharpe@bridgingfinance.ca>

Subject: Re: Discharge

Will advise as soon as I receive confirmation from Altus and the bank. Altus has to release their report and Maria Jenny's person has held it up. I am working on it this week to get funds released now that Jenny signed the agreement late Friday afternoon which delayed everything as well.

Sincerely,



Building Futures.

Sam Mizrahi
President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T: 416.922.4200 ext.4210

C: 416.818.5288

F: 1.866.300.0219

E: Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

11/17/21, 2:44 PM

Mizrahi Developments Mail - Re: Discharge

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830
F3124

On Jun 29, 2020, at 8:41 AM, Graham Marr <GMarr@bridgingfinance.ca> wrote:

Hi Sam, hope you had a nice weekend. Just wanted to touch base on timing of when you expect funds to flow.

Thank you

Graham Marr, CPA, CA, CFA
Senior Managing Director | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca

From: Sam Mizrahi <sam@mizrahidevelopments.ca>
Sent: June 25, 2020 6:38 PM
To: Graham Marr <GMarr@bridgingfinance.ca>
Cc: David Sharpe <dsharpe@bridgingfinance.ca>
Subject: Re: Discharge

Hi Graham and David,

Thank you for your email.

Our Counsel has received the discharge statement. Thank you again for your continued support of both me and my projects. It does not go unnoticed.

I am to obtain Jenny's signatures hopefully tomorrow as I am meeting with her at 2 PM and we will have funds flow next week.

Wishing you both continued good health and good fortune.



Sam Mizrahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T: [416.922.4200 ext.4210](tel:4169224200)
C: [416.818.5288](tel:4168185288)
F: [1.866.300.0219](tel:18663000219)
E: Sam@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

On Jun 25, 2020, at 4:52 PM, Graham Marr <GMarr@bridgingfinance.ca> wrote:

Sam, please let me know if your counsel hasn't received the discharge. I have approvals on my end and have asked Phil to send these to you.

Let me know, thanks

When are funds expected to flow?

Thank you

Graham Marr, CPA, CA, CFA
Senior Managing Director | **Bridging Finance Inc.**
77 King St W, Suite 2925 | Toronto | ON | M5K 1K7
T: (416) 777-1794 | C: (416) 906-0395
E: gmarr@bridgingfinance.ca
www.bridgingfinance.ca

Canada's Premier Private Debt Provider

F856

**THIS IS EXHIBIT "D" TO THE AFFIDAVIT OF SAM MIZRAHI
SWORN REMOTELY BEFORE ME ON OCTOBER 13, 2022**



David Postel (LSO# 78102E)

A Commissioner etc.

From: "Rimer, Philip" <philip.rimer@dentons.com>
Date: Friday, May 14, 2021 at 1:54 PM
To: Young Choi <youngchoi@hanafn.com>
Cc: Remy Del Bel <remy@mizrahidevelopments.ca>, Jaekwon Lee <jaekwonlee@hanafn.com>, Terry Choi <terry.choi@hanafn.com>, Sam Mizrahi <sam@mizrahidevelopments.ca>
Subject: RE: Renewal Notice for 181 Davenport Retail Inc.

Gentlemen

We confirm we are solicitors for the Mizrahi entities.
We understand the following in respect of the status of loans extended by Bridging Finance Inc., ("BFI")

1. The loan relating to the Dundonald Property has in fact been repaid and the BFI security interest had been discharged
2. The loan relating to the 181 Davenport (1 Bloor Sales Gallery) was to have been discharged. However the discharge was not completed as a consequence of the intervening Court appointment of PwC as Receiver of BFI. Indeed Chailons LLP, BFI counsel, has confirmed to the undersigned (and had previously advised our client,) that the security was to have been discharged but same was not completed once PwC was appointed Receiver. We further understand that Mr. Mizrahi has had initial conversations with PwC to arrange for the discharge of the BFI security which we confirm remains subordinate to the security interest in favour of KEB Hana.

Pleased to discuss further.

P



Philip Rimer
Partner

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D +1 613 783 9634 | M +1 613 614 3700
philip.rimer@dentons.com
[Bio](#) | [Website](#)

Dentons Canada LLP
99 Bank Street, Suite 1420 Ottawa, ON K1P 1H4 Canada

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From: Sam Mizrahi <sam@mizrahidevelopments.ca>
Sent: Friday, May 14, 2021 11:24 AM
To: Young Choi <youngchoi@hanafn.com>; Rimer, Philip <philip.rimer@dentons.com>
Cc: Remy Del Bel <remy@mizrahidevelopments.ca>; Jaekwon Lee <jaekwonlee@hanafn.com>; Terry Choi <terry.choi@hanafn.com>
Subject: Re: Renewal Notice for 181 Davenport Retail Inc.

[WARNING: EXTERNAL SENDER]

Good morning Young,

Thank you for your email, I have copied my counsel on this email and we will get you a letter as soon as possible.

Thank you in advance.

Sincerely,



On May 14, 2021, at 11:19 AM, Young Choi <youngchoi@hanafn.com> wrote:

Hi Sam,

Further to our discussion over the phone yesterday, please be advised as follows:

1. The Bank would renew the mortgage loan to 181 Davenport Retail Inc. taking consideration of Bridging Finance Inc. situation
2. The letter from your counsel confirming the following shall be provided **before the end of today**:
 - a. The loan from the Bridging Finance Inc. is paid off and the 2nd charge on title will be removed
 - b. A copy of discharge on title shall be provided as soon as possible.

Thank you.

YOUNG CHOI
General Manager
<youngchoi.png> Bloor Branch, KEB Hana Bank Canada
627 Bloor Street West, Toronto, ON M6G 1K8
T. 416.533.8593 Ext. 238

--- Original Message ---

From : "Sam Mizrahi" <sam@mizrahidevelopments.ca>
To : "Young Choi" <youngchoi@hanafn.com>; "Philip Rimer" <philip.rimer@dentons.com>
Cc : "Remy Del Bel" <remy@mizrahidevelopments.ca>; "Jaekwon Lee" <jaekwonlee@hanafn.com>; "Terry Choi" <terry.choi@hanafn.com>
Date : 2021/05/13 목요일 오후 10:52:01
Subject : Re: Renewal Notice for 181 Davenport Retail Inc.

Good morning Young,

I am copying in Phil Rimer on this email. Perhaps we can set up a conference call and discuss as we are working to having the registration removed by PWC who is now the receiver for Bridging. Bridging counsel was to have it removed prior to the issue that occurred with Bridging on April 30. You and my counsel is and was aware of this as everyone was emailed confirming same. Its unfortunate that Bridging's lawyer did not remove and delete the charge as quickly as possible as we would not have this issue right now, and as a result, we have spoken to PWC to next steps to having it removed. PWC was pre occupied last week as they just got into the receivership role to manage Bridging and they are getting up to speed on everything and the lawyer at Chaitons Phil Taylor who was deleting the charge for Bridging was also in touch with PWC and explained the situation.

I am working this as quickly as I can, but unfortunately we are dealing with the receiver PWC to get this now resolved.

Regardless, this does not impact the banks security on the asset or payments being made to the bank to service the loan. The issue is a registration behind the bank that should never have been registered and was being deleted by Bridging's Counsel when we all learned of this issue and we all got caught timing wise due to the unforeseen receivership of Bridging.

I am working it out with my counsel and PWC and will get back to you shortly. Perhaps we can obtain a temporary waiver in good faith of this default condition, while we are working with the receiver to have the charge discharged.

Thank you in advance.



Sam Mirzahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T: 416.922.4200 ext.4210
C: 416.818.5248
F: 416.390.0219
E: Sam@MirzahiDevelopments.ca
www.MirzahiDevelopments.ca

On May 13, 2021, at 9:28 AM, Young Choi <youngchoi@hanafn.com> wrote:

Hi Sam,

I just checked and found that you left me a voice message during a conference meeting yesterday.

Your loan is now 11 days overdue and, in the bank's usual business, no lawyers are involved at this stage. The Bank's lawyers will be appointed when the problem is not resolved and the Bank enters a legal recovery process. Therefore, if your lawyer has something to say, please tell the bank directly.

Thank you,

 **YOUNG CHOI**
General Manager
Bloor Branch, KEB Hana Bank Canada
627 Bloor Street West, Toronto, ON M6G 1K8
T: 416-533-8593 Ext. 238

--- Original Message ---

From : 'Sam Mirzahi' <sam@mirzahidevelopments.ca>
To : 'Young Choi' <youngchoi@hanafn.com>
Cc : 'Remy Del Bel' <remy@mirzahidevelopments.ca>, 'Jaekwon Lee' <jaekwonlee@hanafn.com>, 'Terry Choi' <terry.choi@hanafn.com>, 'Philip Rimer' <philip.rimer@dentons.com>
Date : 2021/05/13 목요일 오전 7:16:48
Subject : Re: Renewal Notice for 181 Davenport Retail Inc.

Dear Young,

Thank you for your email.

Kindly have your legal counsel reach out to my legal counsel (Philip Rimer) copied on this email, in order to resolve this matter as quickly as possible.

Thank you again for your continued support and wishing you a restful evening.

Sincerely,



Sam Mirzahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T: 416.922.4200 ext.4210
C: 416.818.5248
F: 416.390.0219
E: Sam@MirzahiDevelopments.ca
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On May 12, 2021, at 5:55 PM, Young Choi <youngchoi@hanafn.com> wrote:

Hi Sam,

As advised in the previous email, the term for your loan was expired on May 2, 2021 and the Bank would not be in a position to extend the maturity without confirming a discharge of the 2nd mortgage on title. I understand that there is an issue with the Bridging Finance Inc. and it might take a while to get this issue resolved. But most importantly, you should note that your loan defaulted and the Bank shall call the loan in principal.

I am trying to help and resolve the issue for you, but we are running out of time and cannot wait until all documents are provided. That's why I previously asked you to provide me 'Undertaking Letter' signed from your legal counsel. I will ask our legal counsel to contact you but, meanwhile, could you ask your legal counsel to confirm in writing that the bridging finance loan is fully paid off and they are working on the case to be discharged? It is already 10 days past due, so we need to act quickly.

Thank you.

Regards,

Young

 **YOUNG CHOI**
General Manager
Bloor Branch, KEB Hana Bank Canada
627 Bloor Street West, Toronto, ON M6G 1K8
T: 416-533-8593 Ext. 238

--- Original Message ---

From : "Sam Mizrahi" <sam@mizrahidevelopments.ca>
To : "Young Choi" <youngchoi@hanafn.com>, "Philip Rimer" <philip.rimer@dentons.com>
Cc : "Remy Del Bel" <remy@mizrahidevelopments.ca>, "Jaekwon Lee" <jaekwonlee@hanafn.com>, "Terry Choi" <terry.choi@hanafn.com>
Date : 2021/05/13 목요일 오전 6:28:28
Subject : Re: Renewal Notice for 181 Davenport Retail Inc.

Hi Young Choi

As you requested in your earlier email I instructed our project legal counsel to immediately investigate matters. They have since reported that they can address the issue but strongly suggest that they also correspond with KEB Hana's counsel as the issue has been complicated by the intervening receivership of Bridging Finance Inc.

They ask that I confirm with you who is KEB Hana's Canadian legal counsel. Are we correct in assuming its Faskens? I await your confirmation.

Sincerely,


Sam Mizrahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T: 416.922.4200 ext.4210
C: 416.818.5288
F: 1.866.306.0219
E: Sam@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

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On May 12, 2021, at 12:15 PM, Young Choi <youngchoi@hanafn.com> wrote:

Dear Mr. Sam Mizrahi,

I trust you are keeping well.

As previously advised, the term maturity for the mortgage loan to 181 Davenport Retail Inc. was on **May 2, 2021**.

While reviewing documents, we discovered that there is a 2nd charge mortgage loan registered on title, which violates covenant of the borrower:

<Section 6 under the Loan Agreement>
(j) The borrower shall not without the lender's prior written consent;
(3) create or permit or allow, including its subsidiaries, any mortgage, charge, lien or other security interest any or all of its assets unless simultaneously with the grant of that security interest provision is then made to secure amounts owing under this Agreement equally and ratably with the indebtedness to which that security interest relates.

This is considered as an event of default, so we discussed with you and requested 181 Davenport Retail Inc. to provide us a copy of discharge to resolve the issue. We have been waiting for the copy of Discharge for the past few weeks to resolve the issue before term maturity of your mortgage loan but it is 10 days past due now.

We received your email yesterday explaining what is going on with Bridging Finance Inc. but your legal counsel should have registered a discharge on title when the bridging finance loan was fully paid off in **July 2020**.

The failure to comply resulted in two problems as follow:

1. The mortgage loan to 181 Davenport Retail Inc. is 10 days past due now and the Bank would not be in a position to renew the mortgage loan without confirmation of discharge on title.
2. Furthermore, correct me if I am wrong but it is my understanding that the **IGIS Construction Financing** in the amount of **\$10,052,719.01** was released to pay out the bridging finance loan on July 9, 2020.

I strongly suggest your legal counsel to resolve the issue and send us a copy of discharge registered on title as soon as possible. Since we are running out of time, what I could suggest is to ask your legal counsel to send us a **written "undertaking letter" before the end of today**, confirming that the said loan was fully paid off and the charge on title will be deleted **before the end of May 2021**. I will see what I can do once I receive this undertaking letter signed by your legal counsel.

Regards,

Young Choi


YOUNG CHOI
General Manager
Bloor Branch, KEB Hana Bank Canada
627 Bloor Street West, Toronto, ON M6G 1K8
T: 416.533.8593 Ext. 238

--- Original Message ---

From : "Sam Mizrahi" <sam@mizrahidevelopments.ca>
To : "Jaekwon Lee" <jaekwonlee@hanafn.com>
Cc : "Philip Rimer" <philip.rimer@dentons.com>, "Philip Taylor" <Philip@chaitons.com>, "Remy Del Bel" <remy@mizrahidevelopments.ca>, "Young Choi" <youngchoi@hanafn.com>
Date : 2021/05/11 화요일 오전 7:01:42
Subject : Re: Renewal Notice for 181 Davenport Retail Inc.

Dear Jaekwon,

I trust you and the family are well.

I am not sure if you are aware as we just found out last week, of the issues now surrounding Bridging Finance Inc. and the current receivership with PWC.

<https://www.theglobeandmail.com/business/article-private-debt-manager-bridging-finance-placed-in-receivership-as-osc/>

We are now dealing with this unfortunate situation, as we were in the process with Bridging's counsel Philip Taylor copied here to have the registration deleted, as you were aware.

Please call me Jaekwon, at your earliest opportunity on my cell at 416-818-5288, so that I explain further our progress and understanding of this current PWC process that we spoke with recently.

Thank you in advance.


Sam Mizrahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T: 416.922.4200 ext.4210
C: 416.818.5288
F: 1.866.306.0219
E: Sam@MizrahiDevelopments.ca



www.MizrahiDevelopments.ca

On May 10, 2021, at 2:31 PM, Jaekwon Lee <jaekwonlee@hanafn.com> wrote:

Dear Mr. Mizrahi,

Kindly give us the status update regarding the discharge of the 2nd mortgage by May 12, 2021, as the branch needs to report to the head office for the delay.

Your prompt response would be greatly appreciated.

Regards,

Jaekwon (Thomas) Lee
Manager, Bloor Branch
T: 416.533.8593 (222)
F: 416.537.2600
KEB Hana Bank Canada

627 Bloor Street West, Toronto, ON, M6G 1K8
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--- Original Message ---

From : "Sam Mizrahi" <sam@mizrahidevelopments.ca>
To : "Jaekwon Lee" <jaekwonlee@hanafn.com>, "Philip Rimer" <philip.rimer@dentons.com>, "Philip Taylor" <Philip@challons.com>
Cc : "Remy Del Bel" <remy@mizrahidevelopments.ca>, "Young Choi" <youngchoi@hanafn.com>
Date : 2021/05/04 화요일 오전 1:18:00
Subject : Re: Renewal Notice for 181 Davenport Retail Inc.

Good afternoon Jaekwon,

Thank you for your email.

I am copying in my counsel as well as Bridging Finance Inc counsel on this email and matter, as they were instructed by Bridging Finance approximately 10 days ago to remove the 2nd mortgage charge position off title, and their counsel copied here had drafted the mortgage discharge documents, etc to provide a copy of the discharge as well.

Remy, will provide the revised insurance certificate with the 2nd loss payee removed, as requested.

Thank you in advance and wishing everyone a great day.

Sincerely,



Sam Mizrahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T: 416.922.4200 ext.4210
C: 416.818.5288
F: 416.537.2600
E: Sam@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

On May 3, 2021, at 11:58 AM, Jaekwon Lee <jaekwonlee@hanafn.com> wrote:

Dear Mr. Mizrahi,

Please be reminded that your loan has matured as of today.

The renewal is on hold at the moment due to the 2nd charge registration.

Please let me know when the following documents can be provided:

- Discharge of 2nd charge registration
- Revised insurance certificate with 2nd loss payee removed

Your prompt response will be greatly appreciated.

Regards,

Jaekwon (Thomas) Lee
Manager, Bloor Branch
T: 416.533.8593 (222)
F: 416.537.2600
KEB Hana Bank Canada

627 Bloor Street West, Toronto, ON, M6G 1K8
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--- Original Message ---

From : "Sam Mizrahi" <sam@mizrahidevelopments.ca>
To : "Jaekwon Lee" <jaekwonlee@hanafn.com>
Cc : "Remy Del Bel" <remy@mizrahidevelopments.ca>, "Young Choi" <youngchoi@hanafn.com>
Date : 2021/04/24 토요일 오전 12:28:58
Subject : Re: Renewal Notice for 181 Davenport Retail Inc.

Yes, of course, we will take care of this next week, as per your request.

Thank you.



Sam Mizrahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T: 416.922.4200 ext.4210
C: 416.818.5288
F: 416.537.2600
E: Sam@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

On Apr 23, 2021, at 11:21 AM, Jaekwon Lee <jaekwonlee@hanafn.com> wrote:

Dear Mr. Mizrahi,

Thank you very much for your prompt response.

Can you forward the title search result upon the discharge of the 2nd registration as well as the revised insurance certificate with 2nd loss payee removed?

The underwriter needs to confirm this before processing the renewal. Thank you.

Hoping that all is well with your family.

Regards,

Jackwon (Thomas) Lee
Manager, Bloor Branch
T: 416.533.8593 (222)
F: 416.537.2600
KEB Hana Bank Canada

627 Bloor Street West, Toronto, ON, M6G 1K8
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--- Original Message ---

From : 'Sam Mizrahi' <sam@mizrahidevelopments.ca>
To : 'Jaekwon Lee' <jaekwonlee@hanafn.com>
Cc : 'Remy Del Bel' <remy@mizrahidevelopments.ca>, 'Young Choi' <youngchoi@hanafn.com>
Date : 2021/04/23 금요일 오후 11:32:29
Subject : Re: Renewal Notice for 181 Davenport Retail Inc.

Good morning Jackwon,

Thank you for your email. I trust you and your family are well.

There is no default with Bridging Finance Inc.

I have spoken to Bridging Finance and they will be deleting the registered mortgage charge off title of the property next week.

Thank you again and wishing you and your families continued good health and a restful weekend.

Sincerely,



Sam Mizrahi
President
125 Hazen Avenue
Toronto, Ontario M5R 2E4
T: 416.972.2300 ext.4210
C: 416.518.5208
F: 1.866.300.0219
E: Sam@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

On Apr 21, 2021, at 3:27 PM, Jackwon Lee <jaekwonlee@hanafn.com> wrote:

Dear Mr. Mizrahi,

It appears that the 2nd charge of \$12M against the subject property is registered in favor of Bridging Finance Inc..

Your legal council at the time of disbursement mentioned that the subject charge would remain unregistered and would be registered only in the event of an act of default.

I found a wiring instruction to pay off a loan owed to 'Bridging Finance Inc.' dated June 2020. Please confirm if this should have cleared the 2nd charge registration. If so, please have the 2nd charge to be discharged immediately and contact your insurance broker to remove the second mortgagee from loss payee.

If not, please provide the details of 'Event of Default' which led to the registration of the 2nd charge against the subject property and the plan to cure the default. So, the branch can further discuss the matter with the Credit Department in relation to the renewal of the mortgage loan.

I have attached relevant documents related to the above. Please let me know if you have any question.

Your prompt response will be greatly appreciated.

Regards,

Jackwon (Thomas) Lee
Manager, Bloor Branch
T: 416.533.8593 (222)
F: 416.537.2600
KEB Hana Bank Canada

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--- Original Message ---

From : 'Jaekwon Lee' <jaekwonlee@hanafn.com>
To : 'Sam Mizrahi' <sam@mizrahidevelopments.ca>
Cc : 'Remy Del Bel' <remy@mizrahidevelopments.ca>
Date : 2021/03/09 화요일 오전 6:23:06
Subject : Re: Renewal Notice for 181 Davenport Retail Inc.

Dear Mr. Mizrahi,

Attached please find renewal notice for the commercial loan to 181 Davenport Retail Inc. maturing on Mar. 2, 2021.

Please provide the required documents by Apr. 8, 2021 for timely renewal.

Kindly let us know if you have any question about our renewal process. Thank you.

Regards,

Jackwon (Thomas) Lee
Manager, Bloor Branch
T: 416.533.8593 (222)
F: 416.537.2600
KEB Hana Bank Canada

627 Bloor Street West, Toronto, ON, M6G 1K8
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--- Original Message ---

From : 'Jaekwon Lee' <jaekwonlee@hanafn.com>
To : 'Remy Del Bel' <remy@mizrahidevelopments.ca>
Cc : 'Choi-SiYoung' <youngchoi@hanafn.com>, 'Sam Mizrahi' <sam@mizrahidevelopments.ca>
Date : 2021/02/24 수요일 오전 12:25:13
Subject : Re: Fwd: 181 Davenport Retail Mortgage

Hello, Remy.

Please find the attached the repayment history up to now.

Kindly let me know if you have any other question.

Regards,

Jaekwon (Thomas) Lee
Manager, Bloor Branch
T: 416.533.8593 (222)
F: 416.537.2600
KEB Hana Bank Canada

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--- Original Message ---

From : 'Young Choi' <youngchoi@hanafn.com>
To : 'Lee-Jaekwon' <jaekwonlee@hanafn.com>
Date : 2021/02/23 화요일 오전 3:37:30
Subject : Fwd: 181 Davenport Retail Mortgage

YOUNG CHOI
General Manager
<youngchoi.png>
Bloor Branch, KEB Hana Bank Canada
627 Bloor Street West, Toronto, ON M6G 1K8
T: 416.533.8593 Ext. 238

--- Original Message ---

From : 'Remy Del Bel' <remy@mizrahidevelopments.ca>
To : 'Choi-SiYoung' <youngchoi@hanafn.com>
Cc : 'Sam Mizrahi' <sam@mizrahidevelopments.ca>
Date : 2021/02/23 화요일 오전 3:30:21
Subject : 181 Davenport Retail Mortgage

Hi,

Can you send me statement for our Mortgage, and similar statements to the attached, for the activity in 2020?

As the last amort schedule I have, does not account for Prime Rate Reduction.

Much appreciated

Best regards,
Remy

Remy Del Bel
Vice President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T: 416.922.4200 ext.4260 <<tel:4169224200>>
C: 416.951.6225 <<tel:4169516225>>
F: 1.866.300.0219 <<tel:18663000219>>
E: Remy@MizrahiDevelopments.ca <<mailto:remy@mizrahidevelopments.ca>>
www.MizrahiDevelopments.ca <applewebdata://BB9063FA-A78E-4D30-B217-9A84ABEC51CF/www.mizrahidevelopments.ca>

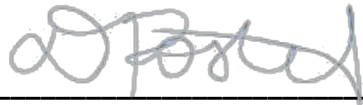
<[youngchoi.png](#)> <title search (181 davenport retail inc.).pdf> <Legal Opinion (2nd mortgage for Bridging Finance Inc.).pdf> <Fund Advance (Bridging Finance Inc.).pdf> <181 Dav Retail - Insurance Policy - Jan 9 2021.pdf>

<[youngchoi.png](#)>
<[youngchoi.png](#)>

<[youngchoi.png](#)>
<[youngchoi.png](#)>

<[youngchoi.png](#)> <[youngchoi.png](#)>
<[youngchoi.png](#)> <[youngchoi.png](#)>

**THIS IS EXHIBIT "E" TO THE AFFIDAVIT OF SAM MIZRAHI
SWORN REMOTELY BEFORE ME ON OCTOBER 13, 2022**

A handwritten signature in grey ink, appearing to read "D Postel", written over a horizontal line.

David Postel (LSO# 78102E)

A Commissioner etc.

RE: Renewal Notice for 181 Davenport Retail Inc.

839
F3133

1 message

Graham Marr <GMarr@bridgingfinance.ca>
To: Sam Mizrahi <sam@mizrahidevelopments.ca>

Fri, Apr 23, 2021 at 10:39 AM

Thanks Sam, I am speaking to Phil on Monday and will be back to you

Graham Marr, CPA, CA, CFA

President | **Bridging Finance Inc.**

77 King St W, Suite 2925 | Toronto | ON | M5K 1K7

T: (416) 777-1794 | C: (416) 906-0395

E: gmarr@bridgingfinance.ca

From: Sam Mizrahi <sam@mizrahidevelopments.ca>
Sent: April 23, 2021 10:33 AM
To: Graham Marr <GMarr@bridgingfinance.ca>
Subject: Fwd: Renewal Notice for 181 Davenport Retail Inc.

FYI



Building Futures.

Sam Mizrahi
President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4210
C. 416.818.5288
F. 1.866.300.0219
E. Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

Begin forwarded message:

From: Sam Mizrahi <sam@mizrahidevelopments.ca>
Subject: Re: Renewal Notice for 181 Davenport Retail Inc.
Date: April 23, 2021 at 10:32:29 AM EDT
To: Jaekwon Lee <jaekwonlee@hanafn.com>

F865

11/10/21, 1:33 PM

Mizrahi Developments Mail - RE: Renewal Notice for 181 Davenport Retail Inc.

Cc: Remy Del Bel <remy@mizrahidevelopments.ca>, Young Choi <youngchoi@hanafn.com>

840
F3134

Good morning Jaekwon,

Thank you for your email. I trust you and your family are well.

There is no default with Bridging Finance Inc.

I have spoken to Bridging Finance and they will be deleting the registered mortgage charge off title of the property next week.

Thank you again and wishing you and your families continued good health and a restful weekend.

Sincerely,



Building Futures.

Sam Mizrahi
President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. [416.922.4200](tel:416.922.4200) ext.4210
C. [416.818.5288](tel:416.818.5288)
F. [1.866.300.0219](tel:1.866.300.0219)
E. Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

On Apr 21, 2021, at 3:27 PM, Jaekwon Lee <jaekwonlee@hanafn.com> wrote:

Dear Mr. Mizrahi,

It appears that the 2nd charge of \$12M against the subject property is registered in favor of Bridging Finance Inc..

Your legal council at the time of disbursement mentioned that the subject charge would remain unregistered and would be registered only in the event of an act of default.

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F866

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broker to remove the second mortgagee from loss payee.

If not, please provide the details of 'Event of Default' which led to the registration of the 2nd charge against the subject property and the plan to cure the default. So, the branch can further discuss the matter with the Credit Department in relation to the renewal of the mortgage loan.

I have attached relevant documents related to the above. Please let me know if you have any question.

Your prompt response will be greatly appreciated.

Regards,

Jaekwon (Thomas) Lee
Manager, Bloor Branch
T: 416.533.8593 (222)
F: 416.537.2600
KEB Hana Bank Canada
[627 Bloor Street West, Toronto, ON, M6G 1K8](#)

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From : "Jaekwon Lee" <jaekwonlee@hanafn.com>
To : "Sam Mizrahi" <sam@mizrahidevelopments.ca>
Cc : "Remy Del Bel" <remy@mizrahidevelopments.ca>
Date : 2021/03/09 화요일 오전 6:23:06
Subject : Re: Renewal Notice for 181 Davenport Retail Inc.

Dear Mr. Mizrahi,

Attached please find renewal notice for the commercial loan to 181 Davenport Retail Inc. maturing on Mar. 2, 2021.

Please provide the required documents by Apr. 8, 2021 for timely renewal.

F867

842
F3136

Kindly let us know if you have any question about our renewal process. Thank you.

Regards,

Jaekwon (Thomas) Lee
Manager, Bloor Branch
T: 416.533.8593 (222)
F: 416.537.2600
KEB Hana Bank Canada
[627 Bloor Street West, Toronto, ON, M6G 1K8](#)

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From : "Jaekwon Lee" <jaekwonlee@hanafn.com>
To : "Remy Del Bel" <remy@mizrahidevelopments.ca>
Cc : "Choi-SiYoung" <youngchoi@hanafn.com>, "Sam Mizrahi" <sam@mizrahidevelopments.ca>
Date : 2021/02/24 수요일 오전 12:25:13
Subject : Re: Fwd: 181 Davenport Retail Mortgage

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Kindly let me know if you have any other question.

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Manager, Bloor Branch
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F868

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843
F3137

--- Original Message ---

From : "Young Choi"<youngchoi@hanafn.com>
To : "Lee-JaeKwon"<jaekwonlee@hanafn.com>
Date : 2021/02/23 화요일 오전 3:37:30
Subject : Fwd: 181 Davenport Retail Mortgage

YOUNG CHOI
General Manager
<youngchoi.png> Bloor Branch, KEB Hana Bank Canada
627 Bloor Street West, Toronto, ON M6G 1K8
T. 416.533.8593 Ext. 238

--- Original Message ---

From : "Remy Del Bel"<remy@mizrahidevelopments.ca>
To : "Choi-SiYoung"<youngchoi@hanafn.com>
Cc : "Sam Mizrahi"<sam@mizrahidevelopments.ca>
Date : 2021/02/23 화요일 오전 3:30:21
Subject : 181 Davenport Retail Mortgage

Hi,

Can you send me statement for our Mortgage, and similar statements to the attached, for the activity in 2020?

As the last amort schedule I have, does not account for Prime Rate Reduction.

Much appreciated

Best regards,
Remy

F869

11/10/21, 1:33 PM

Mizrahi Developments Mail - RE: Renewal Notice for 181 Davenport Retail Inc.

844
F3138

Remy Del Bel

Vice President

[125 Hazelton Avenue](#)

Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4260 <<tel:4169224200>>

C. 416.951.6225 <<tel:4169516225>>

F. 1.866.300.0219 <<tel:18663000219>>

E. Remy@MizrahiDevelopments.ca <<mailto:remy@mizrahidevelopments.ca>>

www.MizrahiDevelopments.ca <[applewebdata://BB9003FA-A78E-4D30-B217-](applewebdata://BB9003FA-A78E-4D30-B217-9A84ABEC51CF/www.mizrahidevelopments.ca)

[9A84ABEC51CF/www.mizrahidevelopments.ca](http://www.mizrahidevelopments.ca)>

<[youngchoi.png](#)><[title search \(181 davenport retail inc.\).pdf](#)><[Legal Opinion \(2nd mortgage for Bridging Finance Inc.\).pdf](#)><[Fund Advance \(Bridging Finance Inc.\).pdf](#)><[181 Dav Retail - Insurance Policy - Jan 9 2021.pdf](#)>

F870

ATERHOUSECOOPERS INC

-and-

NORTHERN CITADEL CAPITAL INC

845
F3
RES

Court File No. CV-22-00685200

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

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF SAM MIZRAHI

HENEIN HUTCHISON LLP

235 King Street East, First Floor

Toronto, Ontario M5A 1J9

Tel: (416) 368-5000

Fax: (416) 368-6640

Scott C. Hutchison (LSO: 29912J)

shutchison@hhllp.ca

Ewa Krajewska (LSO: 57704D)

ekrajewska@hhllp.ca

David Postel (LSO: 78102E)

dpostel@hhllp.ca

Lawyers for the Respondents

F&

ATERHOUSECOOPERS INC

-and-

NORTHERN CITADEL CAPITAL INC

846
F3
R353

Court File No. CV-22-006852

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

PROCEEDING COMMENCED AT TORONTO

RESPONDENTS' APPLICATION RECORD

HENEIN HUTCHISON LLP

235 King Street East, First Floor
Toronto, Ontario M5A 1J9

Tel: (416) 368-5000

Scott C. Hutchison (LSO: 29912J)
shutchison@hhllp.ca

Ewa Krajewska (LSO: 57704D)
ekrajewska@hhllp.ca

David Postel (LSO: 78102E)
dpostel@hhllp.ca

Lawyers for the Respondents

F8

This is Exhibit "C" referred to in the Affidavit of Khashayar Khavari affirmed by Khashayar Khavari at the City of Toronto, in the Province of Ontario, before me on October 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Sean Pierce

Commissioner for Taking Affidavits (or as may be)

SEAN PIERCE

Court File No. CV-22-00685200-00CL

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,
as amended*

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC.,
and 181 DAVENPORT RETAIL INC.**

Respondents

SUPPLEMENTAL AFFIDAVIT OF TYLER RAY

September 20, 2022

Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
3200 – 100 Wellington Street West
Toronto, ON M5K 1K7
Tel: 416-304-1616

John L. Finnigan (LSO# 24040L)
Email: jfinnigan@tgf.ca

Grant B. Moffat (LSO# 32380L)
Email: gmoffat@tgf.ca

Adam Driedger (LSO# 77296F)
Email: adriedger@tgf.ca

Lawyers for the Applicant

Court File No. CV-22-00685200-00CL

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,
as amended*

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC.,
and 181 DAVENPORT RETAIL INC.**

Respondents

INDEX

Tab	Document
1.	Supplemental Affidavit of Tyler Ray sworn September 20, 2022
A.	Exhibit "A" - Original Loan Agreement dated December 17, 2014
B.	Exhibit "B" - First amending agreement dated February 24, 2015
C.	Exhibit "C" - Second amending agreement dated March 11, 2015
D.	Exhibit "D" - Third amending agreement dated April 10, 2015
E.	Exhibit "E" - Fourth amending agreement dated November 27, 2015
F.	Exhibit "F" - Fifth amending agreement dated June 30, 2016
G.	Exhibit "G" - Sixth amending agreement dated November 30, 2016
H.	Exhibit "H" - Seventh amending agreement dated November 1, 2017
I.	Exhibit "I" - Eighth amending agreement dated May 2, 2018

J.	Exhibit "J" - Ninth amending agreement dated December 31, 2020
----	--

851
F3145

TAB 1

F877

Court File No. CV-22-00685200-00CL

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
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PRICEWATERHOUSECOOPERS INC.

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Applicant

- and -

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC.,
and 181 DAVENPORT RETAIL INC.**

Respondents

**SUPPLEMENTAL AFFIDAVIT OF TYLER RAY
(Sworn September 20, 2022)**

I, Tyler Ray of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY
AS FOLLOWS:

1. I am a Senior Manager at PricewaterhouseCoopers Inc. (“**PwC**”), the court-appointed receiver and manager (in such capacity, the “**Bridging Receiver**”) of Bridging Finance Inc. (“**BFI**”) and certain related entities and investment funds (collectively, “**Bridging**”). As such, I have knowledge of the matters deposed to herein, save where I have obtained information from others. Where I have obtained information from others, I have stated the source of that information and believe it to be true.

2. This affidavit is sworn as a supplement to my affidavit sworn on August 8, 2022 (the “**Initial Affidavit**”) in support of the Bridging Receiver’s application to appoint Richter Inc. (“**Richter**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the current and future assets, undertakings, and properties (the “**Property**”) of each of Northern Citadel Capital Inc. (“**Northern Citadel**”), One8One Davenport Inc. (“**One8One**”), and 181 Davenport Retail Inc. (“**181 Retail**” and together with Northern Citadel and One8One, the “**Respondents**”). All capitalized terms not expressly defined herein are defined in the Initial Affidavit.
3. It has come to my attention that the Original Loan Agreement and each of the amendments thereto (each referenced at paragraph 14 of the Initial Affidavit) were inadvertently not included as Exhibits to the Initial Affidavit. The sole purpose of this supplemental affidavit is to include such documents in the record before the Court.
4. Attached hereto as **Exhibit “A”** is a copy of the Original Loan Agreement. Attached hereto as **Exhibit “B”** is a copy of the first amending agreement dated February 24, 2015. Attached hereto as **Exhibit “C”** is a copy of the second amending agreement dated March 11, 2015. Attached hereto as **Exhibit “D”** is a copy of the third amending agreement dated April 10, 2015. Attached hereto as **Exhibit “E”** is a copy of the fourth amending agreement dated November 27, 2015. Attached hereto as **Exhibit “F”** is a copy of the fifth amending agreement dated June 30, 2016. Attached hereto as **Exhibit “G”** is a copy of the sixth amending agreement dated November 30, 2016 (this document is defined in the Initial Affidavit as the November 2016 Amendment). Attached hereto as **Exhibit “H”** is a copy of the seventh amending agreement dated November 1, 2017 (this document is

defined in the Initial Affidavit as the November 2017 Amendment). Attached hereto as **Exhibit “I”** is a copy of the eighth amending agreement dated May 2, 2018. Attached hereto as **Exhibit “J”** is a copy of the ninth amending agreement dated December 31, 2020 (this document is defined in the Initial Affidavit as the December 2020 Amendment).

5. This supplemental affidavit is sworn in support of the Bridging Receiver’s application and for no other or improper purpose.

SWORN remotely via videoconference, by TYLER RAY stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 20th day of September 2022, in accordance with *O. Reg 431/20, Administering Oath or Declaration Remotely*.

Commissioner for Taking Affidavits

Adam Driedger
(LSO# 77296F)

DocuSigned by:



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TYLER RAY

This is Exhibit “A” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 20th day of September, 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.

A Commissioner for taking affidavits

ADAM DRIEDGER

LOAN AGREEMENT

THIS AGREEMENT dated as of December 17, 2014 is between:

Northern Citadel Capital Inc.

(the "Borrower")

and

**Bridging Finance Inc.,
as agent for Sprott Bridging Income Fund LP**

(the "Lender")

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) "Collateral" means all of the Credit Parties' rights, title and interests in and to the Assets and the Subsidiaries and all cash flow therefrom and all other property and assets subject to the Security;
- (d) "Cost Consultant" means the Altus Group;
- (e) "Credit Parties" means collectively the Borrower and the Guarantors;
- (f) "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;

- (g) "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;
- (h) "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;
- (i) "Financial Indebtedness" of the Borrower means the aggregate (without duplication) of the following amounts:
 - (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 (a) to (e) above; and
 - (viii) any of the foregoing amounts in respect of any Subsidiary 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 Indebtedness;
 - (j) "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;
 - (k) "Guarantors" means collectively Mizrahi Soaring Developments Inc. and One8One Davenport Inc;
 - (l) "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;
 - (m) "Indemnitee" has the meaning given in Section 11.3;
 - (n) "Interest Reserve" has the meaning given in Section 3.1;
 - (o) "Leases" means the current leases of the Property, as listed on the rent roll annexed hereto as Schedule "D";
 - (p) "Loan" has the meaning given in Section 2.1;
 - (q) "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;
 - (r) "Net Proceeds" means, in connection with the sale of any unit in the Project, all proceeds received from or in connection with such sale less any reasonable real estate commissions and legal expenses in connection with the completion of such sale (less any HST exigible in connection therewith)
 - (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) "Other Subsidiaries" means collectively the Guarantors and any other subsidiary of the Borrower at any time or from time to time (for the purposes of this subsection the term "subsidiary" means an entity in which the Borrower owns, directly and/or indirectly through one or more Subsidiaries, a majority interest carrying the right, if applicable, to elect at least a majority of the members of the board of directors);
- (u) "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 Subsidiary Properties, provided the same are not of such nature as to materially adversely affect the use of the Subsidiary Properties, 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;
- (v) "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;
- (w) "Project" means the proposed midrise residential condominium project to be constructed by the Borrower on the Property;
- (x) "Property" means collectively the lands and premises in the City of Toronto, Province of Ontario municipally known as 145 Davenport Road and 185 Davenport Road (which

properties will be renumbered and known as 181 Davenport Road), as more particularly described on Schedule "A" attached hereto;

- (y) "Security" or "Security Documents" means all of the security documents to be provided to the Lender under Section 5.1; and
- (z) "Subsidiaries" means the Guarantors and any other subsidiary of such entities at any time or from time to time;
- (aa) "Subsidiary Properties" means the Property and any other real property of any of the Subsidiaries at any time or from time to time;
- (bb) "Sum" has the meaning given in Section 14.8;
- (cc) "Term" means the period from the date hereof to June 30, 2015. The Borrower shall have the right to extend the Term for one period of six months conditional on: (a) the absence of any Event of Default, which is continuing; (b) providing ninety (90) days written notice to the Lender for the extension (the "Extension Notice"); and (c) paying the Lender an extension fee of Twenty One Thousand Four Hundred and Forty (\$21,440) Dollars (the "Extension Payment"). The Extension Payment shall be due upon providing Extension Notice; and
- (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.
- 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 FACILITY

- 2.1 **Loan.** 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 aggregate maximum principal sum of \$11,267,123.29 (CDN) (the "Loan").
- 2.2 **Advance.** The Loan shall be an advance of the entire Loan amount.
- 2.3 **Term.** The Loan shall have a term not exceeding the Term.
- 2.4 **Purpose.** The Loan shall only be used by the Borrower to finance 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 by the Lender.

PART 3 - INTEREST AND REPAYMENT

- 3.1 **Interest Rate.** Interest on any outstanding principal amount of the Loan shall be calculated daily from the date of advance at the rate of 12.426% per annum and shall be payable monthly in arrears from the Interest Reserve. The amount of \$1,453,698.63 shall be held back by the Lender from the advance of the Loan and shall constitute an interest reserve (the "**Interest Reserve**"). The Interest Reserve shall be employed by the Lender for the purpose of paying interest due to the Lender during the Term. The Interest Reserve shall be an advance of the Loan effective the date hereof and shall bear interest as set out herein. The Interest Reserve shall only be available for such purpose, and not for any other purpose or use whatsoever. For greater certainty, the Borrower shall not be entitled to receive any interest in respect of the Interest Reserve held by the Lender.
- 3.2 **Default Interest Rate.** Notwithstanding Section 3.1 above, after the occurrence of an event of default, interest shall accrue in the manner set out above, provided the interest rate payable shall be, and shall not exceed, 25% per annum, compounded on each interest payment date. If the event of default is cured and Lender waives its rights with respect to the applicable event of default, then interest shall thereafter accrue at the Interest Rate set out under Section 3.1.
- 3.3 **Compound Interest.** In case default shall be made in payment of any sum to become due for interest at the time provided for payment herein, compound interest shall be payable and the sum in arrears for interest from time to time as well after as before maturity, and both before and after default and judgement, shall bear interest at the rate provided for herein. In case the interest and compound interest are not paid within the interest calculation period provided for herein from the time of default a rest shall be made, and compound interest at the rate provided for herein shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the Collateral.
- 3.4 **Payments.** The full amount of the outstanding principal together with accrued interest shall be due and payable on the expiry of the Term.
- 3.5 **Prepayment.** The Loan is prepayable upon thirty (30) days notice with one month's interest penalty.

- 3.6 **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.

PART 4 – INTENTIONALLY DELETED

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, substance and ranking:
- (a) a promissory note executed by the Borrower in favour of the Lender reflecting the terms herein;
 - (b) the appropriate Credit Parties will execute and deliver a quit claim deed to the Property (together with an executed paper version of same), which is to be held by the Lender's solicitors in escrow and may not be registered unless the Borrower has committed an Event of Default under this loan facility and following receipt of written notice of such default has failed to remedy same, during the applicable cure period (save and except as noted below where no notice or cure period shall be required). 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 default in performance of any other obligation, it has continued for at least thirty (30) days after notice thereof has been given to the Borrower. Notwithstanding the foregoing, 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 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 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.
 - (c) an unregistered assignment of rents in respect of the Property;
 - (d) a general security agreement in all present and after-acquired personal property of the Credit Parties for registration, in respect of the Borrower only, pursuant to the provisions of the *Personal Property Security Act* (Ontario) ("PPSA"). Upon the occurrence of an Event of Default which has not been remedied the Lender shall be permitted to register in respect of all the Credit Parties under the PPSA;
 - (e) a beneficial owner's agreement executed by the beneficial owners of the Property charging the beneficial interest in the Property;

- (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 Guarantors for all indebtedness, which shall not be the subject of a registration under the PPSA unless there is an Event of Default which has not been remedied;
- (i) a postponement of claim from Sam Mizrahi in respect of all indebtedness of the Borrower and the Guarantors in favour of Sam Mizrahi;
- (j) an environmental indemnity from the Borrower and Guarantors; and
- (k)
 - (i) an irrevocable direction executed by the Credit Parties to the escrow agent for the Project (or to the solicitors acting for the vendor on the Project sales if such solicitors are not the escrow agent), irrevocably authorizing and directing the escrow agent or Project solicitors, as the case may be, to remit the Net Proceeds to the Lender, within two (2) Business Days of the closings, subject to the prior repayment of all monies due and owing to the construction lender for the Project and the deposit bond issuer; and
 - (ii) an acknowledgement and undertaking executed by the escrow agent (or Project solicitors as the case may be) agreeing and undertaking to remit the Net Proceeds to the Lender in accordance with the irrevocable direction referred to in Section 5.1(k)(i).

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.

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, 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 and financial statements for the Credit Parties 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) (already provided to the Lender);
 - (iii) current appraisals of the Property, if available;
- (e) satisfactory review of the Cost Consultant report with respect to the Borrower and its subsidiaries and their projects, 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) confirmation, satisfactory to the Lender and the Lender's counsel, that the Borrower and its subsidiaries do not have any current debt over their personal and real property, with the exception of existing mortgages on title for 145 Davenport Rd. and 185 Davenport Rd., which existing mortgages are to be repaid in full and discharged from title to the Property, on or before closing;
 - (h) 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 therein have been complied with and the Lender being satisfied with its review of all of the Leases of the Property;
 - (i) 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 together with an approval letter from an insurance consultant retained by the Lender (at the Borrower's request, the Lender shall not retain Intech);
 - (j) delivery by the Borrower to the Lender of evidence that all realty taxes for the Property have been paid in full to date;
 - (k) 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;
 - (l) 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 and such other matters as the Lender may require, in form and substance satisfactory to the Lender;

- (m) a title insurance policy issued by Stewart Title, 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. 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;
 - (n) the Borrower has provided evidence, satisfactory to the Lender of the current zoning of the Property; and
 - (o) the representations and warranties set out in Section 8.1 or otherwise hereunder are true and correct as of the date of advance of Loan.
- 6.2 **Advance.** The proceeds of the Loan less the Interest Reserve to be held by the Lender will be paid directly to the Borrower or as it may further direct.

PART 7 – INTERCREDITOR

- 7.1 The Borrower acknowledges and agrees that any default by the Borrower or any of the Subsidiaries to the senior construction lender or any Permitted Encumbrances 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 Credit Parties 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 business as presently carried on by the Credit Parties and 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 each of the Credit Parties have 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 each of the Credit Parties 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 the Credit Parties enforceable against and each of the Borrower and the Credit Parties in accordance with its terms.
 - (d) The execution and delivery of this Agreement and the other Loan Documents and the performance by the Borrower and 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 the Credit Parties or constitute a breach of any existing contractual or other obligation of the Borrower and the Credit Parties or contravene any licence or permit to which the

Borrower and the Credit Parties are subject, (ii) will not result in the creation of, or require the Borrower and the Credit Parties 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 the Credit Parties.

- (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 the Credit Parties.
- (f) The financial information of the Borrower and the Subsidiaries in the form delivered by the Borrower to the Lender fairly, completely and accurately present the financial condition of the Borrower and the Subsidiaries 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 Borrower and the Subsidiaries or upon the ability of the Borrower to perform its obligations under this Agreement or any of the Loan Documents.
- (g) Each of the Borrower and the Credit Parties are not an insolvent persons within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
- (h) There are no actions, suits, judgements, awards or proceedings pending or, to the knowledge of the Borrower, threatened against the Borrower or the Subsidiaries 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 Borrower or the Subsidiaries 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, and the Borrower or the Subsidiaries 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.
- (i) Each of the Borrower and the Subsidiaries 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.
- (j) The Borrower has provided to the Lender all material information relating to the financial condition, business and prospects of the Borrower and all such information is true, accurate and complete in all material respects.
- (k) There are no shareholder loans to the Borrower other than from Sam Mizrahi or direct or indirect subsidiaries, related entities or associates of Sam Mizrahi, in respect of which loans Sam Mizrahi has executed a postponement of claim to and in favour of the Lender.

- (l) There are no shareholder loans to the Subsidiaries other than from Sam Mizrahi or direct or indirect subsidiaries, related entities or associates of Sam Mizrahi, in respect of which loans Sam Mizrahi has executed a postponement of claim to and in favour of the Lender.
- (m) The Borrower and the Credit Parties have good title to the Assets and are the legal and beneficial owners thereof.
- (n) There are no liens, claims, charges or encumbrances whatsoever against the Assets, the Borrower, the Subsidiaries or the Subsidiary Properties other than the Permitted Encumbrances.
- (o) The Borrower and the Credit Parties have good title to, and possession of, the Collateral.
- (p) Sam Mizrahi is the sole shareholder and sole director of the Borrower.
- (q) Mizrahi Enterprises Inc. is the sole shareholder of each of the Subsidiaries.
- (r) Sam Mizrahi is the sole director of each of the Subsidiaries.
- (s) One8One Davenport Inc. is the sole registered owner of 145 Davenport Road with good and marketable title thereto and Mizrahi Soaring Developments Inc., is the sole beneficial owner of 145 Davenport Road.
- (t) One8One Davenport Inc. is the sole registered and beneficial owner of 185 Davenport Road with good and marketable legal and beneficial title thereto.

PART 9 - POSITIVE COVENANTS

- 9.1 **Covenants.** The Borrower and each of the Credit Parties 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 licenses, permits, consents and approvals from all applicable Governmental Authorities required in connection with the Project;
 - (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 sound accounting practice;
 - (f) 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 and the Subsidiary Properties (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;

- (g) during the Term, with respect to each of the Subsidiaries and the Subsidiary Properties, 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. 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;
- (h) during the Term, the Borrower will have monthly meetings to update the Lender with respect to the Subsidiaries and the Subsidiary Properties, and the Project;
- (i) 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;
 - (viii) monthly subsearch report confirming no change in title save and except for the Permitted Encumbrances; and
 - (ix) 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;

- (j) 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 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 which, for greater certainty, will not include any Security over the Subsidiary Properties;
- (k) it will pay 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 in respect of the Collateral or any part or parts of the Collateral;
- (l) it will insure and keep the Collateral and the Subsidiary Properties insured to its full insurable value by a company or companies selected by the Borrower and approved in writing by the Lender 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 whenever required by the Lender, the Borrower will:
 - (i) 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 both as to the amount of insurance required under this Agreement and the perils against which coverage is required and the Borrower will immediately insure in accordance with such certificate;
 - (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
 - (iii) deposit with the Lender every policy and renewal certificate for such insurance or a certified copy of each;
- (m) 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 the Subsidiaries, 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. The Borrower shall provide the Lender any other information concerning its financial position 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 shall provide the Lender with any financial statement or financial information of the Borrower or the Subsidiaries that it is required to provide, and in the same manner that it is required to provide, in connection with the Permitted Indebtedness;
- (n) it will promptly give written notice to the Lender of all claims or proceedings pending or threatened against the Borrower, the Collateral or the Subsidiary Properties which may

give rise to uninsured liability or which may have a material adverse affect on the business or operations of the Borrower;

- (o) save and except for demolition of the existing buildings on the Property pursuant to demolition permits issued by the City of Toronto (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 the Borrower 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;
- (p) 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 or corporation 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;
- (q) 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 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;
- (r) the Borrower will forthwith pay Project costs when due and complete the Project in accordance with the Project budget;
- (s) 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;
- (t) 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;
- (u) provide a complete copy of each unit sale agreement and each amendment thereto to the Lender within fifteen (15) days after the execution thereof;

- (v) sell all units in the Project in a commercially reasonable manner;
- (w) 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;
- (x) 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
- (y) not make material changes to the Project budget without the prior written approval of the Lender, acting reasonably.

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 Subsidiary Properties 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 Subsidiary Properties (other than Permitted Encumbrances), and will not permit any of the Subsidiaries to do the same (other than Permitted Encumbrances) save and except as contemplated under Part 7 hereof;
- (c) utilize any portion of the mortgage proceeds for the purpose of making repairs, improvements or alterations to the Assets or for the purpose of paying off any mortgage taken out for the purpose of financing any such repairs, improvements or alterations;
- (d) change, alter or amend its name or the name of any of the Subsidiaries or of the Borrower's chief place of business without first providing notice to the Lender;
- (e) purchase, establish or acquire in any manner any new business undertaking;
- (f) materially change the nature of the Borrower's or any of the Credit Parties' businesses as presently carried on;
- (g) amalgamate, consolidate or merge or enter into a partnership, joint venture or syndicate with any other person;
- (h) enter into any transaction, or permit any of the Subsidiaries to do so, outside the ordinary active business operations of the Borrower and its Subsidiaries, other than Permitted Indebtedness;
- (i) permit the Borrower or any of the Credit Parties to be dissolved whether by act or omission;

- (j) permit any Encumbrance, lien or similar charge to be placed against the Collateral, the Subsidiary Properties 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;
- (k) change the Voting Control of the Borrower or any of the Credit Parties;
- (l) create, issue, incur or otherwise become liable upon, directly or indirectly, any Financial Indebtedness or permit any of the Subsidiaries to do so other than the Permitted Encumbrances;
- (m) 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;
- (n) 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 of the Subsidiaries to do any such thing with respect to the capital or capital structure of such Subsidiaries;
- (o) 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 any of the Subsidiaries to do any such thing save and except as contemplated under Part 7 hereof;
- (p) 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; or
- (q) redeem or purchase any of the shares of the Borrower or the Subsidiaries.

PART 11 - ENVIRONMENTAL MATTERS

- 11.1 **Environmental Representations.** The Borrower represents and warrants 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 the Borrower has operated its business at all times and has, 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 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 Subsidiary Properties.
- 11.3 **Hazardous Substances Indemnity.** The Borrower 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 Subsidiary Properties at any time, past, present or future.

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 the Borrower fails 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 any of the Subsidiaries or the winding up of the Borrower or any of the Subsidiaries;
 - (d) if a petition is filed for the winding up of the Borrower or any of the Subsidiaries;
 - (e) if the Borrower or any of the Subsidiaries 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 the Borrower or any of the Subsidiaries;
 - (g) if any proceedings concerning the Borrower or any of the Subsidiaries 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 Subsidiaries 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 Subsidiaries or other reorganization or arrangement respecting its liabilities or if the Borrower or any of the Subsidiaries 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 the Borrower or any of the Subsidiaries;
- (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 Subsidiaries;
- (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 any of the Subsidiary Properties;
- (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; or
- (q) if the Borrower sells, agrees to sell or otherwise disposes of the Collateral or any part or parts of it, other than as permitted herein.

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 thirty (30) 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 thirty (30) days after the date of occurrence of such event thereunder provided that the Borrower is diligently contesting such Event of Default in a bona fide manner. Notwithstanding the foregoing, there shall be no

grace period with respect to any Event of Default under Sections 12.1(c), 12.1(e), 12.1(i), 12.1(h) or 12.1(l).

- 12.3 **Waiver.** The Lender may waive any breach by the Borrower of any of the provisions contained in this Agreement or any default by the Borrower in the observance or performance of any covenant or condition required to be observed or performed by the Borrower 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 the Borrower defaults in any covenant to be performed by it under this Agreement or under the Security, the Lender may perform any covenant of the Borrower 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 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 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 whatsoever 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, 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 any 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 Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Attention: Sam Mizrahi, President
Email: sam@mizrahicorp.com

-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:

Bridging Finance Inc.
77 King Street West
Suite 2925
Toronto, ON M5K 1K7

Attention: Natasha Sharpe, CEO & Chief Investment Officer
Email: nsharpe@bridgingfinance.ca

-and to-

Chaitons LLP
Barristers and Solicitors
5000 Yonge Street
10th Floor
Toronto, Ontario
M2N 7E9

Attention: Philip L. Taylor
Email: philip@chaitons.com

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 – SUCCESSION

- 13.1 In the event of the untimely death or incapacity for a period of 120 days 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 14 - GENERAL

- 14.1 **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.
- 14.2 **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.
- 14.3 **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.
- 14.4 **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.
- 14.5 **Assignment by Lender.** The Lender shall have the right, at any time after one (1) year following the date of the initial advance of the Loan, to assign its rights under this Agreement, in whole or in part.
- 14.6 **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.
- 14.7 **“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.

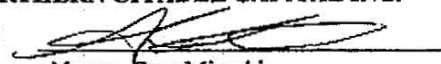
- 14.8 **Maximum Return.** The Borrower and the Lender acknowledge and agree that it is their express intention and desire that in no event will the total payment to the Lender whether for interest, fees, bonus, commission, commitment, stand by or processing fees, or service charges or otherwise (collectively, "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.
- 14.9 **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.
- 14.10 **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.

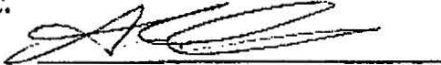
Borrower:

NORTHERN CITADEL CAPITAL INC.


Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

Guarantors:

MIZRAHI SOARING DEVELOPMENTS INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

ONESONE DAVENPORT INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation


Lender:

**BRIDGING FINANCE INC., as agent for
Sprott Bridging Income Fund LP**

Per: 
Name: Natasha Sharpe
Title: CEO and Chief Investment Officer
I have the authority to bind the corporation

Additional Party:

MIZRAHI ENTERPRISES INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

SCHEDULE A

LEGAL DESCRIPTION OF THE PROPERTY

145 Davenport Road:

PCL 5-1 SEC A689E; LT 5 S/S DAVENPORT RD PL 689E TORONTO; LT 6 S/S DAVENPORT RD PL 689E TORONTO; PT LT 7 S/S DAVENPORT RD PL 689E TORONTO; PT LT 8 S/S DAVENPORT RD PL 689E TORONTO; PT LT K PL 401 TORONTO; PT LT 4 PL 411 TORONTO COMM AT A POINT IN THE SLY LIMIT OF DAVENPORT RD DISTANT 56 FT 8 5/8 INCHES MEASURED ELY THEREON FROM THE N WLY ANGLE OF SAID LT 8; THENCE SLY IN A STRAIGHT LINE 81 FT 9 INCHES MORE OR LESS TO A POINT IN THE SLY LIMIT OF THE SAID LT 8 DISTANT 30 FT MEASURED ELY THEREON FROM THE S WLY ANGLE THEREOF; THENCE WLY ALONG THE SLY LIMIT OF SAID LT 8 BEING THE NLY LIMIT OF LT 4 ON SAID REGISTERED PL 411 (YORKVILLE) 40 FT 7 INCHES MORE OR LESS TO A POINT THEREIN DISTANT 105 FT 1/2 AN INCH ELY THEREALONG FROM THE NW ANGLE OF SAID LT; THENCE SLY AND PARALLEL TO THE ELY LIMIT OF HAZELTON AV 28 FT TO A POINT; THENCE ELY PARALLEL TO THE NLY LIMIT OF SAID LT 4, 17 FT 8 1/2 INCHES MORE OR LESS TO THE WLY FACE OF THE WLY WALL OF AN OLD FRAME SHED SITUATE ON THE REAR PORTION OF THE SLY PT OF SAID LT 4 PL 411 YORKVILLE; THENCE NLY ALONG SAID WLY FACE OF WALL 3 INCHES MORE OR LESS TO THE N W CORNER OF SAID FRAME SHED; THENCE ELY ALONG THE NLY FACE OF THE NLY WALL OF SAID FRAME SHED 17 FT 8 1/2 INCHES MORE OR LESS TO THE N E CORNER OF SAID FRAME SHED; THENCE SLY ALONG THE ELY FACE OF THE ELY WALL OF SAID FRAME SHED 3 INCHES MORE OR LESS TO THE SLY LIMIT OF THE NLY 28 FT OF SAID LT 4, PL 411 (YORKVILLE); THENCE ELY ALONG SAID SLY LIMIT OF THE NLY 28 FT OF SAID LT 4, PL 411 YORKVILLE AND ITS PRODUCTION ELY 47 FT 11 INCHES MORE OR LESS TO THE ELY LIMIT OF LT K ACCORDING TO SAID REGISTERED PL 401, BEING ALSO THE WLY LIMIT OF LT 6 ACCORDING TO SAID REGISTERED PL 689E; THENCE SLY ALONG SAID WLY LIMIT OF LT 6 AND ALONG THE WLY LIMIT OF SAID LT 5, 37 FT 11 INCHES MORE OR LESS TO THE S W ANGLE OF SAID LT 5; THENCE ELY ALONG THE SLY LIMIT OF SAID LT 5, 96 FT 4 INCHES MORE OR LESS TO THE S WLY LIMIT OF DAVENPORT RD; THENCE N WLY AND WLY ALONG THE S WLY AND SLY LIMITS OF DAVENPORT RD 170 FT 3/4 OF AN INCH MORE OR LESS TO THE POB; TORONTO, CITY OF TORONTO BEING ALL OF PIN 21196-0019 (LT).

185 Davenport Road:

PART OF LOTS 7 AND 8 PLAN 689E, DESIGNATED AS PART 1 ON PLAN 66R20718; CITY OF TORONTO BEING ALL OF PIN 21196-0327 (LT)

SCHEDULE B

SPECIFIC PERMITTED ENCUMBRANCES

PPSA

1. Registrations existing as of the date hereof in favour of Aviva Insurance Company of Canada against One8One Davenport Inc. and Mizrahi Soaring Developments Inc. bearing registration numbers 20120618 1314 1862 1374 and 20120622 1344 1962 1789.
2. Registrations existing as of the date hereof in favour of United Overseas Bank Limited against One8One Davenport Inc., Mizrahi Soaring Developments Inc. and Mizrahi Enterprises Inc. bearing registration numbers 20131206 0942 1862 0728 and 20131206 0942 1862 0729.
3. Registration existing as of the date hereof in favour of Ridgemount Hazelton Ltd. against Mizrahi Enterprises Inc. bearing registration number 20120111 1218 1590 4592.
4. Registration existing as of the date hereof in favour of Ridgemount M I LP against Mizrahi Enterprises Inc. bearing registration number 20130409 1606 1590 8474.
5. Registration existing as of the date hereof in favour of Ridgemount M II LP against Mizrahi Enterprises Inc. bearing registration number 20140110 0914 1590 4500.
6. Registration existing as of the date hereof in favour of Firm Capital Mortgage Fund Inc. against Mizrahi Enterprises Inc. bearing registration number 20141009 1533 1616 2133.

REAL PROPERTY

1. A charge/mortgage in favour of United Overseas Bank Limited, the construction lender for the Project, registered as instrument number AT3484185 in the maximum principal amount of \$55,000,000.
2. A charge/mortgage in favour of Aviva Insurance Company of Canada, acting as a deposit bond issuer, as security for the deposit bond facility for the Project, registered as instrument number AT3428072 in the maximum principal amount of \$20,000,000.

**SCHEDULE C
PROJECT BUDGET**

Altus Group		PROJECT BUDGET PROFORMA AT JUNE 2012							Project No		108907	
110 Residential Suites, Mixed Use Condominium 181 Davenport Rd Toronto, Ontario									Date		21-Jun-12	
									Report No		P080008	
Item Description	(1)	(2) - (1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	
LAND												
1 Land Cost	14,561,000	0	14,561,000	14,561,000	0	14,561,000	0	110.85	138.11	132.373		
2 Land Appraisal Surplus	0	0	N/A	0	0	N/A	N/A	N/A	N/A	N/A		
3 Land VTR Interest	0	0	N/A	0	0	N/A	N/A	N/A	N/A	N/A		
4 Land Transfer Taxes	313,305	0	313,305	313,305	0	313,305	0	2.30	2.97	2.848		
5 Land Transmittals	0	0	N/A	0	0	N/A	N/A	N/A	N/A	N/A		
6 Lease Termination	0	0	N/A	0	0	N/A	N/A	N/A	N/A	N/A		
7 Realty Taxes	250,000	0	250,000	0	0	250,000	1.90	2.37	2.273			
8 Rent Rates/Municipal Legal	100,000	100,000	200,000	50,000	0	50,000	1.52	1.90	1.818			
9 Site Plan Approval Fees	100,000	0	100,000	0	0	100,000	0.78	0.95	0.99			
10 Liability and Builder's Risk Insurance	130,000	28,668	158,668	0	0	158,668	1.21	1.50	1.442			
Subtotal	15,454,305	128,668	15,582,973	14,924,305	0	14,924,305	658,668	134.63	147.80	141,663.59		
Check	15,454,305	128,668	15,582,973	14,924,305	0	14,924,305	658,668	134.63	147.80	141,663.59		
CONSTRUCTION (HARD)												
11 Construction	32,660,151	(70,029)	31,596,131	0	0	31,596,131	246.14	309.17	296,328			
12 Office Works (Subway Contingency)	0	0	N/A	0	0	N/A	N/A	N/A	N/A	N/A		
13 Escalator Contingency	0	0	N/A	0	0	N/A	N/A	N/A	N/A	N/A		
14 Design and Post Contract Contingency	1,200,000	2,158,000	3,358,000	0	0	3,358,000	25.56	31.85	30,527			
15 Contaminated Soil Abatement	0	0	0	0	0	0	0.00	0.00	0.00			
16 Demolition	100,000	0	100,000	0	0	100,000	0.76	0.95	0.99			
17 Furnishings	100,000	100,000	200,000	0	0	200,000	1.52	1.90	1.818			
18 Utility Connections	150,000	100,000	250,000	0	0	250,000	1.90	2.37	2.273			
19 Purchaser Upgrades	0	0	Excluded	0	0	N/A	N/A	N/A	N/A	N/A		
20 Warranty	75,000	89,000	164,000	0	0	164,000	1.20	1.57	1,500			
21 Public Art Contribution	0	0	0	0	0	0	0.00	0.00	0.00			
22 Construction Management Fees	915,000	62,869	977,869	0	0	977,869	7.44	9.28	8,899			
Subtotal	35,107,151	2,439,849	37,547,000	0	0	37,547,000	285.83	354.13	341,226.36			
Check	35,107,151	2,439,849	37,547,000	0	0	37,547,000	285.83	354.13	341,226.36			
CONSTRUCTION (SOFT)												
23 Various Enclosure Fees	75,000	88,000	158,000	0	0	158,000	1.20	1.50	1,436			
24 Section 37 Contributions	500,000	0	500,000	0	0	500,000	3.87	4.74	4,545			
25 Development Charges	350,000	943,153	1,293,153	0	0	1,293,153	9.94	12.27	11,756			
26 Parkland Dedication	1,456,100	0	1,456,100	0	0	1,456,100	11.08	13.81	13,237			
27 Building Permit	200,000	59,720	259,720	0	0	259,720	1.98	2.46	2,361			
28 Educational Development Charges	35,000	76,458	111,458	0	0	111,458	0.85	1.06	1,013			
Subtotal	2,611,100	1,167,331	3,778,431	0	0	3,778,431	28.76	35.84	34,349.37			
Check	2,611,100	1,167,331	3,778,431	0	0	3,778,431	28.76	35.84	34,349.37			
DESIGN												
29 Architect	750,000	0	750,000	102,322	0	102,322	647,678	5.71	7.11	6,818		
30 Design Consultant - Interior Design	500,000	(200,000)	300,000	0	0	300,000	2.28	2.85	2,727			
31 Structural Engineer	140,000	0	140,000	0	0	140,000	1.07	1.33	1,273			
32 Rebar Detailing	0	0	N/A	0	0	N/A	N/A	N/A	N/A	N/A		
33 Mechanical & Electrical Engineer	150,000	0	150,000	0	0	150,000	1.14	1.42	1,364			
34 Civil Engineer	15,000	0	15,000	0	0	15,000	0.11	0.14	138			
35 Shoring Consultant	75,000	0	75,000	0	0	75,000	0.57	0.71	683			
36 Landscape Architect	30,000	0	30,000	0	0	30,000	0.23	0.28	273			
37 Sustainable Design Consultant	50,000	0	50,000	0	0	50,000	0.38	0.47	455			
38 Printing and Copying	50,000	0	50,000	0	0	50,000	0.38	0.47	455			
39 Consultants Disbursements	50,000	0	50,000	0	0	50,000	0.38	0.47	455			
40 Cost Consultant	50,000	0	50,000	0	0	50,000	0.38	0.47	455			
41 Planning Consultant	75,000	0	75,000	0	0	75,000	0.57	0.71	682			
42 Municipal Approvals Consultant	75,000	0	75,000	2,141	0	2,141	72,859	0.57	0.71	682		
43 Traffic consultant	15,000	0	15,000	0	0	15,000	0.11	0.14	136			
44 Testing and Inspections/Bulletin 19	75,000	25,000	100,000	0	0	100,000	0.76	0.95	909			
45 Soils and Environment Consultant	200,000	(100,000)	100,000	92,866	0	92,866	7,114	0.76	0.95	909		
46 Legal Surveys	40,000	0	40,000	0	0	40,000	0.30	0.38	364			
47 Miscellaneous & Other Fees	250,000	0	250,000	0	0	250,000	1.90	2.37	2,273			
Subtotal	2,590,000	(225,000)	2,315,000	197,349	0	197,349	2,117,651	17.62	21.98	21,045.45		
Check	2,590,000	(225,000)	2,315,000	197,349	0	197,349	2,117,651	17.62	21.98	21,045.45		
LEGAL & ADMINISTRATION												
48 Legal Fees - General	200,000	0	200,000	85,366	0	85,366	114,634	1.52	1.89	1,814		
49 Legal Fees - Corporate / Finance / Lender	100,000	(25,000)	75,000	0	0	75,000	0.57	0.71	682			
50 Legal Fees - Sale/Closing/Leasing	100,000	10,000	110,000	0	0	110,000	0.84	1.04	1,000			
51 External Audit and Accounting	50,000	0	50,000	0	0	50,000	0.38	0.47	455			
52 Development Management Fees	3,000,000	0	3,000,000	85,366	0	3,085,366	22.84	28.45	27,273			
Subtotal	3,450,000	(15,000)	3,435,000	85,366	0	85,366	3,349,634	26.15	32.58	31,227.27		
Check	3,450,000	(15,000)	3,435,000	85,366	0	85,366	3,349,634	26.15	32.58	31,227.27		

AltusGroup		110 Residential Suites, Mixed Use Condominium		PROJECT BUDGET PROFORMA AT JUNE 2012		Project No		10009	
		181 Devonport Rd				Date		21-Jun-11	
		Toronto, Ontario				Report No		Proforma	
Item #	Developer	Item	(1)	(2) - (1)	(2)	(3)	(4)	(5)	(6)
MARKETING / SALES / LEASING									
53		Marketing & Advertising	800,000	0	800,000	33,796	33,796	766,204	6.00
54		Sales Commission/ Lead Broker (Residential)	3,360,000	(2,412,109)	947,891	0	0	947,891	2.30
55		Sales Commission Third Party (Residential)	0	1,780,499	2,787,499	0	0	2,787,499	21.32
56		Sales Office - maintenance/charities/telephone	0	100,000	100,000	0	0	100,000	0.75
57		Sales Office - Construction	800,000	0	800,000	84,625	84,625	715,375	4.57
58		Sales Office - furniture and models	400,000	0	400,000	330,374	330,374	69,626	3.05
59		Tenant Inducements	0	0	0	0	0	0	0.00
60		Retail Leasing Commissions	0	0	0	0	0	0	0.00
61		Purchaser Incentives/Cloways	0	0	0	0	0	0	0.00
		Subtotal	5,160,000	478,266	5,638,266	438,799	438,799	5,214,467	43.65
		Check	5,160,000	478,266	5,638,266	438,799	438,799	5,214,467	43.65
OCCUPANCY OPERATING EXPENSES									
62		Opening Costs & Taxes	500,000	0	500,000	0	0	500,000	3.81
63		Ready Tax	300,000	0	300,000	0	0	300,000	2.31
		Subtotal	800,000	0	800,000	0	0	800,000	6.12
		Check	800,000	0	800,000	0	0	800,000	6.12
FINANCE									
64		Commitment Fees	300,000	51,080	351,080	0	0	351,080	2.80
65		Deposit Issuer Commitment Fees	10,000	0	10,000	0	0	10,000	0.08
66		Bank Administration Fees	5,000	0	5,000	0	0	5,000	0.04
67		Bank Discharge Fees	5,000	(200)	4,800	0	0	4,800	0.04
68		Standby Fee	125,000	85,245	210,245	0	0	210,245	1.68
69		CMHC Fee	0	0	0	0	0	0	0.00
70		PM Fee CMHC Fee	0	0	0	0	0	0	0.00
71		LC Fees/Premiums for Tarion	45,000	47,000	92,000	0	0	92,000	0.73
72		RCB Fees	0	0	0	0	0	0	0.00
73		Project Monitor	145,000	0	145,000	0	0	145,000	1.16
74		Predevelopment Loan Interest	585,000	0	585,000	483,197	483,197	101,803	4.20
75		Construction Loan Interest	2,200,000	222,495	2,422,495	483,197	483,197	1,939,298	22.05
		Subtotal	3,410,000	401,720	3,811,720	483,197	483,197	3,328,523	26.82
		Check	3,410,000	401,720	3,811,720	483,197	483,197	3,328,523	26.82
CONTINGENCY									
76		Development Contingency	1,100,000	14,444	1,114,444	0	0	1,114,444	8.49
		Subtotal	1,100,000	14,444	1,114,444	0	0	1,114,444	8.49
		Check	1,100,000	14,444	1,114,444	0	0	1,114,444	8.49
GOVERNMENT TAXES									
77		GST on Revenue	0	0	0	0	0	0	0.00
78		HST on Revenue	0	0	0	0	0	0	0.00
79		GST Payable	0	0	0	0	0	0	0.00
80		GST Recoverable	0	0	0	0	0	0	0.00
81		HST Payable	0	0	0	0	0	0	0.00
82		HST Recoverable	0	0	0	0	0	0	0.00
		Subtotal	0	0	0	0	0	0	0.00
		Check	0	0	0	0	0	0	0.00
GROSS EXPENDITURES (A)			10,020,000	1,000,000	11,020,000	16,125,018	16,125,018	9,394,982	75.00
OFFSETTING INCOME RECEIVED									
83		Occupancy Income (Residential Units)	(500,000)	(840,148)	(1,340,148)	0	0	(1,340,148)	(10.29)
		Check	(500,000)	(840,148)	(1,340,148)	0	0	(1,340,148)	(10.29)
NET EXPENDITURES (A-B)			9,520,000	115,852	9,635,852	16,125,018	16,125,018	8,054,834	64.71
		Check	9,520,000	115,852	9,635,852	16,125,018	16,125,018	8,054,834	64.71

SCHEDULE D
RENT ROLL

145 DAVENPORT ROAD TENANTS			
SUITE	SQ. FT	MONTHLY AMOUNT	TENANT
Ground Floor East	1470	\$4022	Sean Orr Works
Ground Floor West		\$8000	Mizrahi Khalili Inc.
Second Floor	6000	\$0	7537506 Canada Inc.

This is Exhibit “B” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 20th day of September, 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.

A Commissioner for taking affidavits

ADAM DRIEDGER

Dated as of February 24, 2015

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP (the “**Lender**”) loan to Northern Citadel Capital Inc. (the “**Borrower**”) pursuant to the loan agreement among, *inter alia*, the Borrower and the Lender dated as of the 17th day of December, 2014 (the “**Loan Agreement**”) and the related security described in Schedule “A” attached hereto (collectively, the “**Existing Security**”)

We confirm our mutual agreement to increase the principal amount of the loan facility from \$11,267,123.29 to \$15,613,013.70. In this regard, we confirm that the Lender has agreed to amend the terms and conditions of the Loan Agreement and Existing Security as follows:

1. Effective the date hereof, the reference to “11,267,123.29” in Section 2.1 of the Loan Agreement is hereby deleted and replaced with “\$15,613,013.70”.
2. Effective the date hereof, the reference to “\$1,453,698.63” in section 3.1 of the Loan Agreement is hereby deleted and replaced with “\$1,912,328.77”
3. Effective the date hereof, the reference to “11,267,123.29” in the heading of the Promissory Note granted by the Borrower in favour of the Lender dated as of the 17th day of December 2014 (the “**Promissory Note**”) is hereby deleted and replaced with “\$15,613,013.70”.
4. Effective the date hereof, the reference to “ELEVEN MILLION TWO HUNDRED SIXTY SEVEN THOUSAND ONE HUNDRED TWENTY THREE CANADIAN DOLLARS AND TWENTY NINE (Cdn. \$11,267,123.2) CENTS” in the first paragraph of the Promissory Note is hereby deleted and replaced with “FIFTEEN MILLION SIX HUNDRED THIRTEEN THOUSAND THIRTEEN CANADIAN DOLLARS AND SEVENTY (Cdn. \$15,613,013.70) CENTS”.
5. Effective as of the date hereof, the reference to “11,267,123.29” in the Consideration Field of the Electronic Registration form of the Quit Claim Deed granted by, *inter alia*, the Borrower in favour of the Lender (the “**Quit Claim Deed**”), is hereby deleted and replaced with “\$15,613,013.70”.
6. Effective as of the date hereof, the reference to “\$167,481.85” in the Provincial Land Transfer Tax field of the Quit Claim Deed is hereby deleted and replaced with “\$232,670.21”.
7. Effective as of the date hereof, the reference to “\$166,731.85” in the Municipal Land Transfer Tax field of the Quit Claim Deed is hereby deleted and replaced with “\$231,920.21”.
8. Effective as of the date hereof, the reference to “\$11,267,123.29” in Section 3 in the Provincial and Municipal Land Transfer Tax statements field of the Quit Claim Deed is hereby deleted and replaced with “\$15,613,013.70” in each instance.

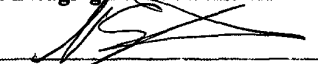
9. The Lender is hereby authorized to update the quit claim deed with the amendments noted in Section 5-8 above and attach same to the Acknowledgment and Direction re Quit Claim Deed dated December 17, 2014. For greater certainty, a copy of the updated Quit Claim Deed is attached hereto as Schedule "B".
10. Effective as of the date hereof, the reference to "\$11,267,123.29" in the first recital of the Guarantee given by Mizrahi Soaring Developments Inc. and One8One Davenport Inc. (collectively the "Guarantors") in favour of the Lender on the 17th day of December, 2014 is hereby deleted and replaced with "\$15,613,013.70".
11. Effective as of the date hereof, the reference to "\$11,267,123.29" in the first recital of the Postponement Agreement given by Sam Mizrahi in favour of the Lender on the 17th day of December, 2014 is hereby deleted and replaced with "\$15,613,013.70".
12. The Borrower, the Guarantors, Sam Mizrahi and Mizrahi Enterprises Inc. (collectively, the "Obligors") confirm that to the extent a party thereto, that the Loan Agreement and Existing Security has not been discharged, waived or varied except as provided herein, that it is binding upon the Obligors, as applicable, and that it is valid and enforceable in accordance with its written terms and it shall constitute, and shall be held by the Lender as, general and continuing security for the payment and fulfillment of all of the indebtedness, liabilities and obligations of the Obligors, , as applicable, present or future, direct or indirect, contingent or not, matured or not, including, without limitation, the obligations under the Promissory Note, as amended by this Agreement.
13. The net proceeds of the additional amount of the loan hereunder of \$3,887,260.27 shall be paid directly to the Borrower or as it may further direct.
14. Subject to due diligence satisfactory to the Lender in its sole discretion, the Lender will consider extending the term to June 30, 2016.
15. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Existing Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
16. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.
17. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, as may be required to evidence the true intent and meaning of this Agreement.

18. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]


Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
Sprott Bridging Income Fund LP**


Per: 
Name: Natasha Sharpe
Title: CEO and Chief Investment Officer

We Acknowledge and Accept the terms and conditions of this Agreement as of this 24th day of February, 2015.

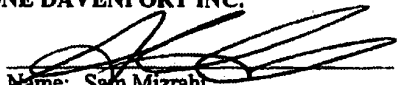
NORTHERN CITADEL CAPITAL INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation


**MIZRAHI SOARING DEVELOPMENTS
INC.**

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

ONEBONE DAVENPORT INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI ENTERPRISES INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation


Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
Sprott Bridging Income Fund LP**


Per: _____
Name: Natasha Sharpe
Title: CEO and Chief Investment Officer

We Acknowledge and Accept the terms and conditions of this Agreement as of this 24th day of February, 2015.


NORTHERN CITADEL CAPITAL INC.

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Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI ENTERPRISES INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

Schedule "A"
Existing Security

Each dated as of December 17, 2014:

1. Loan Agreement.
2. Promissory Note.
3. Quit Claim Deed.
4. General Assignment of Rents.
5. General Security Agreement from the Borrower and the Guarantors.
6. Beneficial Owners' Agreement in respect of 145 Davenport Road.
7. Assignment of Material Agreements from the Borrower and the Guarantors.
8. Assignment of Insurance from the Borrower and the Guarantors.
9. Guarantee from the Guarantors.
10. Postponement Agreement executed by Sam Mizrahi, the Borrower and the Guarantors.
11. Environmental Indemnity executed by the Borrower and the Guarantors.
12. Direction in favour of Harris Sheaffer LLP in respect to of the net proceeds received on closing of the project unit sales, executed by the Borrower, the Guarantors and Mizrahi Enterprises Inc., acknowledged by Harris Sheaffer LLP.

Schedule "B"
Quit Claim Deed

See Attached

LRO # 80 Transfer

In preparation on 2015 02 12 at 09:20

This document has not been submitted and may be incomplete.

yyyy mm dd Page 1 of 2

Properties

PIN 21196 - 0019 LT *Interest/Estate* Fee Simple

Description PCL 5-1 SEC A689E; LT 5 S/S DAVENPORT RD PL 689E TORONTO; LT 6 S/S DAVENPORT RD PL 689E TORONTO; PT LT 7 S/S DAVENPORT RD PL 689E TORONTO; PT LT 8 S/S DAVENPORT RD PL 689E TORONTO; PT LT K PL 401 TORONTO; PT LT 4 PL 411 TORONTO COMM AT A POINT IN THE SLY LIMIT OF DAVENPORT RD DISTANT 56 FT 8 5/8 INCHES MEASURED ELY THEREON FROM THE N WLY ANGLE OF SAID LT 8; THENCE SLY IN A STRAIGHT LINE 81 FT 9 INCHES MORE OR LESS TO A POINT IN THE SLY LIMIT OF THE SAID LT 8 DISTANT 30 FT MEASURED ELY THEREON FROM THE S WLY ANGLE THEREOF; THENCE WLY ALONG THE SLY LIMIT OF SAID LT 8 BEING THE NLY LIMIT OF LT 4 ON SAID REGISTERED PL 411 (YORKVILLE) 40 FT 7 INCHES MORE OR LESS TO A POINT THEREIN DISTANT 105 FT 1/2 AN INCH ELY THEREALONG FROM THE NW ANGLE OF SAID LT; THENCE SLY AND PARALLEL TO THE ELY LIMIT OF HAZELTON AV 28 FT TO A POINT; THENCE ELY PARALLEL TO THE NLY LIMIT OF SAID LT 4, 17 FT 8 1/2 INCHES MORE OR LESS TO THE WLY FACE OF THE WLY WALL OF AN OLD FRAME SHED SITUATE ON THE REAR PORTION OF THE SLY PT OF SAID LT 4 PL 411 YORKVILLE; THENCE NLY ALONG SAID WLY FACE OF WALL 3 INCHES MORE OR LESS TO THE N W CORNER OF SAID FRAME SHED; THENCE ELY ALONG THE NLY FACE OF THE NLY WALL OF SAID FRAME SHED 17 FT 8 1/2 INCHES MORE OR LESS TO THE N E CORNER OF SAID FRAME SHED; THENCE SLY ALONG THE ELY FACE OF THE ELY WALL OF SAID FRAME SHED 3 INCHES MORE OR LESS TO THE SLY LIMIT OF THE NLY 28 FT OF SAID LT 4, PL 411 (YORKVILLE); THENCE ELY ALONG SAID SLY LIMIT OF THE NLY 28 FT OF SAID LT 4, PL 411 YORKVILLE AND ITS PRODUCTION ELY 47 FT 11 INCHES MORE OR LESS TO THE ELY LIMIT OF LT K ACCORDING TO SAID REGISTERED PL 401, BEING ALSO THE WLY LIMIT OF LT 6 ACCORDING TO SAID REGISTERED PL 689E; THENCE SLY ALONG SAID WLY LIMIT OF LT 6 AND ALONG THE WLY LIMIT OF SAID LT 5, 37 FT 11 INCHES MORE OR LESS TO THE S W ANGLE OF SAID LT 5; THENCE ELY ALONG THE SLY LIMIT OF SAID LT 5, 96 FT 4 INCHES MORE OR LESS TO THE S WLY LIMIT OF DAVENPORT RD; THENCE N WLY AND WLY ALONG THE S WLY AND SLY LIMITS OF DAVENPORT RD 170 FT 3/4 OF AN INCH MORE OR LESS TO THE POB; TORONTO , CITY OF TORONTO

Address 145 DAVENPORT ROAD
TORONTO

PIN 21196 - 0327 LT *Interest/Estate* Fee Simple

Description PART OF LOTS 7 AND 8 PLAN 689E, DESIGNATED AS PART 1 ON PLAN 66R20718; CITY OF TORONTO

Address TORONTO

Consideration

Consideration \$ 15,595,260.85

Transferor(s)

The transferor(s) hereby transfers the land to the transferee(s).

Name ONE8ONE DAVENPORT INC.
Acting as a company

Address for Service 189 Forest Hill Road
Toronto, Ontario
M5P 2N3

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

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

Transferee(s)

Capacity

Share

Name BRIDGING FINANCE INC., AS AGENT FOR SPROTT
BRIDGING INCOME FUND LP
Acting as a company

Address for Service 77 King Street West
Suite No. 2925
Toronto, Ontario
M5K 1K7

895
F3189

LRO # 80 Transfer

In preparation on 2015 02 12 at 09:20

This document has not been submitted and may be incomplete.

yyyy mm dd Page 2 of 2

Statements

Schedule: Other: Quit Claim Deed

Calculated Taxes

Provincial Land Transfer Tax	\$232,403.91
Municipal Land Transfer Tax	\$231,653.91

File Number

Transferee Client File Number : 56680

F921

PROVINCIAL AND MUNICIPAL LAND TRANSFER TAX STATEMENTS

In the matter of the conveyance of: 21196 - 0019 PCL 5-1 SEC A689E; LT 5 S/S DAVENPORT RD PL 689E TORONTO; LT 6 S/S DAVENPORT RD PL 689E TORONTO; PT LT 7 S/S DAVENPORT RD PL 689E TORONTO; PT LT 8 S/S DAVENPORT RD PL 689E TORONTO; PT LT K PL 401 TORONTO; PT LT 4 PL 411 TORONTO COMM AT A POINT IN THE SLY LIMIT OF DAVENPORT RD DISTANT 56 FT 8 5/8 INCHES MEASURED ELY THEREON FROM THE N WLY ANGLE OF SAID LT 8; THENCE SLY IN A STRAIGHT LINE 81 FT 9 INCHES MORE OR LESS TO A POINT IN THE SLY LIMIT OF THE SAID LT 8 DISTANT 30 FT MEASURED ELY THEREON FROM THE S WLY ANGLE THEREOF; THENCE WLY ALONG THE SLY LIMIT OF SAID LT 8 BEING THE NLY LIMIT OF LT 4 ON SAID REGISTERED PL 411 (YORKVILLE) 40 FT 7 INCHES MORE OR LESS TO A POINT THEREIN DISTANT 105 FT 1/2 AN INCH ELY THEREALONG FROM THE NW ANGLE OF SAID LT; THENCE SLY AND PARALLEL TO THE ELY LIMIT OF HAZELTON AV 28 FT TO A POINT; THENCE ELY PARALLEL TO THE NLY LIMIT OF SAID LT 4, 17 FT 8 1/2 INCHES MORE OR LESS TO THE WLY FACE OF THE WLY WALL OF AN OLD FRAME SHED SITUATE ON THE REAR PORTION OF THE SLY PT OF SAID LT 4 PL 411 YORKVILLE; THENCE NLY ALONG SAID WLY FACE OF WALL 3 INCHES MORE OR LESS TO THE N W CORNER OF SAID FRAME SHED; THENCE ELY ALONG THE NLY FACE OF THE NLY WALL OF SAID FRAME SHED 17 FT 8 1/2 INCHES MORE OR LESS TO THE N E CORNER OF SAID FRAME SHED; THENCE SLY ALONG THE ELY FACE OF THE ELY WALL OF SAID FRAME SHED 3 INCHES MORE OR LESS TO THE SLY LIMIT OF THE NLY 28 FT OF SAID LT 4, PL 411 (YORKVILLE); THENCE ELY ALONG SAID SLY LIMIT OF THE NLY 28 FT OF SAID LT 4, PL 411 YORKVILLE AND ITS PRODUCTION ELY 47 FT 11 INCHES MORE OR LESS TO THE ELY LIMIT OF LT K ACCORDING TO SAID REGISTERED PL 401, BEING ALSO THE WLY LIMIT OF LT 6 ACCORDING TO SAID REGISTERED PL 689E; THENCE SLY ALONG SAID WLY LIMIT OF LT 6 AND ALONG THE WLY LIMIT OF SAID LT 5, 37 FT 11 INCHES MORE OR LESS TO THE S W ANGLE OF SAID LT 5; THENCE ELY ALONG THE SLY LIMIT OF SAID LT 5, 96 FT 4 INCHES MORE OR LESS TO THE S WLY LIMIT OF DAVENPORT RD; THENCE N WLY AND WLY ALONG THE S WLY AND SLY LIMITS OF DAVENPORT RD 170 FT 3/4 OF AN INCH MORE OR LESS TO THE POB; TORONTO, CITY OF TORONTO

21196 - 0327 PART OF LOTS 7 AND 8 PLAN 689E, DESIGNATED AS PART 1 ON PLAN 66R20718; CITY OF TORONTO

BY: ONE8ONE DAVENPORT INC.
 TO: BRIDGING FINANCE INC., AS AGENT FOR SPROTT BRIDGING INCOME FUND LP % (all PINs)

1. NATASHA SHARPE, CHIEF EXECUTIVE OFFICE AND CHIEF INVESTMENT OFFICER

I am

- (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- (c) A transferee named in the above-described conveyance;
- (d) The authorized agent or solicitor acting in this transaction for _____ described in paragraph(s) () above.
- (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for BRIDGING FINANCE INC., AS AGENT FOR SPROTT BRIDGING INCOME FUND LP described in paragraph(s) (c) above.
- (f) A transferee described in paragraph () and am making these statements on my own behalf and on behalf of _____ who is my spouse described in paragraph () and as such, I have personal knowledge of the facts herein deposed to.

2. I have read and considered the definition of "single family residence" set out in subsection 1(1) of the Act. The land being conveyed herein:
 does not contain a single family residence or contains more than two single family residences.

3. The total consideration for this transaction is allocated as follows:

(a) Monies paid or to be paid in cash	15,595,260.85
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	0.00
(ii) Given Back to Vendor	0.00
(c) Property transferred in exchange (detail below)	0.00
(d) Fair market value of the land(s)	0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	15,595,260.85
(h) VALUE OF ALL CHATTELS - items of tangible personal property	0.00
(i) Other considerations for transaction not included in (g) or (h) above	0.00
(j) Total consideration	15,595,260.85

PROPERTY Information Record

A. Nature of Instrument: Transfer
 LRO 80 Registration No. Date:
 B. Property(s): PIN 21196 - 0019 Address 145 DAVENPORT ROAD Assessment - Roll No TORONTO

898

F3192

F924

This is Exhibit “C” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 20th day of September, 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.

A Commissioner for taking affidavits

ADAM DRIEDGER

Dated as of March 11, 2015

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP (the "Lender") loan to Northern Citadel Capital Inc. (the "Borrower") pursuant to the loan agreement among, *inter alia*, the Borrower and the Lender dated as of the 17th day of December, 2014 (the "Loan Agreement") and the related security described in Schedule "A" attached hereto (collectively, the "Existing Security")

We confirm our mutual agreement to increase the principal amount of the loan facility from \$11,267,123.29 to \$22,051,369.87. In this regard, we confirm that the Lender has agreed to amend the terms and conditions of the Loan Agreement and Existing Security as follows:

1. Effective the date hereof, the reference to "11,267,123.29" in Section 2.1 of the Loan Agreement is hereby deleted and replaced with "\$22,051,369.87".
2. Effective the date hereof, the reference to "\$1,453,698.63" in section 3.1 of the Loan Agreement is hereby deleted and replaced with "\$2,558,904.11"
3. Effective the date hereof, the reference to "11,267,123.29" in the heading of the Promissory Note granted by the Borrower in favour of the Lender dated as of the 17th day of December 2014 (the "Promissory Note") is hereby deleted and replaced with "\$22,051,369.87".
4. Effective the date hereof, the reference to "ELEVEN MILLION TWO HUNDRED SIXTY SEVEN THOUSAND ONE HUNDRED TWENTY THREE CANADIAN DOLLARS AND TWENTY NINE (Cdn. \$11,267,123.2) CENTS" in the first paragraph of the Promissory Note is hereby deleted and replaced with "TWENTY TWO MILLION FIFTY ONE THOUSAND THREE HUNDRED SIXTY NINE CANADIAN DOLLARS AND EIGHTY SEVEN (Cdn. \$22,051,369.87) CENTS".
5. Effective as of the date hereof, the reference to "11,267,123.29" in the Consideration Field of the Electronic Registration form of the Quit Claim Deed granted by, *inter alia*, the Borrower in favour of the Lender (the "Quit Claim Deed"), is hereby deleted and replaced with "\$22,051,369.87".
6. Effective as of the date hereof, the reference to "\$167,481.85" in the Provincial Land Transfer Tax field of the Quit Claim Deed is hereby deleted and replaced with "\$329,245.55".
7. Effective as of the date hereof, the reference to "\$166,731.85" in the Municipal Land Transfer Tax field of the Quit Claim Deed is hereby deleted and replaced with "\$328,495.55".
8. Effective as of the date hereof, the reference to "\$11,267,123.29" in Section 3 in the Provincial and Municipal Land Transfer Tax statements field of the Quit Claim Deed is hereby deleted and replaced with "\$22,051,369.87" in each instance.

9. The Lender is hereby authorized to update the quit claim deed with the amendments noted in Section 5-8 above and attach same to the Acknowledgment and Direction re Quit Claim Deed dated December 17, 2014. For greater certainty, a copy of the updated Quit Claim Deed is attached hereto as Schedule "B".
10. Effective as of the date hereof, the reference to "\$11,267,123.29" in the first recital of the Guarantee given by Mizrahi Soaring Developments Inc. and One8One Davenport Inc. (collectively the "Guarantors") in favour of the Lender on the 17th day of December, 2014 is hereby deleted and replaced with "\$22,051,369.87".
11. Effective as of the date hereof, the reference to "\$11,267,123.29" in the first recital of the Postponement Agreement given by Sam Mizrahi in favour of the Lender on the 17th day of December, 2014 is hereby deleted and replaced with "\$22,051,369.87".
12. The Borrower, the Guarantors, Sam Mizrahi and Mizrahi Enterprises Inc. (collectively, the "Obligors") confirm that to the extent a party thereto, that the Loan Agreement and Existing Security has not been discharged, waived or varied except as provided herein, that it is binding upon the Obligors, as applicable, and that it is valid and enforceable in accordance with its written terms and it shall constitute, and shall be held by the Lender as, general and continuing security for the payment and fulfillment of all of the indebtedness, liabilities and obligations of the Obligors, , as applicable, present or future, direct or indirect, contingent or not, matured or not, including, without limitation, the obligations under the Promissory Note, as amended by this Agreement.
13. The net proceeds of the additional amount of the loan hereunder of \$5,791,780.82 shall be paid directly to the Borrower or as it may further direct.
14. Subject to due diligence satisfactory to the Lender in its sole discretion, the Lender will consider extending the term to June 30, 2016.
15. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Existing Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
16. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.
17. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, as may be required to evidence the true intent and meaning of this Agreement.

18. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]

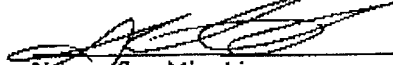
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**BRIDGING FINANCE INC., as agent for
Sprott Bridging Income Fund LP**

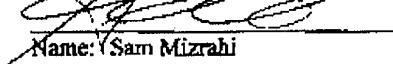
Per: 
Name: Natasha Sharpe
Title: CEO and Chief Investment Officer

We Acknowledge and Accept the terms and conditions of this Agreement as of this 11th day of March, 2015.


NORTHERN CITADEL CAPITAL INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation


MIZRAHI SOARING DEVELOPMENTS INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

ONEONE DAVENPORT INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI ENTERPRISES INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

Schedule "A"
Existing Security

Each dated as of December 17, 2014:

1. Loan Agreement.
2. Promissory Note.
3. Quit Claim Deed.
4. General Assignment of Rents.
5. General Security Agreement from the Borrower and the Guarantors.
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11. Environmental Indemnity executed by the Borrower and the Guarantors.
12. Direction in favour of Harris Sheaffer LLP in respect to of the net proceeds received on closing of the project unit sales, executed by the Borrower, the Guarantors and Mizrahi Enterprises Inc., acknowledged by Harris Sheaffer LLP.

Schedule "B"
Quit Claim Deed

See Attached

21100 - 0318 LT Interest/Estate Fee Simple

Description PCL 5-1 SEC A689E; LT 5 S/S DAVENPORT RD PL 689E TORONTO; LT 6 S/S DAVENPORT RD PL 689E TORONTO; PT LT 7 S/S DAVENPORT RD PL 689E TORONTO; PT LT 8 S/S DAVENPORT RD PL 689E TORONTO; PT LT K PL 401 TORONTO; PT LT 4 PL 411 TORONTO COMM AT A POINT IN THE SLY LIMIT OF DAVENPORT RD DISTANT 56 FT 8 5/8 INCHES MEASURED ELY THEREON FROM THE N WLY ANGLE OF SAID LT 8; THENCE SLY IN A STRAIGHT LINE 81 FT 9 INCHES MORE OR LESS TO A POINT IN THE SLY LIMIT OF THE SAID LT 8 DISTANT 30 FT MEASURED ELY THEREON FROM THE S WLY ANGLE THEREOF; THENCE WLY ALONG THE SLY LIMIT OF SAID LT 8 BEING THE NLY LIMIT OF LT 4 ON SAID REGISTERED PL 411 (YORKVILLE) 40 FT 7 INCHES MORE OR LESS TO A POINT THEREIN DISTANT 105 FT 1/2 AN INCH ELY THEREALONG FROM THE NW ANGLE OF SAID LT; THENCE SLY AND PARALLEL TO THE ELY LIMIT OF HAZELTON AV 28 FT TO A POINT; THENCE ELY PARALLEL TO THE NLY LIMIT OF SAID LT 4, 17 FT 8 1/2 INCHES MORE OR LESS TO THE WLY FACE OF THE WLY WALL OF AN OLD FRAME SHED SITUATE ON THE REAR PORTION OF THE SLY PT OF SAID LT 4 PL 411 YORKVILLE; THENCE NLY ALONG SAID WLY FACE OF WALL 3 INCHES MORE OR LESS TO THE N W CORNER OF SAID FRAME SHED; THENCE ELY ALONG THE NLY FACE OF THE NLY WALL OF SAID FRAME SHED 17 FT 8 1/2 INCHES MORE OR LESS TO THE N E CORNER OF SAID FRAME SHED; THENCE SLY ALONG THE ELY FACE OF THE ELY WALL OF SAID FRAME SHED 3 INCHES MORE OR LESS TO THE SLY LIMIT OF THE NLY 28 FT OF SAID LT 4, PL 411 (YORKVILLE); THENCE ELY ALONG SAID SLY LIMIT OF THE NLY 28 FT OF SAID LT 4, PL 411 YORKVILLE AND ITS PRODUCTION ELY 47 FT 11 INCHES MORE OR LESS TO THE ELY LIMIT OF LT K ACCORDING TO SAID REGISTERED PL 401, BEING ALSO THE WLY LIMIT OF LT 6 ACCORDING TO SAID REGISTERED PL 689E; THENCE SLY ALONG SAID WLY LIMIT OF LT 6 AND ALONG THE WLY LIMIT OF SAID LT 5, 37 FT 11 INCHES MORE OR LESS TO THE S W ANGLE OF SAID LT 5; THENCE ELY ALONG THE SLY LIMIT OF SAID LT 5, 96 FT 4 INCHES MORE OR LESS TO THE S WLY LIMIT OF DAVENPORT RD; THENCE N WLY AND WLY ALONG THE S WLY AND SLY LIMITS OF DAVENPORT RD 170 FT 3/4 OF AN INCH MORE OR LESS TO THE POB; TORONTO , CITY OF TORONTO

Address 145 DAVENPORT ROAD
TORONTO

21196 - 0327 LT Interest/Estate Fee Simple

Description PART OF LOTS 7 AND 8 PLAN 689E, DESIGNATED AS PART 1 ON PLAN 66R20718; CITY OF TORONTO

Address TORONTO

Consideration

Consideration \$ 22,051,369.87

Transferor(s)

The transferor(s) hereby transfers the land to the transferee(s).

Name ONE8ONE DAVENPORT INC.
Acting as a company

Address for Service 189 Forest Hill Road
Toronto, Ontario
M5P 2N3

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

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

Transferee(s)	Capacity	Share
----------------------	-----------------	--------------

Name BRIDGING FINANCE INC., AS AGENT FOR SPROTT
BRIDGING INCOME FUND LP
Acting as a company

Calculated Taxes

<i>Provincial Land Transfer Tax</i>	\$329,245.55
<i>Municipal Land Transfer Tax</i>	\$328,495.55

File Number

Transferee Client File Number : 56680

907
F3201

STRAIGHT LINE 81 FT 9 INCHES MORE OR LESS TO A POINT IN THE SLY
LIMIT OF THE SAID LT 8 DISTANT 30 FT MEASURED ELY THEREON FROM
THE S WLY ANGLE THEREOF; THENCE WLY ALONG THE SLY LIMIT OF SAID
LT 8 BEING THE NLY LIMIT OF LT 4 ON SAID REGISTERED PL 411
(YORKVILLE) 40 FT 7 INCHES MORE OR LESS TO A POINT THEREIN
DISTANT 105 FT 1/2 AN INCH ELY THEREALONG FROM THE NW ANGLE OF
SAID LT; THENCE SLY AND PARALLEL TO THE ELY LIMIT OF HAZELTON AV
28 FT TO A POINT; THENCE ELY PARALLEL TO THE NLY LIMIT OF SAID LT 4,
17 FT 8 1/2 INCHES MORE OR LESS TO THE WLY FACE OF THE WLY WALL
OF AN OLD FRAME SHED SITUATE ON THE REAR PORTION OF THE SLY PT
OF SAID LT 4 PL 411 YORKVILLE; THENCE NLY ALONG SAID WLY FACE OF
WALL 3 INCHES MORE OR LESS TO THE N W CORNER OF SAID FRAME
SHED; THENCE ELY ALONG THE NLY FACE OF THE NLY WALL OF SAID
FRAME SHED 17 FT 8 1/2 INCHES MORE OR LESS TO THE N E CORNER OF
SAID FRAME SHED; THENCE SLY ALONG THE ELY FACE OF THE ELY WALL
OF SAID FRAME SHED 3 INCHES MORE OR LESS TO THE SLY LIMIT OF THE
NLY 28 FT OF SAID LT 4, PL 411 (YORKVILLE); THENCE ELY ALONG SAID
SLY LIMIT OF THE NLY 28 FT OF SAID LT 4, PL 411 YORKVILLE AND ITS
PRODUCTION ELY 47 FT 11 INCHES MORE OR LESS TO THE ELY LIMIT OF
LT K ACCORDING TO SAID REGISTERED PL 401, BEING ALSO THE WLY
LIMIT OF LT 6 ACCORDING TO SAID REGISTERED PL 689E; THENCE SLY
ALONG SAID WLY LIMIT OF LT 6 AND ALONG THE WLY LIMIT OF SAID LT 5,
37 FT 11 INCHES MORE OR LESS TO THE S W ANGLE OF SAID LT 5;
THENCE ELY ALONG THE SLY LIMIT OF SAID LT 5, 96 FT 4 INCHES MORE
OR LESS TO THE S WLY LIMIT OF DAVENPORT RD; THENCE N WLY AND
WLY ALONG THE S WLY AND SLY LIMITS OF DAVENPORT RD 170 FT 3/4 OF
AN INCH MORE OR LESS TO THE POB; TORONTO, CITY OF TORONTO

21196 - 0327 PART OF LOTS 7 AND 8 PLAN 689E, DESIGNATED AS PART 1 ON PLAN
66R20718; CITY OF TORONTO

BY: ONE8ONE DAVENPORT INC.
TO: BRIDGING FINANCE INC., AS AGENT FOR SPROTT BRIDGING INCOME FUND LP % (all PINs)

1. NATASHA SHARPE, CHIEF EXECUTIVE OFFICE AND CHIEF INVESTMENT OFFICER

I am

- (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- (c) A transferee named in the above-described conveyance;
- (d) The authorized agent or solicitor acting in this transaction for ____ described in paragraph(s) () above.
- (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for BRIDGING FINANCE INC., AS AGENT FOR SPROTT BRIDGING INCOME FUND LP described in paragraph(s) (c) above.
- (f) A transferee described in paragraph () and am making these statements on my own behalf and on behalf of ____ who is my spouse described in paragraph () and as such, I have personal knowledge of the facts herein deposed to.

2. I have read and considered the definition of "single family residence" set out in subsection 1(1) of the Act. The land being conveyed herein:
does not contain a single family residence or contains more than two single family residences.

3. The total consideration for this transaction is allocated as follows:

(a) Monies paid or to be paid in cash	22,051,369.87
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	0.00
(ii) Given Back to Vendor	0.00
(c) Property transferred in exchange (detail below)	0.00
(d) Fair market value of the land(s)	0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	22,051,369.87
(h) VALUE OF ALL CHATTELS - items of tangible personal property	0.00
(i) Other considerations for transaction not included in (g) or (h) above	0.00
(j) Total consideration	22,051,369.87

F933

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F3202

D. (i) Last Conveyance(s): PIN 21196 - 0019 Registration No.

PIN 21196 - 0327 Registration No.

(ii) Legal Description for Property Conveyed : Same as in last conveyance? Yes No Not known

F934

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F3203

F935

This is Exhibit “D” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 20th day of September, 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.

A Commissioner for taking affidavits

ADAM DRIEDGER

Dated as of April 10, 2015

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP (the "**Lender**") loan to Northern Citadel Capital Inc. (the "**Borrower**") pursuant to the loan agreement among, *inter alia*, the Borrower and the Lender dated as of the 17th day of December, 2014 as amended by letter agreements dated February 24, 2015 and March 11, 2015 (collectively, the "**Loan Agreement**") and the related security described in Schedule "A" attached hereto (collectively, the "**Existing Security**")

We confirm our mutual agreement to increase the principal amount of the loan facility from \$22,051,369.87 to \$26,278,150.69. In this regard, we confirm that the Lender has agreed to amend the terms and conditions of the Loan Agreement and Existing Security as follows:

1. Effective the date hereof, the reference to "22,051,369.87" in Section 2.1 of the Loan Agreement is hereby deleted and replaced with "\$26,278,150.69".
2. Effective the date hereof, the reference to "\$2,558,904.11" in section 3.1 of the Loan Agreement is hereby deleted and replaced with "\$2,940,213.70"
3. Effective the date hereof, the reference to "22,051,369.87" in the heading of the Promissory Note granted by the Borrower in favour of the Lender dated as of the 17th day of December 2014 (the "**Promissory Note**") is hereby deleted and replaced with "\$26,278,150.69".
4. Effective the date hereof, the reference to "TWENTY TWO MILLION FIFTY ONE THOUSAND THREE HUNDRED SIXTY NINE CANADIAN DOLLARS AND EIGHTY SEVEN (Cdn. \$22,051,369.87) CENTS" in the first paragraph of the Promissory Note is hereby deleted and replaced with "TWENTY SIX MILLION TWO HUNDRED SEVENTY EIGHT THOUSAND ONE HUNDRED AND FIFTY CANADIAN DOLLARS AND SIXTY NINE (Cdn. \$26,278,150.69) CENTS".
5. Effective as of the date hereof, the reference to "22,051,369.87" in the Consideration Field of the Electronic Registration form of the Quit Claim Deed granted by, *inter alia*, the Borrower in favour of the Lender (the "**Quit Claim Deed**"), is hereby deleted and replaced with "\$26,278,150.69".
6. Effective as of the date hereof, the reference to "\$329,245.55" in the Provincial Land Transfer Tax field of the Quit Claim Deed is hereby deleted and replaced with "\$392,647.26".
7. Effective as of the date hereof, the reference to "\$328,495.55" in the Municipal Land Transfer Tax field of the Quit Claim Deed is hereby deleted and replaced with "\$391,897.26".
8. Effective as of the date hereof, the reference to "\$22,051,369.87" in Section 3 in the Provincial and Municipal Land Transfer Tax statements field of the Quit Claim Deed is hereby deleted and replaced with "\$26,278,150.69" in each instance.

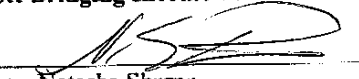
9. The Lender is hereby authorized to update the quit claim deed with the amendments noted in Section 5-8 above and attach same to the Acknowledgment and Direction re Quit Claim Deed dated December 17, 2014. For greater certainty, a copy of the updated Quit Claim Deed is attached hereto as Schedule "B".
10. Effective as of the date hereof, the reference to "\$22,051,369.87" in the first recital of the Guarantee given by Mizrahi Soaring Developments Inc. and One8One Davenport Inc. (collectively the "Guarantors") in favour of the Lender on the 17th day of December, 2014 is hereby deleted and replaced with "\$26,278,150.69".
11. Effective as of the date hereof, the reference to "\$22,051,369.87" in the first recital of the Postponement Agreement given by Sam Mizrahi in favour of the Lender on the 17th day of December, 2014 is hereby deleted and replaced with "\$26,278,150.69".
12. The Borrower, the Guarantors, Sam Mizrahi and Mizrahi Enterprises Inc. (collectively, the "Obligors") confirm that to the extent a party thereto, that the Loan Agreement and Existing Security has not been discharged, waived or varied except as provided herein, that it is binding upon the Obligors, as applicable, and that it is valid and enforceable in accordance with its written terms and it shall constitute, and shall be held by the Lender as, general and continuing security for the payment and fulfillment of all of the indebtedness, liabilities and obligations of the Obligors, as applicable, present or future, direct or indirect, contingent or not, matured or not, including, without limitation, the obligations under the Promissory Note, as amended by this Agreement.
13. The net proceeds of the additional amount of the loan hereunder of \$4,226,780.82 shall be paid directly to the Borrower or as it may further direct.
14. Subject to due diligence satisfactory to the Lender in its sole discretion, the Lender will consider extending the term to June 30, 2016.
15. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Existing Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
16. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.
17. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, as may be required to evidence the true intent and meaning of this Agreement.

18. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]


Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
Spratt Bridging Income Fund LP**


Per: 
Name: Natasha Sharpe
Title: CEO and Chief Investment Officer

We Acknowledge and Accept the terms and conditions of this Agreement as of this 10th day of April, 2015.


NORTHERN CITADEL CAPITAL INC

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation


MIZRAHI SOARING DEVELOPMENTS INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

ONE8ONE DAVENPORT INC

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI ENTERPRISES INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

Schedule "A"
Existing Security

Each dated as of December 17, 2014:

1. Loan Agreement.
2. Promissory Note.
3. Quit Claim Deed.
4. General Assignment of Rents.
5. General Security Agreement from the Borrower and the Guarantors.
6. Beneficial Owners' Agreement in respect of 145 Davenport Road.
7. Assignment of Material Agreements from the Borrower and the Guarantors.
8. Assignment of Insurance from the Borrower and the Guarantors.
9. Guarantee from the Guarantors.
10. Postponement Agreement executed by Sam Mizrahi, the Borrower and the Guarantors.
11. Environmental Indemnity executed by the Borrower and the Guarantors.
12. Direction in favour of Harris Sheaffer LLP in respect to of the net proceeds received on closing of the project unit sales, executed by the Borrower, the Guarantors and Mizrahi Enterprises Inc., acknowledged by Harris Sheaffer LLP.

Schedule "B"
Quit Claim Deed

See Attached

Properties

PIN 21196 - 0019 LT **Interest/Estate** Fee Simple

Description PCL 5-1 SEC A689E; LT 5 S/S DAVENPORT RD PL 689E TORONTO; LT 6 S/S DAVENPORT RD PL 689E TORONTO; PT LT 7 S/S DAVENPORT RD PL 689E TORONTO; PT LT 8 S/S DAVENPORT RD PL 689E TORONTO; PT LT K PL 401 TORONTO; PT LT 4 PL 411 TORONTO COMM AT A POINT IN THE SLY LIMIT OF DAVENPORT RD DISTANT 56 FT 8 5/8 INCHES MEASURED ELY THEREON FROM THE N WLY ANGLE OF SAID LT 8; THENCE SLY IN A STRAIGHT LINE 81 FT 9 INCHES MORE OR LESS TO A POINT IN THE SLY LIMIT OF THE SAID LT 8 DISTANT 30 FT MEASURED ELY THEREON FROM THE S WLY ANGLE THEREOF; THENCE WLY ALONG THE SLY LIMIT OF SAID LT 8 BEING THE NLY LIMIT OF LT 4 ON SAID REGISTERED PL 411 (YORKVILLE) 40 FT 7 INCHES MORE OR LESS TO A POINT THEREIN DISTANT 105 FT 1/2 AN INCH ELY THEREALONG FROM THE NW ANGLE OF SAID LT; THENCE SLY AND PARALLEL TO THE ELY LIMIT OF HAZELTON AV 28 FT TO A POINT; THENCE ELY PARALLEL TO THE NLY LIMIT OF SAID LT 4, 17 FT 8 1/2 INCHES MORE OR LESS TO THE WLY FACE OF THE WLY WALL OF AN OLD FRAME SHED SITUATE ON THE REAR PORTION OF THE SLY PT OF SAID LT 4 PL 411 YORKVILLE; THENCE NLY ALONG SAID WLY FACE OF WALL 3 INCHES MORE OR LESS TO THE N W CORNER OF SAID FRAME SHED; THENCE ELY ALONG THE NLY FACE OF THE NLY WALL OF SAID FRAME SHED 17 FT 8 1/2 INCHES MORE OR LESS TO THE N E CORNER OF SAID FRAME SHED; THENCE SLY ALONG THE ELY FACE OF THE ELY WALL OF SAID FRAME SHED 3 INCHES MORE OR LESS TO THE SLY LIMIT OF THE NLY 28 FT OF SAID LT 4, PL 411 (YORKVILLE); THENCE ELY ALONG SAID SLY LIMIT OF THE NLY 28 FT OF SAID LT 4, PL 411 YORKVILLE AND ITS PRODUCTION ELY 47 FT 11 INCHES MORE OR LESS TO THE ELY LIMIT OF LT K ACCORDING TO SAID REGISTERED PL 401, BEING ALSO THE WLY LIMIT OF LT 6 ACCORDING TO SAID REGISTERED PL 689E; THENCE SLY ALONG SAID WLY LIMIT OF LT 6 AND ALONG THE WLY LIMIT OF SAID LT 5, 37 FT 11 INCHES MORE OR LESS TO THE S W ANGLE OF SAID LT 5; THENCE ELY ALONG THE SLY LIMIT OF SAID LT 5, 96 FT 4 INCHES MORE OR LESS TO THE S WLY LIMIT OF DAVENPORT RD; THENCE N WLY AND WLY ALONG THE S WLY AND SLY LIMITS OF DAVENPORT RD 176 FT 3/4 OF AN INCH MORE OR LESS TO THE POB, TORONTO CITY OF TORONTO

Address 145 DAVENPORT ROAD
TORONTO

PIN 21196 - 0327 LT **Interest/Estate** Fee Simple

Description PART OF LOTS 7 AND 8 PLAN 689E, DESIGNATED AS PART 1 ON PLAN 56R20718, CITY OF TORONTO

Address TORONTO

Consideration

Consideration \$ 26,278,150.69

Transferor(s)

The transferor(s) hereby transfers the land to the transferee(s)

Name ONEONE DAVENPORT INC
Acting as a company

Address for Service 189 Forest Hill Road
Toronto, Ontario
M5P 2N3

I, Sam Mirzahi, President, have the authority to bind the corporation
This document is not authorized under Power of Attorney by this party

Transferee(s)

Capacity **Share**

Name BRIDGING FINANCE INC, AS AGENT FOR SPROTT
BRIDGING INCOME FUND LP
Acting as a company

Address for Service 77 King Street West
Suite No. 2925
Toronto, Ontario
M5K 1K7

Statements

Schedule: Other Out Claim Deed

Calculated Taxes

Provincial Land Transfer Tax	\$392,647.26
Municipal Land Transfer Tax	\$391,867.26

File Number

Transferee Client File Number: 565RQ

PROVINCIAL AND MUNICIPAL LAND TRANSFER TAX STATEMENTS

918
F3212

In the matter of the conveyance of 21196 - 0019 FCL 5-1 SEC A589E; LT 5 S/S DAVENPORT RD PL 689E TORONTO; LT 6 S/S DAVENPORT RD PL 689E TORONTO; PT LT 7 S/S DAVENPORT RD PL 689E TORONTO; PT LT 8 S/S DAVENPORT RD PL 689E TORONTO; PT LT K PL 401 TORONTO; PT LT 4 PL 411 TORONTO COMM AT A POINT IN THE SLY LIMIT OF DAVENPORT RD DISTANT 56 FT 6 5/8 INCHES MEASURED ELY THEREON FROM THE N WLY ANGLE OF SAID LT 8; THENCE SLY IN A STRAIGHT LINE 61 FT 9 INCHES MORE OR LESS TO A POINT IN THE SLY LIMIT OF THE SAID LT 8 DISTANT 30 FT MEASURED ELY THEREON FROM THE S WLY ANGLE THEREOF; THENCE WLY ALONG THE SLY LIMIT OF SAID LT 8 BEING THE NLY LIMIT OF LT 4 ON SAID REGISTERED PL 411 (YORKVILLE) 40 FT 7 INCHES MORE OR LESS TO A POINT THEREIN DISTANT 105 FT 1/2 AN INCH ELY THEREALONG FROM THE NW ANGLE OF SAID LT THENCE SLY AND PARALLEL TO THE ELY LIMIT OF HAZELTON AV 28 FT TO A POINT, THENCE ELY PARALLEL TO THE NLY LIMIT OF SAID LT 4, 17 FT 8 1/2 INCHES MORE OR LESS TO THE WLY FACE OF THE WLY WALL OF AN OLD FRAME SHED SITUATE ON THE REAR PORTION OF THE SLY PT OF SAID LT 4 PL 411 YORKVILLE THENCE NLY ALONG SAID WLY FACE OF WALL 3 INCHES MORE OR LESS TO THE N W CORNER OF SAID FRAME SHED, THENCE ELY ALONG THE NLY FACE OF THE NLY WALL OF SAID FRAME SHED 17 FT 8 1/2 INCHES MORE OR LESS TO THE N E CORNER OF SAID FRAME SHED; THENCE SLY ALONG THE ELY FACE OF THE ELY WALL OF SAID FRAME SHED 3 INCHES MORE OR LESS TO THE SLY LIMIT OF THE NLY 28 FT OF SAID LT 4, PL 411 (YORKVILLE); THENCE ELY ALONG SAID SLY LIMIT OF THE NLY 26 FT OF SAID LT 4, PL 411 YORKVILLE AND ITS PRODUCTION ELY 47 FT 11 INCHES MORE OR LESS TO THE ELY LIMIT OF LT K ACCORDING TO SAID REGISTERED PL 401, BEING ALSO THE WLY LIMIT OF LT 6 ACCORDING TO SAID REGISTERED PL 689E, THENCE SLY ALONG SAID WLY LIMIT OF LT 6 AND ALONG THE WLY LIMIT OF SAID LT 5 37 FT 11 INCHES MORE OR LESS TO THE S W ANGLE OF SAID LT 5, THENCE ELY ALONG THE SLY LIMIT OF SAID LT 5 96 FT 4 INCHES MORE OR LESS TO THE S WLY LIMIT OF DAVENPORT RD, THENCE N WLY AND WLY ALONG THE S WLY AND SLY LIMITS OF DAVENPORT RD 170 FT 3/4 OF AN INCH MORE OR LESS TO THE POB, TORONTO, CITY OF TORONTO

21196 - 0327 PART OF LOTS 7 AND 8 PLAN 689E, DESIGNATED AS PART 1 ON PLAN 66R20718; CITY OF TORONTO

BY ONE8ONE DAVENPORT INC
TO BRIDGING FINANCE INC, AS AGENT FOR SPROTT BRIDGING INCOME FUND LP % (all PINs)

1 NATASHA SHARPE, CHIEF EXECUTIVE OFFICER AND CHIEF INVESTMENT OFFICER

I am

- (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- (c) A transferee named in the above-described conveyance
- (d) The authorized agent or solicitor acting in this transaction for _____ described in paragraph(s) () above
- (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for BRIDGING FINANCE INC, AS AGENT FOR SPROTT BRIDGING INCOME FUND LP described in paragraph(s) (c) above
- (f) A transferee described in paragraph () and am making these statements on my own behalf and on behalf of _____ who is my spouse described in paragraph () and as such, I have personal knowledge of the facts herein deposed to

2 I have read and considered the definition of "single family residence" set out in subsection 1(1) of the Act. The land being conveyed herein does not contain a single family residence or contains more than two single family residences.

3 The total consideration for this transaction is allocated as follows:

(a) Monies paid or to be paid in cash	26,278,150.69
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	0.00
(ii) Given Back to Vendor	0.00
(c) Property transferred in exchange (detail below)	0.00
(d) Fair market value of the land(s)	0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	26,278,150.69
(h) VALUE OF ALL CHATTELS - items of tangible personal property	0.00
(i) Other considerations for transaction not included in (g) or (h) above	0.00
(j) Total consideration	26,278,150.69

PROPERTY Information Record

A Nature of Instrument: Transfer
LRO 80 Registration No: Date:
B Property(s): PIN 21196 - 0019 Address 145 DAVENPORT ROAD TORONTO Assessment Roll No:

F944

PROVINCIAL AND MUNICIPAL LAND TRANSFER TAX STATEMENTS

B Property(s) PIN 21196 - 0327 Address TORONTO Assessment Roll No

C Address for Service 77 King Street West Suite No. 2925 Toronto, Ontario M5K 1K7

D (i) Last Conveyance(s) PIN 21196 - 0019 Registration No. PIN 21196 - 0327 Registration No.

(ii) Legal Description for Property Conveyed : Same as in last conveyance? Yes No Not known

919
F3213

F945

This is Exhibit “E” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 20th day of September, 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.

A Commissioner for taking affidavits

ADAM DRIEDGER

Dated as of November 27, 2015

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP (the "**Lender**") loan to Northern Citadel Capital Inc. (the "**Borrower**") pursuant to the loan agreement among, *inter alia*, the Borrower and the Lender dated as of the 17th day of December, 2014 as amended by letter agreements dated February 24, 2015, March 11, 2015 and April 10, 2015 (collectively, the "**Loan Agreement**") and the related security described in Schedule "A" attached hereto (collectively, the "**Existing Security**")

We confirm your request to extend the term of the Loan Agreement to June 30, 2016. In this regard, we confirm that the Lender has agreed subject to receipt of the Extension Fee (as hereinafter defined) with the execution of this Agreement, to amend the terms and conditions of the Loan Agreement and Existing Security as follows:

1. Effective the date hereof, the term of the loan in Section 1.1(cc) of the Loan Agreement is hereby extended from December 31, 2015 to June 30, 2016.
2. Effective the date hereof, the reference to "26,278,150.69" in Section 2.1 of the Loan Agreement is hereby deleted and replaced with "\$27,910,750.68".
3. Effective the date hereof, the reference to "\$2,940,213.70" in section 3.1 of the Loan Agreement is hereby deleted and replaced with "\$4,572,813.90"
4. Effective the date hereof, the reference to "26,278,150.69" in the heading of the Promissory Note granted by the Borrower in favour of the Lender dated as of the 17th day of December 2014 (the "**Promissory Note**") is hereby deleted and replaced with "\$27,910,750.68".
5. Effective the date hereof, the reference to "TWENTY SIX MILLION TWO HUNDRED AND SEVENTY EIGHT THOUSAND ONE HUNDRED FIFTY CANADIAN DOLLARS AND SIXTY NINE (Cdn. \$26,278,150.69) CENTS" in the first paragraph of the Promissory Note is hereby deleted and replaced with "TWENTY SEVEN MILLION NINE HUNDRED AND TEN THOUSAND SEVEN HUNDRED AND FIFTY CANADIAN DOLLARS AND SIXTY EIGHT (Cdn. \$27,910,750.68) CENTS".
6. Effective as of the date hereof, the reference to "26,278,150.69" in the Consideration Field of the Electronic Registration form of the Quit Claim Deed granted by, *inter alia*, the Borrower in favour of the Lender (the "**Quit Claim Deed**"), is hereby deleted and replaced with "\$27,910,750.68".
7. Effective as of the date hereof, the reference to "\$392,647.26" in the Provincial Land Transfer Tax field of the Quit Claim Deed is hereby deleted and replaced with "\$417,136.26".
8. Effective as of the date hereof, the reference to "\$391,897.26" in the Municipal Land Transfer Tax field of the Quit Claim Deed is hereby deleted and replaced with "\$416,386.26".

9. Effective as of the date hereof, the reference to "\$26,278,150.69" in Section 3 in the Provincial and Municipal Land Transfer Tax statements field of the Quit Claim Deed is hereby deleted and replaced with "\$27,910,750.68" in each instance.
10. The Lender is hereby authorized to update the quit claim deed with the amendments noted in Section 7-10 above and attach same to the Acknowledgment and Direction re Quit Claim Deed dated December 17, 2014.
11. Effective as of the date hereof, the reference to "\$26,278,150.69" in the first recital of the Guarantee given by Mizrahi Soaring Developments Inc. and One8One Davenport Inc. (collectively the "**Guarantors**") in favour of the Lender on the 17th day of December, 2014 is hereby deleted and replaced with "\$27,910,750.68".
12. Effective as of the date hereof, the reference to "\$26,278,150.69" in the first recital of the Postponement Agreement given by Sam Mizrahi in favour of the Lender on the 17th day of December, 2014 is hereby deleted and replaced with "\$27,910,750.68".
13. The Borrower, the Guarantors, Sam Mizrahi and Mizrahi Enterprises Inc. (collectively, the "**Obligors**") confirm that to the extent a party thereto, that the Loan Agreement and Existing Security has not been discharged, waived or varied except as provided herein, that it is binding upon the Obligors, as applicable, and that it is valid and enforceable in accordance with its written terms and it shall constitute, and shall be held by the Lender as, general and continuing security for the payment and fulfillment of all of the indebtedness, liabilities and obligations of the Obligors, , as applicable, present or future, direct or indirect, contingent or not, matured or not, including, without limitation, the obligations under the Promissory Note, as amended by this Agreement.
14. The net proceeds of the additional amount of the loan hereunder of \$1,632,661.50 shall be retained by the Lender in accordance with Section 3.1 of the Loan Agreement as amended by this Agreement.
15. The Borrower shall pay to the Lender an extension fee in the amount of \$50,000 (the "**Extension Fee**") upon acknowledgement of this letter and shall be responsible for all legal fees and disbursements incurred by the Bank in connection with the preparation and negotiation of this Agreement.
16. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Existing Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
17. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be

extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.

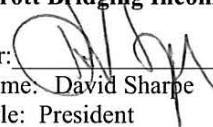
18. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, as may be required to evidence the true intent and meaning of this Agreement.
19. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
20. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]




Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
Sprott Bridging Income Fund LP**

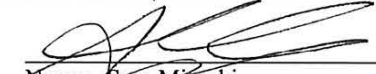
Per: 
Name: David Sharpe
Title: President

We Acknowledge and Accept the terms and conditions of this Agreement as of this 27th day of November, 2015.


NORTHERN CITADEL CAPITAL INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation


MIZRAHI SOARING DEVELOPMENTS INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

ONE8ONE DAVENPORT INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI ENTERPRISES INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

Schedule "A"
Existing Security

Each dated as of December 17, 2014:

1. Loan Agreement.
2. Promissory Note.
3. Quit Claim Deed.
4. General Assignment of Rents.
5. General Security Agreement from the Borrower and the Guarantors.
6. Beneficial Owners' Agreement in respect of 145 Davenport Road.
7. Assignment of Material Agreements from the Borrower and the Guarantors.
8. Assignment of Insurance from the Borrower and the Guarantors.
9. Guarantee from the Guarantors.
10. Postponement Agreement executed by Sam Mizrahi, the Borrower and the Guarantors.
11. Environmental Indemnity executed by the Borrower and the Guarantors.
12. Direction in favour of Harris Sheaffer LLP in respect to of the net proceeds received on closing of the project unit sales, executed by the Borrower, the Guarantors and Mizrahi Enterprises Inc., acknowledged by Harris Sheaffer LLP.

This is Exhibit “F” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 20th day of September, 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.

A Commissioner for taking affidavits

ADAM DRIEDGER

Dated as of June 30, 2016

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP (the "**Lender**") loan to Northern Citadel Capital Inc. (the "**Borrower**") pursuant to the loan agreement among, *inter alia*, the Borrower and the Lender dated as of the 17th day of December, 2014 as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015 and November 27, 2015 (collectively, the "**Loan Agreement**") and the related security described in Schedule "A" attached hereto (collectively, the "**Existing Security**")

We confirm your request to extend the term of the Loan Agreement to October 31, 2016. In this regard, we confirm that the Lender has agreed to amend the terms and conditions of the Loan Agreement and Existing Security as follows:

1. Effective the date hereof, the term of the loan in Section 1.1(cc) of the Loan Agreement is hereby extended from June 30, 2016 to November 30, 2016.
2. Effective the date hereof, the reference to "\$27,910,750.68" in Section 2.1 of the Loan Agreement is hereby deleted and replaced with "\$29,271,251.00".
3. Effective the date hereof, the reference to "\$4,572,813.90" in section 3.1 of the Loan Agreement is hereby deleted and replaced with "\$5,933,313.90"
4. Effective the date hereof, the reference to "\$27,910,750.68" in the heading of the Promissory Note granted by the Borrower in favour of the Lender dated as of the 17th day of December 2014 (the "**Promissory Note**") is hereby deleted and replaced with "\$29,271,251.00".
5. Effective the date hereof, the reference to "TWENTY SEVEN MILLION NINE HUNDRED AND TEN THOUSAND SEVEN HUNDRED AND FIFTY CANADIAN DOLLARS AND SIXTY EIGHT (Cdn. \$27,910,750.68) CENTS" in the first paragraph of the Promissory Note is hereby deleted and replaced with "TWENTY NINE MILLION TWO HUNDRED SEVENTY ONE THOUSAND TWO HUNDRED AND FIFTY ONE CANADIAN DOLLARS (Cdn. \$29,271,251.00)".
6. Effective as of the date hereof, the reference to "27,910,750.68" in the Consideration Field of the Electronic Registration form of the Quit Claim Deed granted by, *inter alia*, the Borrower in favour of the Lender (the "**Quit Claim Deed**"), is hereby deleted and replaced with "\$29,271,251.00".
7. Effective as of the date hereof, the reference to "\$417,136.26" in the Provincial Land Transfer Tax field of the Quit Claim Deed is hereby deleted and replaced with "\$581,900.02".
8. Effective as of the date hereof, the reference to "\$416,386.26" in the Municipal Land Transfer Tax field of the Quit Claim Deed is hereby deleted and replaced with "\$581,150.02".

9. Effective as of the date hereof, the reference to "\$27,910,750.68" in Section 3 in the Provincial and Municipal Land Transfer Tax statements field of the Quit Claim Deed is hereby deleted and replaced with "\$29,271,251.00" in each instance.
10. The Lender is hereby authorized to update the quit claim deed with the amendments noted in Section 7-9 above and is authorized to updated the PIN/legal description,, as applicable, and attach same to the Acknowledgment and Direction re Quit Claim Deed dated December 17, 2014.
11. Effective as of the date hereof, the reference to "\$27,910,750.68" in the first recital of the Guarantee given by Mizrahi Soaring Developments Inc. and One8One Davenport Inc. (collectively the "**Guarantors**") in favour of the Lender on the 17th day of December, 2014 is hereby deleted and replaced with "\$29,271,251.00".
12. Effective as of the date hereof, the reference to "\$27,910,750.68" in the first recital of the Postponement Agreement given by Sam Mizrahi in favour of the Lender on the 17th day of December, 2014 is hereby deleted and replaced with "\$29,271,251.00".
13. The Borrower, the Guarantors, Sam Mizrahi and Mizrahi Enterprises Inc. (collectively, the "**Obligors**") confirm that to the extent a party thereto, that the Loan Agreement and Existing Security has not been discharged, waived or varied except as provided herein, that it is binding upon the Obligors, as applicable, and that it is valid and enforceable in accordance with its written terms and it shall constitute, and shall be held by the Lender as, general and continuing security for the payment and fulfillment of all of the indebtedness, liabilities and obligations of the Obligors, , as applicable, present or future, direct or indirect, contingent or not, matured or not, including, without limitation, the obligations under the Promissory Note, as amended by this Agreement.
14. The net proceeds of the additional amount of the loan hereunder of \$5,933,313.90 shall be retained by the Lender in accordance with Section 3.1 of the Loan Agreement as amended by this Agreement.
15. The Borrower shall be responsible for all legal fees and disbursements incurred by the Bank in connection with the preparation and negotiation of this Agreement.
16. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Existing Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
17. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.

18. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, as may be required to evidence the true intent and meaning of this Agreement.
19. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
20. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]


Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
Sprott Bridging Income Fund LP**


Per: 
Name: Natasha Sharpe
Title: CEO and Chief Investment Officer

We Acknowledge and Accept the terms and conditions of this Agreement as of this 30th day of June, 2016.

NORTHERN CITADEL CAPITAL INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI SOARING DEVELOPMENTS INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

ONE8ONE DAVENPORT INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI ENTERPRISES INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

Schedule "A"
Existing Security

Each dated as of December 17, 2014:

1. Loan Agreement.
2. Promissory Note.
3. Quit Claim Deed.
4. General Assignment of Rents.
5. General Security Agreement from the Borrower and the Guarantors.
6. Beneficial Owners' Agreement in respect of 145 Davenport Road.
7. Assignment of Material Agreements from the Borrower and the Guarantors.
8. Assignment of Insurance from the Borrower and the Guarantors.
9. Guarantee from the Guarantors.
10. Postponement Agreement executed by Sam Mizrahi, the Borrower and the Guarantors.
11. Environmental Indemnity executed by the Borrower and the Guarantors.
12. Direction in favour of Harris Sheaffer LLP in respect to of the net proceeds received on closing of the project unit sales, executed by the Borrower, the Guarantors and Mizrahi Enterprises Inc., acknowledged by Harris Sheaffer LLP.

This is Exhibit “G” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 20th day of September, 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.

A Commissioner for taking affidavits

ADAM DRIEDGER

Dated as of November 30, 2016

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP (the “**Lender**”) loan to Northern Citadel Capital Inc. (the “**Borrower**”) pursuant to the loan agreement among, *inter alia*, the Borrower and the Lender dated as of the 17th day of December, 2014 as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015 and June 30, 2016 (collectively, the “**Loan Agreement**”) and the related security described in Schedule “A” attached hereto (collectively, the “**Existing Security**”)

We confirm your request to obtain an additional advance of \$6,556,500 under the Loan (the “**Additional Advance**”) and an extension to the term of the Loan Agreement. In this regard, we confirm that the Lender has agreed subject to receipt of the Work Fee (as hereinafter defined) with the execution of this Agreement, to amend the terms and conditions of the Loan Agreement and Existing Security as follows (all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement):

1. Effective the date hereof, Borrower shall mean collectively and on a joint and several basis Northern Citadel Capital Inc., Mizrahi Inc. and 2495159 Ontario Inc. (“**249**”) as though each were an original party to the Loan Agreement and the Existing Security, as applicable, provided, however, that recourse by the Lender against Mizrahi Inc. shall be limited to the Accounts (as hereinafter defined). For greater certainty, for the purposes of this section, the Existing Security includes, without limitation, items 2, 5, 7, 8, 10 and 11 thereof.
2. Effective the date hereof, Guarantors shall mean collectively and on a joint and several basis Mizrahi Soaring Developments Inc., One8One Davenport Inc. and 181 Davenport Retail Inc. (“**181**”) as though each were an original party to the Loan Agreement and the Existing Security, as applicable. For greater certainty, for the purposes of this section, the Existing Security includes, without limitation, items 5, 7, 8, 9, 10 and 11 thereof.
3. Effective the date hereof, Obligors shall mean collectively, Northern Citadel Capital Inc., Mizrahi Inc., 249, Mizrahi Enterprises Inc., Mizrahi Soaring Developments Inc., One8One Davenport Inc., 181 Davenport Retail Inc. and Sam Mizrahi.
4. Mizrahi Inc., 181 and 249 acknowledge that they have each received a copy of the Loan Agreement and the Existing Security and, by execution of this Agreement, that they each agree to be bound by same, as applicable, as though an original party thereto, as aforesaid.
5. The Additional Advance shall be used to fund the legal fees, the Work Fee, improvements to the approximately 4,097 square foot unit at 181 Davenport to be sold to 181 and to be used as a sales and presentation gallery for the Project (the “**Unit**”), the purchase of 14 Dundonald Street, Toronto (the “**Dundonald Property**”) and for no other purpose and disbursed as set out herein.
6. Effective the date hereof, the term of the Loan in Section 1.1(cc) of the Loan Agreement is hereby extended from November 30, 2016, to the earliest of: (i) the first draw by Mizrahi Development Group (The One) Inc. (“**The One**”) under its construction loan facility (the

“**Construction Facility**”) for 1 Bloor Street West (the “**Project**”) which at the option of the Borrower, provided there has been no Event of Default, may be extended to the second draw under the Construction Facility; and (ii) November 30, 2018 (the “**Maturity Date**”).

7. Effective the date hereof, the reference to “\$29,271,251.00” in Section 2.1 of the Loan Agreement is hereby deleted and replaced with “\$35,827,751”.
8. The Borrower acknowledges and agrees that effective the date hereof, the Interest Reserve has been fully depleted.
9. From and after the date hereof, interest on any outstanding principal amount of the Loan shall be calculated daily at the rate of 12% per annum and shall accrue and be compounded monthly on the last day of each month and be payable on the earliest of: (i) and Event of Default; (ii) prepayment of the Loan for any reason whatsoever; and (iii) the Maturity Date.
10. Effective the date hereof, the reference to “\$29,271,251.00” in the heading of the Promissory Note granted by the Borrower in favour of the Lender dated as of the 17th day of December 2014 (the “**Promissory Note**”) is hereby deleted and replaced with “\$35,827,751”.
11. Effective the date hereof, the reference to “TWENTY-NINE MILLION TWO HUNDRED SEVENTY-ONE THOUSAND TWO HUNDRED AND FIFTY-ONE CANADIAN DOLLARS (Cdn. \$29,271,251.00)” in the first paragraph of the Promissory Note is hereby deleted and replaced with “THIRTY-FIVE MILLION EIGHT HUNDRED AND TWENTY-SEVEN THOUSAND SEVEN HUNDRED AND FIFTY-ONE CANADIAN DOLLARS (Cdn. \$35,827,751)”.
12. Effective as of the date hereof, the reference to “\$29,271,251.00” in the first recital of the Guarantee given by Mizrahi Soaring Developments Inc., One8One Davenport Inc. and, as a result of this Agreement, 181 Davenport Retail Inc. in favour of the Lender on the 17th day of December, 2014 is hereby deleted and replaced with “\$35,827,751”.
13. Effective as of the date hereof, the reference to “\$29,271,251.00” in the first recital of the Postponement Agreement given by Sam Mizrahi and the Obligors in favour of the Lender on the 17th day of December, 2014 is hereby deleted and replaced with “\$35,827,751”.
14. The Obligors shall cause the following security to be provided to the Lender (collectively the “**New Security**” and with the Existing Security, the “**Security**”):
 - a. forthwith after the registration of the transfer of the Unit to 181 by 181 in favour of the Lender:
 - i. a collateral charge / mortgage of land from 181 in the amount of the principal amount of the Loan then outstanding plus \$5,000,000 subject only to a conventional first mortgage in the principal amount of \$5,400,000 with a lender listed in Schedule 1, 2 or 3 to the *Bank Act* (Canada) or a Credit Union regulated by The Deposit Insurance Corporation of Ontario and otherwise acceptable to the Lender, not to unreasonably or arbitrarily withheld, conditioned or delayed and on terms and conditions acceptable to the Lender in its sole discretion, acting

- reasonably (the “**First Mortgage**”), together with an assignment of rents all in the standard form of the Lender;
- ii. a general security agreement from 181 registered under the PPSA subject only to a prior registration by the lender under the First Mortgage in the standard form of the Lender;
 - iii. a quit claim deed from 181 in favour of the Lender in the amount of the lesser of:
 - (i) the principal amount of the Loan then outstanding; and
 - (ii) 6,556,500 which is to be held by the Lender's solicitors in escrow and may not be registered unless the Borrower has committed an Event of Default and following receipt of written notice of such default has failed to remedy same, during the applicable cure period (save and except as noted below where no notice or cure period shall be required). 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 default in performance of any other obligation, it has continued for at least thirty (30) days after notice thereof has been given to the Borrower. Notwithstanding the foregoing, 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 gives or creates a mortgage, charge, lien (save and except for the First Mortgage and any 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 Unit, or in the event the Borrower sells, agrees to sell or otherwise disposes of all or any part of the Unit or any collateral secured by the Existing Security or the New Security except as otherwise permitted by the Lender in the standard form of the Lender. For greater certainty, any registration of the quit claim deed shall only satisfy that portion of the Loan that is equal to the amount of the quit claim deed less applicable taxes;
- b. a security interest by Mizrahi Inc. in the Accounts. In order to effect same, Mizrahi hereby grants a security interest in the Accounts in accordance with the provisions of the PPSA it being agreed that the Lender shall not register such security interest until the occurrence of an event of default subject to the same cure periods set out in a. (iii) above. The Obligors hereby covenant that all payments by Mizrahi Inc. to the Lender shall be free and clear of any prior security interest whatsoever;
 - c. a first charge/mortgage of land in the principal amount of \$15,000,000 and assignment of rents by 249 over the Dundonald Property supported by a policy of title insurance and such other standard mortgage closing documents as the Lender may reasonably require (collectively the “**Dundonald Charge**”);
 - d. an opinion of counsel to the Mizrahi Inc., 181 and 249 and related documentation in a form satisfactory to the Lender and its solicitors.
15. The Obligors acknowledge and agree that items 7, 8 and 11 of the Existing Security are amended *mutatis mutandis* to reflect the fact that the Existing Security is intended to include the Unit and

the Dundonald Property and all such agreements are also hereby amended *pro tanto* to give effect to the foregoing.

16. The Loan shall be permanently reduced by the Net Proceeds (as defined in the direction to Harris Sheaffer LLP dated June 21, 2012, delivered in connection with the Loan).
17. The Obligors and the Lender acknowledge and agree that the remaining balance of the Loan, including, without limitation, the Additional Advance, after receipt of the Net Proceeds shall be secured by the Existing Security and the New Security.
18. The Obligors shall ensure that 50% of all sales commissions, marketing and advertising fees, 100% of the reimbursement of all costs incurred in respect of the presentation gallery in the Unit (the "**Presentation Gallery**"), including, without limitation, leasehold improvements and furniture, earned and actually received by Mizrahi Inc. from The One in connection with the Project (as set out in the Altus Group ("**Altus**") budget dated April 6, 2016 (the "**Budget**")) and 100% of the reimbursement of the parkland dedication costs in respect of the Dundonald Property as set out in the Budget (collectively, the "**Accounts**"), shall be directed to the Lender to be applied as a permanent reduction of the Loan.
19. Mizrahi Inc. shall retain Altus to oversee and report on the construction of the presentation gallery in the Unit including, without limitation, leasehold improvements and furniture (the "**Consultant**").
20. The Obligors shall use their best efforts to refinance the Dundonald Property with a lender listed in Schedule 1, 2 or 3 to the *Bank Act* (Canada) or a Credit Union regulated by The Deposit Insurance Corporation of Ontario and otherwise acceptable to the Lender, not to unreasonably or arbitrarily withheld, conditioned or delayed, on or before May 31, 2017 in the principal amount of \$1,500,000 and on terms and conditions acceptable to the Lender in its sole discretion (the "**Dundonald Financing**").
21. The Obligors hereby undertake to provide written updates as to the status of the Dundonald Financing by 12:00pm every other Monday.
22. The Obligors acknowledge and agree that net proceeds (after payment of only reasonable broker fees and legal fees) of the Dundonald Financing shall be directed to the Lender to be applied as a permanent reduction of the Loan.
23. The Lender hereby acknowledges and agrees it shall subordinate and standstill the Dundonald Charge and related security in favour of the Dundonald Financing on terms and conditions acceptable to the Lender in its sole discretion, including, without limitation, the length of the standstill, not to unreasonably delayed, provided that: (i) there has been no default by any of the Obligors under any of their obligations to the Lender; and (ii) the Dundonald Financing is on terms and conditions acceptable to the Lender in its sole discretion not to be unreasonably withheld or delayed.
24. The Obligors confirm that, to the extent a party thereto, the Loan Agreement and Existing Security has not been discharged, waived or varied except as provided herein, that it is binding upon the Obligors, as applicable, and that it is valid and enforceable in accordance with its written terms and it shall constitute, and shall be held by the Lender as, general and continuing security

for the payment and fulfillment of all of the indebtedness, liabilities and obligations of the Obligors, as applicable, present or future, direct or indirect, contingent or not, matured or not, including, without limitation, the obligations under the Promissory Note, as amended by this Agreement.

25. The Borrower shall pay a work fee of \$56,500 (including HST) to Bridging Finance Inc. (the "Work Fee") which shall be paid on the earlier of December 15, 2016 and the date of the Additional Advance.
26. The Borrower shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Agreement and all matters relating thereto which fees shall be paid on the earlier of December 15, 2016, and the date of the Additional Advance.
27. In the event that 181 fails to provide the New Security as aforesaid, 181 hereby irrevocably constitutes and appoints any officer of the Lender its due and lawful attorney with full power of substitution in its name and on its behalf, to execute and deliver the New Security to the Lender; such appointment, coupled with an interest, being irrevocable to the maximum extent permitted by applicable law.
28. In the event that on or before December 12, 2016: (i) the Dundonald Charge is not received; and (ii) the Additional Advance has not taken place, the Additional Advance shall be cancelled. For greater certainty, notwithstanding the terms of this Agreement, interest shall accrue on the Additional Advance commencing December 1, 2016.
29. The Lender covenants that, provided that the New Security has been executed and delivered to the Lender's solicitor together with the Work Fee and legal fees to date, \$3,927,931.02 of the Additional Advance shall be disbursed to Fogler Rubinoff LPP for the completion of the purchase of Dundonald Property and the balance of the Additional Advance shall be disbursed to Mizrahi Inc. for the improvements to the Unit.
30. Upon completion of the Presentation Gallery as determined by Altus, Altus shall conduct, at no expense to the Lender, a full and complete cost review and analysis on behalf of The One, Mizrahi Inc. and the Lender to determine the value of the goods and services supplied and provided in connection with the completion of the Presentation Gallery. In the event that Altus determines that the value of the goods and services supplied exceeds \$2,500,000 then Mizrahi Inc. shall be solely responsible for such excess. In the event that Altus determines that the value of the goods and services supplied is less than \$2,500,000, then Mizrahi Inc. covenants to forthwith repay to the Lender the difference between \$2,500,000 and such value. All amounts are inclusive of any applicable taxes, including, without limitation, HST. The Altus determination shall be final and binding upon the parties hereto.
31. Notwithstanding the terms and conditions of the Loan Agreement and the Existing Security, all Obligors may be provided with notice or any other commutation in accordance with section 12.12 of the Loan Agreement to the address for the Borrower set out therein.
32. For the purposes of item 5 of the Existing Security, the collateral locations shall be as set out therein together with the Unit and the Dundonald Property.

33. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Existing Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
34. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.
35. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Existing Security, as may be required to evidence the true intent and meaning of this Agreement.
36. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
37. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]


Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
Sprott Bridging Income Fund LP**


Per: 
Name: Natasha Sharpe
Title: CEO and Chief Investment Officer

We Acknowledge and Accept the terms and conditions of this Agreement as of this 30th day of November, 2016.


NORTHERN CITADEL CAPITAL INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

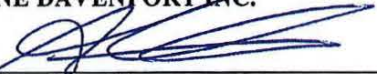
MIZRAHI INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

2495159 ONTARIO INC.

Per: 
Name: Sam Mizrahi
Title: President
I have authority to bind the corporation

ONE8ONE DAVENPORT INC.

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI ENTERPRISES INC.

Per: 

Name: ~~Sam Mizrahi~~

Title: President

I have the authority to bind the corporation

MIZRAHI SOARING DEVELOPMENTS INC.

Per: 

Name: ~~Sam Mizrahi~~

Title: President

I have the authority to bind the corporation

181 DAVENPORT RETAIL INC.

Per: 

Name: ~~Sam Mizrahi~~

Title: President

I have the authority to bind the corporation

Schedule "A"Existing Security

Each dated as of December 17, 2014 (as may have been amended):

1. Loan Agreement.
2. Promissory Note.
3. Quit Claim Deed.
4. General Assignment of Rents.
5. General Security Agreement from the Borrower and the Guarantors.
6. Beneficial Owners' Agreement in respect of 145 Davenport Road.
7. Assignment of Material Agreements from the Borrower and the Guarantors.
8. Assignment of Insurance from the Borrower and the Guarantors.
9. Guarantee from the Guarantors.
10. Postponement Agreement executed by Sam Mizrahi, the Borrower and the Obligors.
11. Environmental Indemnity executed by the Borrower and the Guarantors.
12. Direction in favour of Harris Sheaffer LLP in respect to of the net proceeds received on closing of the project unit sales, executed by the Borrower, the Guarantors and Mizrahi Enterprises Inc., acknowledged by Harris Sheaffer LLP.

This is Exhibit “H” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 20th day of September, 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.

A Commissioner for taking affidavits

ADAM DRIEDGER

Dated as of November 1, 2017

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP (the “**Lender**”) loan to Northern Citadel Capital Inc., Mizrahi Inc. and 2495159 Ontario Inc. (collectively, the “**Borrower**”) pursuant to a loan agreement among, *inter alia*, the Borrower and the Lender dated as of December 17, 2014, as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015, June 30, 2016, and November 30, 2016 (collectively, the “**Loan Agreement**”)

We confirm your request to obtain an additional advance of \$5,584,750 under the Loan (the “**Additional Advance**”). In this regard, we confirm that the Lender has agreed, subject to receipt of the Work Fee (as hereinafter defined), to amend the terms and conditions of the Loan Agreement and the Security as follows (all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement):

1. The Additional Advance shall be disbursed as set out herein and used to fund the Work Fee and to finish the Project in such amounts and for such purposes as approved by Altus and the Lender.
2. Effective the date hereof, the reference to “\$35,827,751” in Section 2.1 of the Loan Agreement is hereby deleted and replaced with “\$41,412,501”.
3. The Obligors acknowledge and agree that interest on the outstanding principal amount of the Loan is calculated daily at the rate of 12% per annum and since November 30, 2016, has been and shall continue to accrue and be compounded monthly on the last day of each month and is payable on the earliest of: (i) an Event of Default; (ii) prepayment of the Loan for any reason whatsoever; and (iii) the Maturity Date. Interest on the Additional Advance shall commence as of the date hereof regardless of the date of disbursement.
4. As of November 1, 2017, the Obligors acknowledge and agree that there is \$39,976,188.61 outstanding under the Loan and that they do not dispute their liability to the Lender on any ground whatsoever. The Obligors further confirm that they have no claim, demand, setoff or counter-claim against the Lender on any basis whatsoever and that there is no matter, fact or thing which may be asserted by any of them in extinction or diminution of their indebtedness to the Lender or result in any bar to or delay in the recovery thereof. If there are any such claims for setoff, counter-claim, damages or otherwise, they are hereby expressly released and discharged.
5. Advances of the Additional advance shall be made at the request of the Borrower and be at the sole discretion of the Lender. The first advance of the Additional Advance shall be \$3,200,000 plus the Work Fee and legal fees and shall be made on or about November 10, 2017.
6. Effective the date hereof, the reference to “\$35,827,751” in the heading of the Promissory Note granted by the Borrower in favour of the Lender dated as of the 17th day of December 2014 (the “**Promissory Note**”) is hereby deleted and replaced with “\$41,412,501”.

7. Effective the date hereof, the reference to “THIRTY-FIVE MILLION EIGHT HUNDRED AND TWENTY-SEVEN THOUSAND SEVEN HUNDRED AND FIFTY-ONE CANADIAN DOLLARS (Cdn. \$35,827,751)” in the first paragraph of the Promissory Note is hereby deleted and replaced with “FORTY-ONE MILLION FOUR HUNDRED AND TWELVE THOUSAND FIVE HUNDRED AND ONE CANADIAN DOLLARS (Cdn. \$41,412,501)”.
8. Effective as of the date hereof, the reference to “\$35,827,751” in the first recital of the Guarantee given by the Guarantors in favour of the Lender on the 17th day of December, 2014 is hereby deleted and replaced with “\$41,412,501”.
9. Effective as of the date hereof, the reference to “\$35,827,751” in the first recital of the Postponement Agreement given by the Obligors in favour of the Lender on the 17th day of December, 2014 is hereby deleted and replaced with “\$41,412,501”.
10. The Obligors confirm that the Unit has not yet been transferred to 181 and agree that any transfer of the Unit shall require the prior written consent of the Lender in its sole discretion such consent not be unreasonably or arbitrarily withheld, conditioned or delayed. For greater certainty, the Obligors shall cause the New Security to be delivered forthwith after the registration of the transfer of the Unit.
11. The Obligors confirm that the Loan shall be permanently reduced by the Net Proceeds (as defined in the direction to Harris Sheaffer LLP dated June 21, 2012, delivered in connection with the Loan). The Obligors confirm that the remaining balance of the Loan, including, without limitation, the Additional Advance, after receipt of the Net Proceeds shall be secured by the Security.
12. The Obligors confirm that on the payout of the obligations owing to United Overseas Bank in respect of the Project the Obligors shall deliver to the Lender in respect of the Project (including, without limitation, the Unit) the following (collectively, the “**Project Security**” and with the Security, the “**Security**”):
 - a. a collateral charge / mortgage of land in the amount of the principal amount of the Loan then outstanding plus \$5,000,000, together with an assignment of rents and a general security agreement all in the standard form of the Lender and registered on title and under the PPSA as applicable. The collateral charge / mortgage of land shall contain a covenant by the Lender to register a partial discharge of this collateral charge / mortgage of land upon the sale of any unit to a bona fide third party purchaser for value, upon receipt of the Net Proceeds;
 - b. a quit claim deed in favour of the Lender in the amount of the principal amount of the Loan then outstanding plus \$5,000,000 which is to be held by the Lender's solicitors in escrow and may not be registered unless the Borrower has committed an Event of Default and following receipt of written notice of such default has failed to remedy same, during the applicable cure period (save and except as noted below where no notice or cure period shall be required). 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 default in performance of any other obligation, it has continued for at least thirty (30) days after notice thereof has been given to the



Borrower. Notwithstanding the foregoing, 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 Obligors give or create a mortgage, charge, lien (save and except for any construction liens, in respect of which the Obligors (or any of them) shall have received notice with an opportunity to bond off and vacate such lien) or encumbrance upon the remaining units at the Project. For greater certainty, any registration of the quit claim deed shall only satisfy that portion of the Loan that is equal to the value of the remaining units at the time of registration less any encumbrances.

13. On the transfer of the Unit, the Lender shall provide a subordination in respect of the Unit to a conventional first mortgage in the principal amount of up to \$5,400,000 with a lender listed in Schedule 1, 2 or 3 to the Bank Act (Canada) or a Credit Union regulated by The Deposit Insurance Corporation of Ontario and otherwise acceptable to the Lender, not to unreasonably or arbitrarily withheld, conditioned or delayed and on terms and conditions acceptable to the Lender in its sole discretion, acting reasonably, together with an assignment of rents all in the standard form of the Lender.
14. The Obligors shall ensure that 100% of all sales commissions, less payments made to any unaffiliated or related co-operating real estate brokers (provided said percentage does not exceed 50%), 50% of all marketing and advertising fees, 100% of the reimbursement of all costs incurred in respect of the Presentation Gallery, including, without limitation, leasehold improvements and furniture, earned and actually received by Mizrahi Inc. (which the Obligors represent and warrant is the entity entitled to such funds) from The One in connection with the Project (as set out in the Budget) and 100% of the reimbursement of the parkland dedication costs in respect of the Dundonald Property as set out in the Budget (collectively, the “**Accounts**”), shall be directed to the Lender to be applied as a permanent reduction of the Loan until indefeasibly repaid in full. The Lender confirms that its sole recourse against Mizrahi Inc. shall be limited to the Accounts (as defined in this section 14 herein).
15. In the event that the Obligors fail to provide the Project Security, the Obligors hereby irrevocably constitute and appoint any officer of the Lender its due and lawful attorney with full power of substitution in its name and on its behalf, to execute and deliver such documentation to the Lender; such appointment, coupled with an interest, being irrevocable to the maximum extent permitted by applicable law.
16. The Obligors confirm that, to the extent a party thereto, the Loan Agreement and the Security have not been discharged, waived or varied except as provided herein, that they are binding upon the Obligors, as applicable, and that they are valid and enforceable in accordance with their written terms and shall constitute, and shall be held by the Lender as, general and continuing security for the payment and fulfillment of all of the indebtedness, liabilities and obligations of the Obligors, as applicable, present or future, direct or indirect, contingent or not, matured or not, including, without limitation, the obligations under the Promissory Note, as amended by this Agreement.
17. The Borrower shall pay a work fee of \$84,750 (including HST) to Bridging Finance Inc. (the “**Work Fee**”) which shall be paid on the earlier of November 15, 2017 and the date of the Additional Advance.




18. The Borrower shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Agreement and all matters relating thereto which fees shall be paid on the earlier of November 15, 2017, and the date of the Additional Advance. If not paid as aforesaid, such amounts may be paid by the Lender and added to the Loan and shall bear interest from the date of such payment in accordance with the terms of the Loan and shall be secured by the Security.
19. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
20. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.
21. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Security, as may be required to evidence the true intent and meaning of this Agreement.
22. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
23. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]

Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
Sprott Bridging Income Fund LP**

Per: 
Name: Natasha Sharpe
Title: Chief Investment Officer

We Acknowledge and Accept the terms and conditions of this Agreement as of this 1st day of November, 2017.

**NORTHERN CITADEL CAPITAL INC. (as
Borrower and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI INC. (as Borrower and Obligor)

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**2495159 ONTARIO INC. (as Borrower and
Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have authority to bind the corporation

**ONE8ONE DAVENPORT INC. (as Guarantor
and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
Sprott Bridging Income Fund LP**

Per: _____
Name: Natasha Sharpe
Title: Chief Investment Officer

We Acknowledge and Accept the terms and conditions of this Agreement as of this 1st day of November, 2017.

**NORTHERN CITADEL CAPITAL INC. (as
Borrower and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI INC. (as Borrower and Obligor)

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation


**2495159 ONTARIO INC. (as Borrower and
Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
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**ONE8ONE DAVENPORT INC. (as Guarantor
and Obligor)**

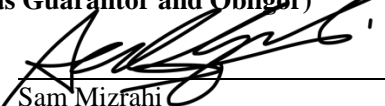
Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI ENTERPRISES INC. (as Obligor)

Per: 
Name: Sam Mizrahi
Title: President

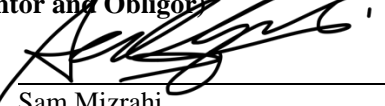
I have the authority to bind the corporation

**MIZRAHI SOARING DEVELOPMENTS
INC. (as Guarantor and Obligor)**

Per: 
Name: Sam Mizrahi
Title: President

I have the authority to bind the corporation

**181 DAVENPORT RETAIL INC. (as
Guarantor and Obligor)**

Per: 
Name: Sam Mizrahi
Title: President

I have the authority to bind the corporation

Witness:



Sam Mizrahi (as Obligor)

This is Exhibit "I" referred to in the Affidavit of Tyler Ray sworn by Tyler Ray of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 20th day of September, 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.

A Commissioner for taking affidavits

ADAM DRIEDGER

May 2, 2018

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP (the “**Lender**”) loan to Northern Citadel Capital Inc., Mizrahi Inc. and 2495159 Ontario Inc. (collectively, the “**Borrower**”) pursuant to a loan agreement among, *inter alia*, the Borrower and the Lender dated as of December 17, 2014, as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015, June 30, 2016, November 30, 2016, and November 1, 2017 (collectively, the “**Loan Agreement**”)

We confirm that the Lender has agreed, to amend the terms and conditions of the Loan Agreement and the Security as follows (all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement):

1. As of May 1, 2018, the Obligors acknowledge and agree that there is \$48,340,227.18 outstanding under the Loan and that they do not dispute their liability to the Lender on any ground whatsoever. The Obligors further confirm that they have no claim, demand, setoff or counter-claim against the Lender on any basis whatsoever and that there is no matter, fact or thing which may be asserted by any of them in extinction or diminution of their indebtedness to the Lender or result in any bar to or delay in the recovery thereof. If there are any such claims for setoff, counter-claim, damages or otherwise, they are hereby expressly released and discharged.
2. The Obligors acknowledge that the Project Security has not yet been provided and that the transfer of the Unit is scheduled to take place on May 2, 2018.
3. The Lender hereby consents to the transfer of the Unit in accordance with the terms of the Agreement of Purchase and Sale dated May 20, 2016, as amended by agreement dated December 15, 2016.
4. The Lender hereby consents to a first mortgage over the Unit in favour of KEB Hana Bank Canada on substantially the same terms and conditions as set out in an offer letter dated September 28, 2017.
5. Notwithstanding Section 12 of the amending letter dated November 1, 2017, in respect of the Unit, 181 shall contemporaneously with the transfer and mortgage of the Unit noted above, provide a collateral charge / mortgage of land in the amount of the principal amount of \$12,000,000 (the “**Charge**”) together with an assignment of rents and a general security agreement all in the standard form of the Lender and registered on title to the Unit and under the PPSA as applicable. The Charge shall not provide for an interest rate, however, all interest, costs, fees and other amounts owing to the Lender shall be added to the principal amount and be secured by the Charge.
6. In the event that at any time, the obligations of the Obligors exceed \$12,000,000 and 181 has any equity in the Unit as determined by the Lender, 181 shall provide an agreement to amend the Charge to increase the principal amount thereof to an amount equal to such Obligations plus \$5,000,000. If 181 fails to provide such amending agreement within 3 days of request therefore,

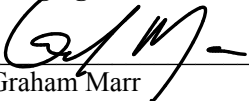
181 hereby irrevocably constitutes and appoints any officer of the Lender its due and lawful attorney with full power of substitution in its name and on its behalf, to execute and deliver such amending agreement to the Lender; such appointment, coupled with an interest, being irrevocable to the maximum extent permitted by applicable law.

7. For greater certainty, to the extent the Charge, assignment of rents or general security agreement names only Bridging Finance Inc. as Chargee, Assignee or Creditor (or other similar capacity), the Obligors acknowledge and agree that Bridging Finance Inc. holds such security as agent for Sprott Bridging Income Fund LP.
8. The Obligors confirm that, to the extent a party thereto, the Loan Agreement and the Security have not been discharged, waived or varied except as provided herein, that they are binding upon the Obligors, as applicable, and that they are valid and enforceable in accordance with their written terms and shall constitute, and shall be held by the Lender as, general and continuing security for the payment and fulfillment of all of the indebtedness, liabilities and obligations of the Obligors, as applicable, present or future, direct or indirect, contingent or not, matured or not, including, without limitation, the obligations under the Promissory Note, as amended by this Agreement.
9. The Borrower shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Agreement and all matters relating thereto which fees shall be paid within 10 days of request therefore. If not paid as aforesaid, such amounts may be paid by the Lender and added to the Loan and shall bear interest from the date of such payment in accordance with the terms of the Loan and shall be secured by the Security.
10. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
11. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.
12. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Security, as may be required to evidence the true intent and meaning of this Agreement.
13. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
14. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]

Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
Sprott Bridging Income Fund LP**

Per: 
Name: Graham Marr
Title: Senior Managing Director

We Acknowledge and Accept the terms and conditions of this Agreement as of this ____ day of May, 2018.

**NORTHERN CITADEL CAPITAL INC. (as
Borrower and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

MIZRAHI INC. (as Borrower and Obligor)

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**2495159 ONTARIO INC. (as Borrower and
Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have authority to bind the corporation

**ONE8ONE DAVENPORT INC. (as Guarantor
and Obligor)**

Per: _____
Name: Sam Mizrahi
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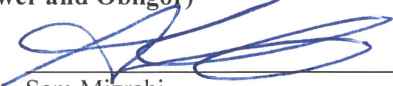
Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
Sprott Bridging Income Fund LP**


Per: _____
Name:
Title:

We Acknowledge and Accept the terms and conditions of this Agreement as of this ____ day of
May, 2018.

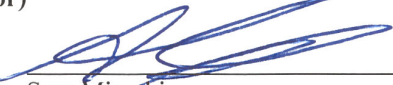
**NORTHERN CITADEL CAPITAL INC. (as
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Per: 
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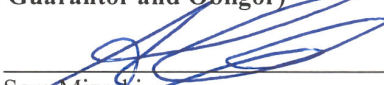
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Title: President
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Per: 
Name: Sam Mizrahi
Title: President
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INC. (as Guarantor and Obligor)**

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**181 DAVENPORT RETAIL INC. (as
Guarantor and Obligor)**

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation



Witness:



Sam Mizrahi (as Obligor)

This is Exhibit “J” referred to in the Affidavit of Tyler Ray sworn by Tyler Ray of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 20th day of September, 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely.*

A Commissioner for taking affidavits

ADAM DRIEDGER

Dated as of December 31, 2020

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Dear Mr. Mizrahi:

Re: Bridging Finance Inc. as agent for Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) (the “**Lender**”) loan to Northern Citadel Capital Inc., (collectively, the “**Borrower**”) pursuant to a loan agreement among, *inter alia*, the Borrower and the Lender dated as of December 17, 2014, as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015, June 30, 2016, November 30, 2016 (the “**November Letter**”), November 1, 2017 and May 2, 2018 (collectively, the “**Loan Agreement**”)

We confirm that the Lender has agreed, to amend the terms and conditions of the Loan Agreement and the Security as follows (all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement):

1. As of December 31, 2020, the Obligors acknowledge and agree that there is \$45,892,107.79 outstanding under the Loan and that they do not dispute their liability to the Lender on any ground whatsoever. The Obligors further confirm that they have no claim, demand, setoff or counter-claim against the Lender on any basis whatsoever and that there is no matter, fact or thing which may be asserted by any of them in extinction or diminution of their indebtedness to the Lender or result in any bar to or delay in the recovery thereof.
2. Effective the date hereof, the Maturity Date (as defined in the November Letter) is hereby extended to April 30, 2022.
3. The Borrower shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Agreement and all matters relating thereto which fees shall be paid within 10 days of request therefore. If not paid as aforesaid, such amounts may be paid by the Lender and added to the Loan and shall bear interest from the date of such payment in accordance with the terms of the Loan and shall be secured by the Security.
4. This Agreement is supplemental to and shall be read with and be deemed to be part of the Loan Agreement, the Promissory Note, the Guarantee and the Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Loan Agreement, the Promissory Note, the Guarantee, the Security and any agreements or documents entered into in connection with the Loan Agreement, the Promissory Note, the Guarantee and the Security shall mean the Loan Agreement, the Promissory Note, the Guarantee and the Security, all as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.
5. All the terms and conditions of the Loan Agreement, the Promissory Note, the Guarantee and the Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.



6. The Obligors agree to execute such further assurances with respect to this Agreement, the Loan Agreement, the Promissory Note, the Guarantee and the Security, as may be required to evidence the true intent and meaning of this Agreement.
7. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
8. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

[Signature Page Follows]

Provided that the foregoing meets with your approval, kindly execute where indicated and return two original copies of this letter to the Lender.

**BRIDGING FINANCE INC., as agent for
BRIDGING INCOME FUND LP**

Per: _____
Name:
Title:

We Acknowledge and Accept the terms and conditions of this Agreement as of this 31th day of December, 2020.

**NORTHERN CITADEL CAPITAL INC. (as
Borrower and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**ONESONE DAVENPORT INC. (as Guarantor
and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President

MIZRAHI ENTERPRISES INC. (as Obligor)

Per: _____
Name: Sam Mizrahi
Title: President

**MIZRAHI SOARING DEVELOPMENTS
INC. (as Guarantor and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

**181 DAVENPORT RETAIL INC. (as
Guarantor and Obligor)**

Per: _____
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

DEWATERHOUSECOOPERS INC.

in its capacity as court-appointed receiver and manager of
ing Finance Inc. and certain related entities and investment funds)

Applicant

- and - **NORTHERN CITADEL CAPITAL INC., ONE80N
DAVENPORT INC., and 181 DAVENPORT RETAIL
INC.**

Respo

Court File No. CV-22-00685200

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

Proceedings commenced at Toronto, Ontario

SUPPLEMENTAL AFFIDAVIT OF TYLER RAY

Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
3200 – 100 Wellington Street West
Toronto, ON M5K 1K7

John L. Finnigan (LSO# 24040L)
Email: jfinnigan@tgf.ca


Grant B. Moffat (LSO# 32380L)
Email: gmoffat@tgf.ca

Adam Driedger (LSO# 77296F)
Email: adriedger@tgf.ca

Tel: 416-304-1616

Lawyers for the Applicant

This is Exhibit "D" referred to in the Affidavit of Khashayar Khavari affirmed by Khashayar Khavari at the City of Toronto, in the Province of Ontario, before me on October 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

SEAN PIERCE

CV-22-00685200-00CL

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,
as amended*

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC.,
and 181 DAVENPORT RETAIL INC.**

Respondents

**FACTUM OF THE APPLICANT
(Application Returnable September 23, 2022)**

September 16, 2022

Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
3200 – 100 Wellington Street West
Toronto, ON M5K 1K7

John L. Finnigan (LSO# 24040L)
Email: jfinnigan@tgf.ca

Grant B. Moffat (LSO# 32380L)
Email: gmoffat@tgf.ca

Adam Driedger (LSO# 77296F)
Email: adriedger@tgf.ca

Tel: 416-304-1616

Lawyers for the Applicant

Contents

PART I - OVERVIEW 3

PART II - THE FACTS 4

Background & Appointment of Bridging Receiver 4

Corporate Information & Business of the Respondents 6

The Loan Agreement & Advances 6

Security & Guarantees 9

Events & Transactions Leading up to Application 9

Events of Default & Demands 13

PART III - THE ISSUE 15

PART IV - LAW & ANALYSIS..... 15

 A. THE RECEIVER SHOULD BE APPOINTED 15

 (i) *Jurisdiction to Appoint the Receiver* 15

 (ii) *It is Just and Convenient to Appoint the Receiver in the Circumstances* 18

 (iii) *Investigatory Powers are Necessary and Warranted* 19

 (iv) *The Receiver should be Authorized to Assign the Respondents into Bankruptcy* 21

 B. SPECIFIC RELIEF SOUGHT 22

 (i) *Investigatory Powers* 22

 (ii) *Authority to Assign into Bankruptcy* 23

PART V - RELIEF REQUESTED 24

CV-22-00685200-00CL

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,
as amended*

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC.,
and 181 DAVENPORT RETAIL INC.**

Respondents

FACTUM OF THE APPLICANT

PART I - OVERVIEW

1. PricewaterhouseCoopers Inc. (“**PwC**”), solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. (“**BFI**”) and certain related entities and investment funds (in such capacity, the “**Applicant**” or the “**Bridging Receiver**”), seeks an order (the “**Receivership Order**”) appointing Richter Inc. (“**Richter**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the current and future assets, undertakings, and properties (the “**Property**”) of each of Northern Citadel Capital Inc. (“**Northern Citadel**”), One8One Davenport Inc. (“**One8One**”) and 181 Davenport Retail Inc. (“**181 Retail**”) and together with Northern Citadel and One8One, the “**Respondents**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts of Justice Act* (the “**CJA**”).

2. The relief sought by the Bridging Receiver should be granted on the basis that it is “just and convenient” to appoint the proposed Receiver in the circumstances and therefore the applicable legal test set out under section 243 of the BIA and section 101 of the CJA has been satisfied.
3. Further, the Court has the jurisdiction to grant the relief sought in the proposed Receivership Order pursuant to section 243(1)(c) of the BIA, which provides that the Court may appoint a receiver to take any action the court considers advisable where it is just and convenient to do so. As set out below, there is precedent for the provisions of the proposed Receivership Order that deviate from the Model Order.

PART II - THE FACTS

4. The facts relevant to the relief sought by the Bridging Receiver are set out in greater detail in the Affidavit of Tyler Ray sworn August 8, 2022 (the “**Ray Affidavit**”) and are summarized below. All capitalized terms not expressly defined herein are defined in the Ray Affidavit.

Background & Appointment of Bridging Receiver

5. By orders of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 30, 2021, May 3, 2021, and May 14, 2021, PwC was appointed as the Bridging Receiver.¹
6. PwC was appointed as the Bridging Receiver pursuant to section 129 of the Securities Act

¹ Affidavit of Tyler Ray sworn August 8, 2022 (the “**Ray Affidavit**”) at para 4.

upon application by the Commission as a result of the Commission's ongoing investigation into Bridging and certain related individuals and entities.²

7. The Bridging Receiver was appointed to protect the interests of, and maximize value for, Bridging's investors and other stakeholders. As detailed in the Bridging Receiver's various reports to the Court, Bridging's investors are facing significant losses on their investments in the Bridging Funds.³
8. One of the loans in Bridging's portfolio is the Loan made by BFI on behalf of certain of the Bridging Funds to Northern Citadel and certain related entities. The Loan is currently past maturity and in default. On May 12, 2022, the Bridging Receiver issued the Demand Letters and BIA Notices to the Respondents. The Respondents have failed to make any payments in reduction of the Loan notwithstanding the maturity of the Loan and the issuance of the Demand Letters and the BIA Notices.⁴
9. The Bridging Receiver has significant concerns regarding certain events and transactions involving the Respondents, certain related entities, and the former principals of Bridging, some of which are described in the Ray Affidavit and summarized below.⁵
10. The Bridging Receiver brings this application to appoint Richter as Receiver of the Respondents as part of its broader investigation into the affairs of Bridging and in an effort to minimize the losses that Bridging's investors and other stakeholders will suffer as a

² Ray Affidavit at para 5.

³ Ray Affidavit at para 7.

⁴ Ray Affidavit at paras 8 and 14.

⁵ Ray Affidavit at para 10.

result of the Loan. The appointment of an independent court officer as Receiver of the Respondents is required in these circumstances to investigate the financial situation and affairs of the Respondents and to realize on their assets (to the extent any such assets are available or recoverable) for the benefit of all stakeholders.⁶

Corporate Information & Business of the Respondents

11. Each of the Respondents is a corporation incorporated under the laws of the Province of Ontario with its registered head office in Toronto, Ontario. The Respondents developed and marketed the condominium project located at 181 Davenport Road, Toronto, Ontario (the “**181 Davenport Project**”).⁷
12. Sam Mizrahi, the principal of the Respondents, was listed as the sole director of each of the Respondents up until May 15, 2022. It appears that Sam Mizrahi was removed as a director of each of the Respondents effective as of May 15, 2022, three days after the Bridging Receiver delivered the Demand Letters and BIA Notices to the attention of Sam Mizrahi. Sam Mizrahi remains listed as the sole officer of each of the Respondents.⁸

The Loan Agreement & Advances

13. Pursuant to the Loan Agreement, Bridging Finance Inc., as agent (in such capacity, the “**Agent**”) on behalf of Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) and the related investment funds from time to time acting as lender (collectively, the

⁶ Ray Affidavit at para 11.

⁷ Ray Affidavit at paras 12 and 13.

⁸ Ray Affidavit at para 13.

“**Lender**”) made available to Northern Citadel, Mizrahi Inc. (“**MI**”), and 2495159 Ontario Inc. (“**249 Ontario**”) and together with Northern Citadel and MI, the “**Borrower**”) a non-revolving term credit facility (the “**Loan**”) in the principal amount of \$41,412,501.00.⁹

14. MI and 249 Ontario are not Respondents to this Application and no relief is being sought by the Bridging Receiver in respect of MI and 249 Ontario on this Application. MI and 249 Ontario were added as entities comprising the “Borrower” pursuant to the November 2016 Amendment. There is a dispute as to whether MI and 249 Ontario still comprise the “Borrower” under the Loan Agreement and have any continuing liability thereunder. The issue of whether MI and 249 Ontario still comprise the “Borrower” under the Loan Agreement and have any continuing liability thereunder is not being addressed in this application, but may be addressed by the Bridging Receiver at a later date.¹⁰
15. Interest currently accrues on the Loan at the rate of 12% per annum. The Lender has received cash payments from the Borrower on only four occasions since the inception of the Loan in December 2014. All of those payments were received prior to expiry of the Term of the Loan on April 30, 2022.¹¹
16. As at June 30, 2022, the total amount owing by the Respondents to the Lender under the Loan is \$54,866,885.69, consisting of principal in the amount of \$17,054,655.33 and accrued and unpaid interest in the amount of \$37,812,230.36, together with all accrued

⁹ Ray Affidavit at para 14.

¹⁰ Ray Affidavit at para 15.

¹¹ Ray Affidavit at para 16.

costs to the date of payment.¹²

17. The original purpose of the Loan was to finance a portion of Northern Citadel's equity in the 181 Davenport Project. The Bridging Receiver also understands that, as set out in the Loan Agreement, certain Loan advances were used to:¹³

- (a) fund cost overruns on the 181 Davenport Project;
- (b) make improvements to the approximately 4,097 square foot unit (the "**Unit**") at the 181 Davenport Project to be used as a sales and presentation gallery for "The One" construction project located at 1 Bloor Street West, Toronto, Ontario (the "**1 Bloor Project**"). The Unit is owned by the Respondent 181 Retail; and
- (c) fund 249 Ontario's purchase of the real property located at 14 Dundonald Street, Toronto, Ontario (the "**Dundonald Property**"). The Dundonald Property was subsequently conveyed in 2020 by 249 Ontario to the City of Toronto (the "**Dundonald Conveyance**") for the benefit of Mizrahi Development Group (The One) Inc. ("**The One**") and/or certain other entities involved in the development of the 1 Bloor Project. The Dundonald Property does not appear to have any connection to the 181 Davenport Project.

18. The Bridging Receiver does not have full and complete information regarding the apparent inability of the Respondents to repay the Indebtedness. The Bridging Receiver has not obtained complete financial disclosure from the Respondents.¹⁴

¹² Ray Affidavit at para 17.

¹³ Ray Affidavit at para 19.

¹⁴ Ray Affidavit at para 22.

Security & Guarantees

19. As security for all of the present and future indebtedness and obligations of the Respondents to the Lender under the Loan, each of the Respondents granted to the Agent and the Lender, among other things, security over substantially all of its present and after-acquired property pursuant to separate general security agreements (the “**Respondent GSAs**”).¹⁵
20. The Agent made a registration against 181 Retail pursuant to the PPSA on May 2, 2018. As permitted under the Loan Agreement, the Bridging Receiver, on behalf of the Agent and the Lender, made a PPSA registration against each of Northern Citadel and One8One on May 12, 2022 following the failure by the Borrower to repay the Loan upon expiry of the Term.¹⁶
21. The PPSA searches appended to the Ray Affidavit confirm that the only registration against each of Northern Citadel and One8One is the registration made by the Bridging Receiver on behalf of the Agent and the Lender. There are two PPSA registrations against 181 Retail. The first registration was made by KEB Hana Bank Canada and a subsequent registration was made by the Agent.¹⁷

Events & Transactions Leading up to Application

22. As set out in detail in the Ray Affidavit, the Bridging Receiver has significant concerns

¹⁵ Ray Affidavit at paras 23 - 29.

¹⁶ Ray Affidavit at paras 24 & 27.

¹⁷ Ray Affidavit at para 29.

regarding certain events and transactions involving the Respondents, certain related entities, and the former principals of Bridging, some of which are summarized below:¹⁸

- (a) **1 Bloor Project & Conflicts of Interest.** The books and records of Bridging indicate that the 1 Bloor Project was indirectly owned by Sam Mizrahi, Jenny Coco, and Natasha Sharpe during the period between approximately March 12, 2015 and December 30, 2020 (the “**Applicable Period**”), which coincides with a substantial majority of the lifespan of the Loan.¹⁹ Jenny Coco and Natasha Sharpe are directors and indirect shareholders of BFI, and were also both members of BFI’s credit committee. The Bridging Receiver has significant concerns regarding the potential conflicts of interest between Jenny Coco and Natasha Sharpe in their capacities as principals of Bridging and members of the BFI credit committee, and separately as indirect owners of the 1 Bloor Project.
- (b) **November 2016 Amendment & Accounts.** Pursuant to the November 2016 Amendment, the definition of “Borrower” was amended to include 249 Ontario and MI in addition to Northern Citadel. Leading up to the November 2016 Amendment, Bridging lacked sufficient collateral coverage for the Loan. In order to cover this shortfall, MI was added as a Borrower under the Loan and the Accounts (primarily comprised of the sales commissions owing to MI in connection with the 1 Bloor Project) were pledged in favour of the Lender. The Accounts formed a material portion of the collateral subject to the Lender’s security. On multiple occasions,

¹⁸ Ray Affidavit at paras 30 – 86.

¹⁹ The books and records of Bridging do not contain information regarding the ownership of the 1 Bloor Project beyond the Applicable Period. Ray Affidavit at paras 34 and 36.

the Credit Parties represented to Bridging that the estimated Loan repayments sourced through the 1 Bloor Project (by way of the Accounts) would exceed \$20 million in aggregate.

(c) **Conveyance of Dundonald Property & July 2020 Partial Repayments.** Part of the November 2016 Advance was used to fund 249 Ontario's purchase of the Dundonald Property. The Dundonald Charge in the principal amount of \$15 million was granted by 249 Ontario as New Security for the Loan. The Dundonald Property was subsequently conveyed by 249 Ontario to the City of Toronto in 2020 for the benefit of the 1 Bloor Project. The purpose of the Dundonald Conveyance was to partially satisfy the 1 Bloor Project's municipal parkland obligations owing to the City of Toronto. 249 Ontario received approximately \$6.2 million in connection with the Dundonald Conveyance and directed payment of this amount to Bridging. Bridging agreed to discharge the Dundonald Charge notwithstanding that this amount was less than the \$15 million principal amount of the Dundonald Charge. The Dundonald Property does not appear to have any connection to the 181 Davenport Project. The Bridging Receiver has significant concerns regarding the involvement of Jenny Coco and Natasha Sharpe in the original Dundonald Property acquisition (and the subsequent Dundonald Conveyance) as both principals of Bridging and part owners of the 1 Bloor Project.

(d) **December 2020 Amendment & 2020 Bridging Audit.** The final amendment to the Loan Agreement was the December 2020 Amendment. The execution of the December 2020 Amendment was one day prior to the date of the audit opinion of Bridging Income Fund LP by KPMG. It appears that the December 2020

Amendment may have been executed to satisfy inquires from KPMG regarding the status of the Loan and whether it was past due. The December 2020 Amendment was executed after a series of emails and phone calls between Graham Marr of BFI and Sam Mizrahi. As a result of those emails and phone calls, among other things, MI and 249 Ontario were removed from the subject line and signature block of the December 2020 Amendment. MI and 249 Ontario now take the position that this had the effect of extinguishing their continuing liability under the Loan (which would leave the Lender with little to no other sources of recovery for the Loan). The Bridging Receiver continues to investigate this matter.

- (e) **Communications since Bridging Receivership.** The Bridging Receiver has engaged with the Credit Parties on multiple occasions in an effort to understand their financial position and formulate a repayment plan for the Loan. These efforts have been unsuccessful. The Respondents have largely failed to provide basic financial reporting required under the Loan Agreement and have failed to provide any plan for repayment of the Loan.
- (f) **Alleged Cerieco Secret Guarantee.** The Bridging Receiver has also become aware of an Alleged Secret Guarantee pursuant to which Sprott Bridging Income Fund LP allegedly guaranteed a loan (the “**Cerieco Loan**”) by Cerieco to Mizrahi Commercial (The One) LP in the amount of approximately \$213 million in connection with the construction of the 1 Bloor Project. The Bridging Receiver understands that Cerieco has filed a statement of claim (the “**Cerieco Claim**”) claiming over \$200 million in damages against, among others, Sam Mizrahi, Jenny Coco, and certain entities related to the 1 Bloor Project in connection with the

Cerieco Loan. The Cerieco Claim, among other things, alleges that Jenny Coco and Natasha Sharpe, on a confidential basis, effectively leveraged the balance sheet of Bridging Income Fund LP through the Alleged Secret Guarantee in order to obtain the Cerieco Loan for the 1 Bloor Project. The Bridging Receiver continues to investigate this matter and the documents and information related to the Cerieco Claim and the Alleged Secret Guarantee.

Events of Default & Demands

23. Pursuant to the Loan Agreement, the Term of the Loan expired on April 30, 2022. Pursuant to section 3.4 of the Original Loan Agreement, the principal amount of the Loan, together with accrued interest, is due and payable on the expiry of the Term.²⁰
24. The Respondents failed to repay the full amount outstanding under the Loan on the expiry of the Term, contrary to section 3.4 of the Original Loan Agreement (the “**Payment Default**”). The Payment Default is continuing as at the date hereof. The Bridging Receiver has not waived the Payment Default.²¹
25. Pursuant to section 12.1(a) of the Original Loan Agreement, an Event of Default occurs if the Borrower fails to observe or perform any term, condition, covenant, or undertaking involving the payment of money under the Loan Agreement. Pursuant to section 12.2 of the Original Loan Agreement, a default referred to under section 12.1 shall not constitute

²⁰ Ray Affidavit at para 87.

²¹ Ray Affidavit at para 88.

an Event of Default unless, in the case of default in payment of money, it has continued for at least 10 days after the due date for payment.²²

26. On May 2, 2022 (the first business day after the expiry of the Term), counsel for the Bridging Receiver sent the Default Letter to the Respondents confirming the existence of the Payment Default and advising that, if the Payment Default continued for at least 10 days after the due date for payment, the Payment Default would constitute an Event of Default under the Loan Agreement.²³
27. Notwithstanding the Default Letter, the Respondents failed to make any payments in respect of the Indebtedness or otherwise provide the Bridging Receiver with a response regarding the Payment Default.²⁴
28. On May 12, 2022, the Bridging Receiver delivered the Demand Letters to each of the Respondents advising that the Payment Default had continued for at least 10 days after the due date for payment and therefore constituted an Event of Default under the Loan Agreement. Pursuant to section 12.1 of the Original Loan Agreement, the Indebtedness is immediately due and payable upon the occurrence of an Event of Default. Accordingly, as set out in the Demand Letters, the Bridging Receiver demanded payment of the Indebtedness from each of the Respondents and enclosed a separate BIA Notice.²⁵

²² Ray Affidavit at para 89.

²³ Ray Affidavit at para 90.

²⁴ Ray Affidavit at para 91.

²⁵ Ray Affidavit at para 92.

29. The 10-day notice period set out in the BIA Notices expired on May 22, 2022. As at the date hereof, the Respondents have failed to repay the Indebtedness.²⁶

30. Pursuant to section 12.8 of the Original Loan Agreement, upon any Event of Default, the Lender may appoint a receiver or a receiver and manager of the Collateral, being all assets of the Respondents.²⁷

PART III - THE ISSUE

31. The sole issue on this application is whether it is just and convenient for the Court to appoint Richter as Receiver on the terms of the proposed Receivership Order.

PART IV - LAW & ANALYSIS

A. THE RECEIVER SHOULD BE APPOINTED

(i) *Jurisdiction to Appoint the Receiver*

32. Pursuant to Section 243 of the BIA, the Court may, on application by a secured creditor, appoint a receiver to take control of an insolvent person's property if it is just or convenient to do so:

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

²⁶ Ray Affidavit at para 93.

²⁷ Ray Affidavit at para 28.

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

33. Section 101 of the CJA provides for the appointment of a receiver when "it is just or convenient" to do so.

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

34. The Respondent GSAs charge the property of the Respondents as security for the Respondents' obligations under the Loan. The Bridging Receiver, on behalf of the Lender, is therefore a "secured creditor" within the meaning of the BIA.²⁸

35. The Respondents have failed to repay the Loan notwithstanding expiry of the Term and the issuance of the Demand Letters and the BIA Notices. It does not appear that the Respondents have assets of any meaningful value. The Respondents are "insolvent persons" within the meaning of the BIA.²⁹

36. Courts have considered the following factors, among others, when determining whether it is just or convenient to appoint a receiver:

(a) the existence of a debt and a default;

(b) the quality of the security;

²⁸ Ray Affidavit at paras 23 – 28; *BIA*, s. 2.

²⁹ Ray Affidavit at paras 66, 88, 92, 93 and 94(f); *BIA*, s. 2.

- (c) the fact that the creditor has the right to appoint a receiver under the documentation provided for in the loan;
- (d) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- (e) the likelihood of maximizing the return to the parties; and
- (f) the risk to the security holder.³⁰

37. The fact that a secured creditor has a right under its security documentation to appoint a receiver is of central importance. In cases where the security documentation provides for the appointment of a receiver, the analysis is focused on a consideration of whether it is in the interests of all concerned to have the receiver appointed by the court. As noted by Justice Morawetz (as he then was) in *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*:

...while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties (emphasis added).³¹

³⁰ See for example: [Central 1 Credit Union v. UM Financial Inc. and UM Capital Inc.](#), 2011 ONSC 5612 (Commercial List) at para 22; [RMB Australia Holdings Limited v. Seafield Resources Ltd.](#), 2014 ONSC 5205 (Commercial List) at para 28; [Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited](#), 2011 ONSC 1007 (Commercial List) at paras 24 and 27 [*Carnival Leasing*]; and [Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.](#), 2009 BCSC 1527 at para 25.

³¹ [Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.](#), 2013 ONSC 6866 (Commercial List) at para 27.

38. It is not necessary for a creditor whose security documentation provides for the appointment of a receiver to demonstrate that it will suffer irreparable harm if the appointment is not granted by the court.³²

(ii) *It is Just and Convenient to Appoint the Receiver in the Circumstances*

39. The Bridging Receiver submits that it is just and convenient to appoint the Receiver in the circumstances and therefore the statutory test for the appointment of a receiver is satisfied for the following reasons:

- (a) pursuant to the Loan Agreement, the Borrower agreed to permanently repay the Loan on the expiry of the Term. The Respondents have failed to make any payments in respect of the Indebtedness notwithstanding the expiry of the Term;
- (b) as a result of the Payment Default, which constitutes an Event of Default under the Loan Agreement, the Bridging Receiver, on behalf of the Lender, is contractually entitled under the Original Loan Agreement to seek the appointment of Richter as Receiver of the Property of the Respondents;
- (c) the 10-day notice period set out in the BIA Notices has expired;
- (d) the Bridging Receiver does not have full disclosure regarding the financial situation of the Respondents or the use of the principal advances of approximately \$35.5 million under the Loan. The appointment of the proposed Receiver, with the benefit of the investigatory powers set out in the proposed Receivership Order, will provide

³² [Carnival Leasing, supra note 23 at paras 24-28.](#)

the means to investigate the use of the Loan proceeds and the financial situation of the Respondents to the benefit of all stakeholders;

- (e) the Bridging Receiver has significant concerns regarding the events and transactions summarized herein and more particularly described in the Ray Affidavit involving the Respondents, certain related entities, and the former principals of Bridging. The Bridging Receiver does not have full and complete information regarding these events and transactions. The appointment of the Receiver will assist in advancing the investigation into these matters and the Bridging Receiver's broader investigation into the affairs of Bridging; and
- (f) based on the limited reporting delivered to the Bridging Receiver and the Agent by the Respondents, it does not appear that the Respondents have assets of any meaningful value. The appointment of the proposed Receiver over the Property of the Respondents is necessary in the circumstances to determine if there are any assets available to satisfy the claims of the Lender and the other stakeholders of the Respondents and, if appropriate, to realize upon any such assets for the benefit of all stakeholders.

(iii) Investigatory Powers are Necessary and Warranted

- 40. An investigative receiver may be appointed to investigate the affairs of a debtor or to review transactions, even those concerning related non-parties.³³

³³ *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368 at [para 66](#) [*Akagi*].

41. The primary objective of an investigative receiver is to gather information and ascertain the “true state of affairs” concerning the financial dealings and assets of the debtor and potentially a related network of individuals and corporations.³⁴ The investigative receiver acts to equalize an informational imbalance between the parties and assist the creditor in tracing the use of its funds.³⁵
42. The Ontario Court of Appeal in *Akagi* identified four general themes for the court to consider when determining if an investigative receivership is appropriate:
- (a) The appointment of an investigative receiver is necessary to alleviate a risk posed to the plaintiff’s right of recovery;
 - (b) The primary objective of investigative receivers is to determine the true state of affairs of the debtor and related entities;
 - (c) Generally, the investigative receiver does not control or operate the debtor’s business;³⁶ and
 - (d) The investigative receivership must be carefully tailored to assist the creditor’s recovery while protecting the debtor’s interest and go no further than necessary.³⁷
43. To date, the Bridging Receiver’s attempts to obtain complete information from the Respondents in relation to the Loan have been unsuccessful. The information provided has

³⁴ *Ibid* at [para 90](#).

³⁵ *East Guardian v. Mazur*, 2014 ONSC 6403 at [paras 75](#) and [81](#).

³⁶ This is not a strict rule, however. See for example [Stroh v. Millers Cove Resources Inc., 1995 CarswellOnt 275 \(Ct J \(Gen Div\) \[Comm. List\]\)](#), aff’d [1995 CarswellOnt 3551 \(Ct J \(Gen Div\) \[Div. Ct\]\)](#) where Farley J. appointed a receiver to take control of corporate assets and investigate certain self-dealing transactions made by the majority shareholder.

³⁷ *Akagi*, *supra* note 29 at [para 90](#).

been incomplete while other of the Bridging Receiver's inquiries have been ignored. Without further insight into the financial situation of the Respondents, the Bridging Receiver's ability to recover on the Loan is at risk.

44. In order to fully identify how the proceeds of the Loan were used and the Property of the Respondents available to repay the Loan, the Receiver requires the ability to investigate and compel production of documents relevant to the Loan. These documents may be in the possession and control of entities other than the Respondents.
45. The proposed terms of the Receivership Order go no further than necessary to ensure the Receiver may investigate the Respondents' activities and obtain a more complete picture of their assets and transactions.

(iv) The Receiver should be Authorized to Assign the Respondents into Bankruptcy

46. The Court is empowered to authorize a receiver to file an assignment in bankruptcy on behalf of the debtor.³⁸
47. In granting this authority to a receiver, the Court should consider the specific facts of the case to determine if a bankruptcy may present a preferable option to the receiver. The Court has previously granted this power to a receiver for the purpose of permitting the receiver to avail itself of the enhanced investigatory power of a trustee in the face of an uncooperative debtor or suspicious circumstances.³⁹

³⁸ *RBC v. Gustin*, 2019 ONSC 5370 at [paras 12](#) and [15](#) [*Gustin*], citing *Bank of Montreal v. Owen Sound Golf & Country Club Ltd.*, [2012 ONSC 557](#) and *Royal Bank v. Sun Squeeze Juices Inc.*, [1994 CarswellOnt 266](#), [1994] O.J. No. 567 (Gen. Div. [Comm. List]) [*Sun Squeeze*], aff'd [1994 CanLII 8771 \(CA\)](#).

³⁹ *Gustin*, *supra* note 38 at [para 8](#); *Sun Squeeze*, *supra* note 38 at para 14.

48. The Bridging Receiver does not have full insight into the financial affairs of the Respondents and has identified significant concerns regarding certain events and transactions involving the Respondents, certain related entities, and the former principals of Bridging. While the investigatory powers sought in the Receivership Order will allow for a clearer picture to be formed, the Receiver may require the enhanced powers and remedies provided to a Trustee under the BIA to address these concerns.

B. SPECIFIC RELIEF SOUGHT

49. The proposed Receivership Order largely follows the terms of the Model Order. It is respectfully submitted that the terms of the draft Receivership Order are necessary and appropriate based on the facts set out herein to permit the Receiver to take possession of, and realize upon, the assets of the Respondents for the benefit of the Bridging Receiver and the other stakeholders.

50. The following provisions in the Receivership Order are specifically required and appropriate in the circumstances. The Court has the statutory jurisdiction to grant the following provisions pursuant to section 243(1)(c) of the BIA, which provides that the Court may appoint a receiver to take any action the court considers advisable where it is just or convenient to do so.

(i) *Investigatory Powers*

51. Paragraphs 4(j) and (s) of the proposed Receivership Order provide that the Receiver may undertake any investigation the Receiver considers appropriate in relation to the location and/or disposition of assets reasonably believed to be or have been Property and that the

Receiver may conduct examinations under oath of any person reasonably believed to have knowledge of the Property or the affairs of the Respondents.

52. Given the lack of full disclosure by the Respondents to the Bridging Receiver regarding their financial situation, the Receiver requires enhanced powers to compel disclosure of relevant information. Further, the significant concerns identified by the Bridging Receiver regarding certain events and transactions involving the Respondents, certain related entities and the former principals of Bridging (including the utilization of Loan proceeds to benefit the 1 Bloor Project), support the granting of such enhanced powers as just and convenient in the circumstances.

(ii) Authority to Assign into Bankruptcy

53. Paragraph 4(t) of the proposed Receivership Order provides that the Receiver may, if considered appropriate by the Receiver, cause the Respondents to file an application for bankruptcy under the BIA.
54. Given the lack of available information regarding the Respondents' financial position and the significant concerns identified by the Bridging Receiver regarding certain events and transactions involving the Respondents, certain related entities and the former principals of Bridging, the Bridging Receiver respectfully submits that the Receiver should be granted the ability to obtain the enhanced powers and remedies provided to a Trustee under the BIA if considered appropriate by the Receiver.

PART V - RELIEF REQUESTED

55. For all of the foregoing reasons, the Bridging Receiver requests that this Court grant an Order substantially in the form of the draft Receivership Order located at Tab 3 of its Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th of September, 2022.

Alexander Overton

For Grant Moffat

Thornton Grout Finnigan LLP
3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

John L. Finnigan (LSO# 24040L)
Email: jfinnigan@tgf.ca

Grant B. Moffat (LSO# 32380L)
Email: gmoffat@tgf.ca

Adam Driedger (LSO# 77296F)
Email: adriedger@tgf.ca

Lawyers for the Applicant

**SCHEDULE “A”
LIST OF AUTHORITIES**

No.	Case Law
1.	<u>Central 1 Credit Union v. UM Financial Inc. and UM Capital Inc.</u> , 2011 ONSC 5612
2.	<u>RMB Australia Holdings Limited v. Seafield Resources Ltd.</u> , 2014 ONSC 5205
3.	<u>Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited</u> , 2011 ONSC 1007
4.	<u>Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.</u> , 2009 BCSC 1527
5.	<u>Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.</u> , 2013 ONSC 6866
6.	<u>Akagi v. Synergy Group (2000) Inc.</u> , 2015 ONCA 368
7.	<u>East Guardian v. Mazur</u> , 2014 ONSC 6403
8.	<u>Stroh v. Millers Cove Resources Inc.</u> , 1995 CarswellOnt 275 (Ct J (Gen Div) [Comm. List]), <u>aff’d 1995 CarswellOnt 3551 (Ct J (Gen Div) [Div. Ct])</u>
9.	<u>RBC v. Gustin</u> , 2019 ONSC 5370
10.	<u>Bank of Montreal v. Owen Sound Golf & Country Club Ltd.</u> , 2012 ONSC 557
11.	<u>Royal Bank v. Sun Squeeze Juices Inc.</u> , 1994 CarswellOnt 266, [1994] O.J. No. 567 (Gen. Div. [Comm. List]), <u>aff’d 1994 CanLII 8771 (CA)</u> .

**SCHEDULE “B”
RELEVANT STATUTES**

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

Definitions

2 In this Act,

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due

secured creditor means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

- (a) a person who has a right of retention or a prior claim constituting a real right, within the meaning of the *Civil Code of Québec* or any other statute of the Province of Quebec, on or against the property of the debtor or any part of that property, or
- (b) any of
 - (i) the vendor of any property sold to the debtor under a conditional or instalment sale,
 - (ii) the purchaser of any property from the debtor subject to a right of redemption, or
 - (iii) the trustee of a trust constituted by the debtor to secure the performance of an obligation,

if the exercise of the person’s rights is subject to the provisions of Book Six of the *Civil Code of Québec* entitled *Prior Claims and Hypothecs* that deal with the exercise of hypothecary rights

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Courts of Justice Act, R.S.O. 1990 c. C-43, as amended

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Insolvency and Insolvency Act, R.S.C. 1985, c. B-3, as amended

DEWEY, SMITH & COMPANY INC. - and -
in its capacity as court-appointed receiver and manager
of the assets of the Applicant (including Finance Inc. and certain related entities and
investment funds)
Applicant

NORTHERN CITADEL CAPITAL INC., ONE800
DAVENPORT INC.
and 181 DAVENPORT RETAIL INC.
Respondent

Court File No. CV-22-00685200-00C1

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto, Ontario

FACTUM OF THE APPLICANT

Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7
Tel: (416) 304-1616

John L. Finnigan (LSO# 24040L)
Email: jfinnigan@tgf.ca

Grant B. Moffat (LSO# 32380L)
Email: gmoffat@tgf.ca

Adam Driedger (LSO# 77296F)
Email: adriedger@tgf.ca

Lawyers for the Applicant

This is Exhibit "E" referred to in the Affidavit of Khashayar Khavari affirmed by Khashayar Khavari at the City of Toronto, in the Province of Ontario, before me on October 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

SEAN PIERCE

AMENDED THIS Sept 21, 2016 PURSUANT TO
RÈGLE DE LA COUR DE JUSTICE CONFORMÉMENT À
 RÈGLE/LA RÈGLE 28.02 (A)
 THE ORDER OF _____
L'ORDONNANCE DU _____
DATED / FAIT LE _____
REGISTRAR C. Irwin
SUPERIOR COURT OF JUSTICE GREFFIER REGISTRAR
COUR SUPÉRIEURE DE JUSTICE

993
F3287

Court File No. CV-15-11187-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

KHASHAYAR KHAVARI and MOHAMMAD MAHDI TAJBAKSH

Plaintiffs

- and -

SAM MIZRAHI, MICHAEL RENEE MIZRAHI, ZIBA MIZRAHI, MIZRAHI ENTERPRISES INC., MIZRAHI INC., 133 HAZELTON INC. (CORP NO: 228916), 133 HAZELTON INC. (CORP NO: 1895309), 133 HAZELTON INC. (CORP. NO: 1927750), 1834369 ONTARIO INC., SOARING MIZRAHI DEVELOPMENTS INC., MIZRAHI DEVELOPMENT GROUP (131 HAZELTON) INC., MIZRAHI DEVELOPMENT GROUP (133 HAZELTON) INC., ONE8ONE DAVENPORT INC., (CORP NO: 2325793), ONE8ONE DAVENPORT INC. (CORP NO: 1912202), ONE8ONE DAVENPORT INC. (CORP. NO: 1927551), MIZRAHI SOARING DEVELOPMENTS INC., MIZRAHI DEVELOPMENT GROUP (145 DAVENPORT) INC., MIZRAHI DEVELOPMENT GROUP (185 DAVENPORT) INC., UNIMAX INTERNATIONAL LTD., 129 HAZELTON INC., MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., MIZRAHI RESIDENTIAL (THE ONE) GP INC., MIZRAHI COMMERCIAL (THE ONE) GP INC., SAM M. INC., S.& Z. MIZRAHI INVESTMENT LTD., MIZRAHI (128 HAZELTON) INC., MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC., MIZRAHI KHALILI INC., MIZRAHI (C-GMS0) INC. and NORTHERN CITADEL CAPITAL INC.

Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

F1019

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: ~~September~~ ^{November 20, 2015}, 2016 ^h

Issued by C. Irwin Registrar
Local registrar
330 University Avenue, Toronto,
Ontario

TO: **LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**
Suite 2600, 130 Adelaide Street West
Toronto, ON M5H 3P5

Lawrence E. Thacker LSUC #: 36939M
Tel: (416) 865-3097
Fax: (416)865-9010
Email: lthacker@litigate.com

Nadia Campion LSUC#: 522000
Tel: (416) 865-2974
Fax: (416) 865-2843
Email: ncampion@litigate.com

Chris Kinnear Hunter LSUC#: 65545D
Tel: (416) 865-2874
Fax: (416) 865-2866
Email: chunter@litigate.com

Lawyers for the Defendants/Plaintiffs by Counterclaim, Sam Mizrahi,
Michael Renee Mizrahi, Ziba Mizrahi,
Mizrahi Enterprises Inc., Mizrahi Inc.,
129 Hazelton Inc., Mizrahi Development Group (The One)
Inc., Mizrahi Residential (The One) GP Inc., Mizrahi
Commercial (The One) GP Inc., Sam M. Inc., S. & Z
Mizrahi Investment Ltd., Mizrahi (28 Hazelton) Inc.,
Mizrahi Development Group (1451 Wellington) Inc.,
and Mizrahi (C-GMS0) Inc.

AND TO: **STOCKWOODS LLP**
TD North Tower, P.O. Box 140
77 King Street West, Suite 4130
Toronto, ON M5K 1H1

Luisa Ritacca
Tel: (416) 593-7200
Fax: (416) 593-9345
luisar@stockwoods.ca

Lawyers for the Defendant/Plaintiff by Counterclaim,
Unimax International Ltd.

AND TO: **LAW OFFICE OF GERALD MATLOFSKY**
Barrister and Solicitor
118 Eglinton Avenue West, Suite 208
Toronto, ON M4R 2G4

Gerald Matlofsky
Tel: (416) 487-7634
Fax: (416) 256-9244
Gerald@Acanac.net

Lawyers for the Defendant by Counterclaim/Plaintiff by Counterclaim Vria Investment
Limited AND Lawyers for the Defendants by Counterclaim,
Ardavan Khavari and Aylar Mousavi

AND TO: **DEWART GLEASON LLP**
Barristers and Solicitors
366 Adelaide Street West, Suite 102
Toronto, ON M5V 1R9

Adam Pantel
Tel: (416) 971-8000
Fax: (416) 971-8001
apantel@dglp.ca

Lawyers for the Defendant by Counterclaim, Nicholas Tyacke

CLAIM

1. The plaintiffs seek:

- (a) as against the corporate defendants identified in **Schedule “A”** (the “**Project Companies**”), Sam Mizrahi (“**Sam**”), Mizrahi Inc. (“**MI**”) and Mizrahi Enterprises Inc. (“**MEI**”):
 - (i) a declaration that the business and affairs of the Project Companies have been carried on by Sam in a manner that is oppressive and unfairly prejudicial to Khashayar Khavari (“**Khash**”);
 - (ii) an accounting of the financial affairs of the real estate developments listed in **Schedule “B”** (the “**Projects**”), including:
 - (A) all assets, liabilities, revenues and losses;
 - (B) all fees received by the defendants relating to the Projects;
 - (iii) a declaration that Khash is entitled to a 50% ownership interest in the Project Companies, and a 50% interest in any profits or fees arising from the Project Companies or the Projects (except in respect of Unimax International Ltd. and Northern Citadel Capital Inc.);
 - (iv) an order to rectify any necessary records to reflect the proper financial state of the Project Companies, including but not limited to corporate ledgers and tax filings;
 - (v) an order requiring that any and all corporate documents, records and information regarding the corporate defendants be delivered to the plaintiffs, including records of any transactions carried out by the Project Companies;
 - (vi) an order awarding compensation to Khash for any damages suffered by him due to the oppressive and unfair manner in which the Project Companies’ business and affairs have been carried on;
 - (vii) damages in the amount of \$125 million; and
 - (viii) punitive or aggravated damages in the amount of \$15 million.
- (b) as against all of the defendants:
 - (i) an order requiring them to account for all property received by them or for their benefit directly or indirectly from or on behalf of Khash, the Project Companies or arising from the affairs of the Projects;

- (ii) an equitable tracing of the monies to which Khash has an entitlement directly or indirectly, including any funds which have been misappropriated and/or converted into their property; and
 - (iii) an order declaring that Khash possesses an equitable interest in any such property (including shares or other securities), on the basis of a constructive or other trust;
 - (iv) an order imposing a constructive trust in favour of Khash over any property acquired with funds from the Project Companies or funds that have been secured by the assets of the Project Companies.
- (c) as against Unimax International Ltd. (“**Unimax**”):
- (i) an order declaring that the business and affairs of Unimax have been carried on by Sam in a manner that is oppressive and unfairly prejudicial to Khash and Mahdi as shareholders, and Khash as creditor;
 - (ii) an order declaring that Khash and Mahdi have each been since inception the owner of 30% of Unimax’s common shares;
 - (iii) an order setting aside and declaring invalid any resolutions for the issuance of securities in Unimax since October 1, 2011 and rescinding or declaring void *ab initio* any such securities, including the issuance of 12 million preferred shares to MEI;
 - (iv) an order directing that Unimax’s share registry be amended to properly reflect its security holders;
 - (v) an order declaring that Unimax owes Khash \$381,045 in relation to shareholder loans advanced and directing that such amounts be repaid with interest forthwith;
 - (vi) an order requiring Unimax and Sam to compensate Khash and Mahdi for any damages suffered as a result of the oppressive and unfair manner in which Unimax’s business and affairs have been carried on;
 - (vii) an order that Unimax purchase Khash’s 30% interest and Mahdi’s 30% interest at fair market value;
 - (viii) an order to rectify Unimax’s records to reflect the interests of Khash and Mahdi, including but not limited to corporate records and tax returns.
- (d) as against Northern Citadel Capital Inc. (“**Northern Citadel**”):
- (i) an order declaring that Khash is the sole shareholder of Northern Citadel;

- (ii) an accounting of the financial affairs of Northern Citadel from October 11, 2011 to present;
 - (iii) an equitable tracing of any funds that the other defendants have received from Northern Citadel;
 - (iv) an order that Khash has an equitable interest or constructive trust over any property that the other defendants have acquired with funds that originated with Northern Citadel;
 - (v) an order to rectify Northern Citadel's records to reflect Khash's interest, including but not limited to corporate records and tax returns.
- (e) certificates of pending litigation in respect of the lands and premises set out in **Schedule "C"** (the "**Project Lands**");
 - (f) in the alternative to the relief sought above, an order requiring the defendants to return to the plaintiffs all monies invested by the plaintiffs (directly or indirectly) in the Projects and Unimax;
 - (g) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (h) costs of this action on a full indemnity basis, plus HST; and
 - (i) such further and other relief as counsel may advise and this Honourable Court permits.

I. THE PARTIES

2. The plaintiffs, Khashayar Khavari ("**Khash**") and Mahdi Tajbakhsh ("**Mahdi**"), are individuals residing in the Province of Ontario. Mahdi is Khash's brother-in-law.

3. The defendant Sam Mizrahi ("**Sam**") is an individual residing in the City of Toronto in the Province of Ontario. Khash and Sam are business partners in a real estate development business and a number of development projects.

4. The defendants Michal Mizrahi (“**Michal**”) and Ziba Mizrahi (“**Ziba**”) are Sam’s wife and mother, respectively. Ziba owns and controls S&Z Inc., an Ontario corporation.

5. Together with Michal, Sam is a director and officer and owns and controls 100% of the shares of the defendant Mizrahi Inc. (“**MI**”), an Ontario corporation. MI carries on business as, among other things, a general contractor in relation to the Projects.

6. Sam also owns and controls 100% of the shares of the defendant Mizrahi Enterprises Inc. (“**MEI**”), an Ontario corporation through which Sam manages his personal affairs.

7. Sam controls the remaining defendant corporations, which are each incorporated in Ontario.

II. Overview

8. This action arises from a partnership between Sam and Khash to develop real estate together. Sam and Khash were 50/50 partners in a successful real estate development business. The partnership developed each of the Projects listed on Schedule “B”.

9. In April 2015, Khash began asking questions about the financial state of the business and asked for a return of a portion of his capital, to which he was entitled. In response, Sam locked him out of the business, attempted to delete and manipulate corporate records, and has refused to pay Khash his share of profits.

10. Sam has effectively taken unilateral steps to end the partnership and appropriate the partnership’s assets for himself, without paying Khash the value of his interest in the partnership.

III. The Partnership over the Projects

11. In or around the spring of 2010 Khash and Sam agreed to develop condominium projects together (the “**Partnership**”). Before going into business with Khash, Sam had never developed a condominium.

12. Despite his inexperience, Sam represented to Khash that Sam would contribute “know how” to the Partnership.

13. Sam was unable to, and did not, contribute funding to the Partnership.

14. The Partnership was carried on under the name Mizrahi Khalili, and then later Mizrahi Developments. Any project that was developed under the banner of Mizrahi Khalili or Mizrahi Developments was the subject of the Partnership.

15. Sam and Khash agreed to become 50/50 partners. They agreed that they would split all profits on each development project on a 50/50 basis. The profits on a particular project would be divided between Khash and Sam after all loans, interest, expenses and costs on that project had been satisfied, including the repayment of all shareholder loans and shareholder equity (the “**Partnership Agreement**”).

16. Khash and Sam also agreed that any fees that MEI and MI received from working on the Partnership’s projects would be split 50/50 between Khash and Sam.

17. Mahdi later joined and was engaged full-time in the business of the Partnership. He was compensated from Khash’s share of the Partnership’s profits.

18. The Partnership was successful. Up until July 2015, Khash, Mahdi and Sam jointly developed or were in the process of developing the properties listed in **Schedule “B”** (defined above as the “Projects”) located at:

- (a) 133 Hazelton Avenue, Toronto (“**133 Hazelton**”);
- (b) 181 Davenport Road, Toronto (“**181 Davenport**”);
- (c) 1451 Wellington Street West, Ottawa (“**1451 Wellington**”);
- (d) 1 Bloor Street West, Toronto (“**1 Bloor**”);
- (e) 128 Hazelton Avenue, Toronto (“**128 Hazelton**”); and
- (f) 129 Hazelton Avenue, Toronto (“**129 Hazelton**”).

19. Khash, Mahdi and Sam also pursued a number of prospective projects during that time that were ultimately not developed, playing identical roles in regard to each.

IV. Contributions of the Partners

20. Each of Khash, Mahdi and Sam participated in the marketing, management and development of each of the Projects, operating out of shared offices at 126 Hazelton Avenue.

21. Khash, Sam and Mahdi conceived of each of the Projects together. They discussed how they would design and develop each Project and agreed together on a budget for each Project.

22. Khash and Mahdi each contributed their skill and labour to the Partnership. They did not receive any remuneration, and instead, were supposed to be compensated from Khash’s share of development and contractor fees (from MI and MEI) and his share of the Partnership’s profits, which were to be paid upon completion of each Project.

23. At the outset, Khash agreed to make an initial cash contribution of \$7 million to the Partnership to acquire the land for 133 Hazelton. He later contributed further funds towards the development of 133 Hazelton because bank financing was not available until a certain stage of development was reached and Sam was unable to contribute any funds.

24. When the development of 181 Davenport commenced, Khash made a further contribution of funds that were used, in conjunction with other financing, to acquire the property for 181 Davenport.

25. In total, Khash advanced funds in excess of \$17 million to the Partnership, which were recorded as shareholder loans to 133 Hazelton and 181 Davenport (or the corporations that were used to carry out those Projects).

26. Aside from these funds, the Projects have been financed by take-back mortgages from vendors, construction financing from banks, and loans from private lenders. Khash and Mahdi were unaware of the full nature and extent of the money that has been borrowed.

27. Sam has not contributed any material funds to the Projects, either directly or through his companies, aside from funds borrowed from two private lenders and secured by Project assets.

28. As work began on the first Project (133 Hazelton), Sam's inexperience began to cause problems. Sam did not know how to build a condominium. The trades and consultants lost confidence. The development at 133 Hazelton stalled. As a result, Khash and Mahdi became more involved in the operations and the development of the Projects. Khash and Mahdi brought 133 Hazelton to completion. Sam became less involved in the operations and his role was limited

to (i) managing the Partnership's finances and (ii) negotiating and obtaining deals and financing for the Projects.

V. The Trust Agreement

29. Each of the Projects was carried out through the defendant Project Companies, which are set out in **Schedule "A"**.

30. MI, a company controlled by Sam, was retained to act as the general contractor for the construction of 133 Hazelton and 181 Davenport. The partners agreed that any savings achieved by using MI as the general contractor would increase the profits of the Projects, which would be shared 50/50 between Khash and Sam.

31. At the outset, Sam and Khash were each 50% shareholders in the 133 Hazelton Project Companies (see **Schedule "D"**) and the 181 Davenport Project Companies (see **Schedule "E"**) through their respective holding companies.

32. In fall 2011, the media published negative reports about Khash's father, Mahmoud Khavari ("**Mahmoud**"). At Sam's insistence, Khash (i) resigned as a director and officer of the Project Companies, and (ii) agreed that Sam would hold his shares in trust. Sam represented to Khash that unless he took those steps, the funds that Khash contributed to the Partnership would be lost because the adverse publicity would make it difficult to sell units in the Projects.

33. A trust agreement (dated October 11, 2011) and written addendum (dated December 5, 2011) were executed to give effect to their agreement concerning Khash's shares (the "**Trust Agreement**"). The Trust Agreement provides that:

- (a) MEI would act as bare trustee, holding Khash's 50% shareholding in the 133 Hazelton companies, his 50% shareholding in the 181 Davenport companies, and his 100% shareholding in Northern Citadel in trust for Khash's benefit; and
- (b) Khash remained the equitable owner of the shares, had an express right to their return, and was entitled to an accounting for amounts due as a shareholder and other information relating to the shares.

34. After the execution of the Trust Agreement, Sam had legal control over the Project Companies carrying on the development of 133 Hazelton and 181 Davenport as the sole registered shareholder and director and officer. Khash, however, remained a 50% partner with an interest in the profits of each of the Projects.

35. The only documents that contain the terms of the Trust Agreement are the documents referenced in paragraph 33 above. There are no other addendums to the Trust Agreement.

36. As a result of – and to avoid – the adverse publicity surrounding Khash's father, Mizrahi Khalili's name was changed to Mizrahi Developments. This was done at Sam's urging. From that point forward, the Partnership carried on under the name Mizrahi Developments.

37. Any projects that were carried on by Mizrahi Developments are the subject of the Partnership.

VI. The Development of the Projects Following the Trust Agreement

38. Sam negotiated financing for 133 Hazelton and 181 Davenport. Construction financing was advanced directly to the 133 Hazelton companies, and both vendor take-back and construction financing were advanced directly to the 181 Davenport companies.

39. In addition, Sam arranged loans from two private lenders, Bridging Capital Inc. (“**Bridging**”) and Ridgemount Capital Corp. (“**Ridgemount**”). These loans were secured by the assets of the 181 Davenport companies (and for Ridgemount, the 133 Hazelton companies) (collectively the “**Private Loans**”).

40. The Private Loans were advanced to MEI and Northern Citadel, respectively (both controlled by Sam) for the benefit of the Partnership.

VII. The Initial Funding and Development of 1 Bloor, 1451 Wellington and 128 and 129 Hazelton

41. Sam, Khash and Mahdi together decided that the Partnership would develop the Projects at 1 Bloor, 1451 Wellington and 128 and 129 Hazelton.

42. They required funding to do so. Together, they decided to use a portion of the funds that they received from the Private Loans to put deposits on those four Projects.

43. Accordingly, Sam, Khash and Mahdi used the Partnership’s assets (loan proceeds secured by the Partnership’s assets, namely the assets of 181 Davenport) to acquire the properties that now form 1 Bloor, 1451 Wellington and 128 and 129 Hazelton.

44. The Projects at 1 Bloor, 1451 Wellington and 128 and 129 Hazelton were developed by the Partnership under the banner of Mizrahi Developments.

45. Khash and Mahdi played an identical role in the development of 1 Bloor, 1451 Wellington and 128 and 129 Hazelton as they had in respect of 133 Hazelton and 181 Davenport.

Indeed:

- (a) Khash and Mahdi played an integral role in developing, managing and marketing those Projects;
- (b) Khash and Mahdi were involved in financial decisions relating to those Projects;
- (c) Khash and Mahdi did not receive any remuneration for this role, aside from their expected share of profits; and
- (d) Khash and Mahdi had access to the books and records of the related Project companies.

46. By the time the Partnership began developing 1 Bloor, 128 and 129 Hazelton and 1451 Wellington, Khash, Sam and Mahdi were comfortable with each other. They trusted each other. Sam fostered a close relationship with Khash and his family. And the Partnership was successful.

47. Accordingly, Khash and Sam did not continue to document their respective interests in the Projects or execute another Trust Agreement or Addendum.

48. They simply agreed that those Projects were within the Partnership and that Sam and Khash would split the Partnership's interest the same way as they had always done – 50/50.

VIII. The Lock-Out

49. In March 2015, 133 Hazelton was registered as a condominium corporation and was substantially complete. Sam advised that 133 Hazelton had achieved significant profits as projected by reports from Altus Group, which had been retained by the construction financing lender to monitor the use of construction financing funds on this project.

50. On April 20, 2015, Khash, Mahmoud and Mahdi accordingly met with Sam to discuss various accounting issues relating to the Projects. At that meeting, Khash requested an

accounting of the profits from 133 Hazelton and a return of his capital contribution of \$10.3 million in that project.

51. Sam agreed to make an immediate return of \$7 million, issuing a cheque in partial repayment of Khash's capital contribution, and promised to repay the balance. 133 Hazelton subsequently issued cheques for this amount post-dated to the end of June.

52. On the same day of the meeting and without Khash's knowledge, Sam transferred \$4.8 million from 133 Hazelton to MEI.

53. On June 26, 2015, Mahmoud and Mahdi met with Sam to review the status of the Projects. At that meeting, Sam admitted that he had mismanaged 181 Davenport and that the project was consequently in financial difficulty. Sam's admission contradicted the financial reporting that Khash and Mahdi had received to that point in time. The financial reporting was clear that the 181 Davenport development should generate profits of approximately \$23 million.

54. On June 29, 2015, Sam asked Khash and Mahdi not to cash the post-dated cheques for the balance of Khash's capital contribution to 133 Hazelton, suggesting for the first time that 133 Hazelton lacked the funds to repay Khash's capital contribution. Sam's statements again contradicted the financial reporting that Khash and Mahdi had received to that point in time. The financial reporting was clear that the 133 Hazelton development should generate profits of approximately \$11.5 million.

55. Sam later put a stop-payment on the cheques, which as a result could not be negotiated in accordance with Sam's earlier promise.

56. Khash and Mahdi both began to question Sam about the discrepancies in his statements about the financial condition of 133 Hazelton and 181 Davenport and the financial reporting, which continued to state that the profits would be approximately \$11.5 million and \$23 million, respectively.

57. On July 6, 2016, Khash sent a letter to Sam demanding the return of his shares that were held in trust.

58. The next day, Sam locked Khash and Mahdi out of their shared offices. Sam directed Project staff to change the locks to the offices on July 6, 2015, while Khash was overseas on his honeymoon.

59. Sam also attempted to delete the documents contained in Khash and Mahdi's email accounts and manipulated the corporate records to their detriment.

60. Khash and Sam spoke on the telephone. Sam admitted that he had removed funds from the Projects and would not return them. Sam further stated that Khash would not get his money back until Sam thought it was the right time.

61. Sam then threatened Khash stating that if Khash took legal action, Khash would lose all his money.

62. Since that time, Khash and Mahdi have been locked out of the Projects and have been denied material information and all participation in the Projects. Khash and Mahdi have now learned that throughout the duration of the Partnership, Sam withheld material information from

them about the Projects and actively misled them about the Projects' debts and the use of loan proceeds.

63. Although 133 Hazelton is fully occupied by residents, Sam has refused to provide any accounting of profits or any return of Khash's capital contributions. Sam has also failed to take the steps necessary to bring 181 Davenport to completion. There is no legitimate reason for Sam's refusals and failures in this regard.

64. Sam now denies Khash and Mahdi were ever involved in any of the Projects other than 133 Hazelton or 181 Davenport, or that they are entitled to any profits generated therefrom.

65. Sam is attempting to take advantage of the various changes that were put into place at his insistence to deal with the adverse publicity surrounding Khash's father.

66. Khash trusted Sam enough to (i) allow Sam to hold his interests in trust, and (ii) agree to remove his name from the Partnership and the Projects. However, although the name of the Partnership changed from Mizrahi Khalili to Mizrahi Developments, Khash's role and entitlements did not change.

67. Sam has abused Khash's trust and has attempted to misappropriate the assets of the Partnership for himself.

IX. Oppressive conduct

68. In light of the Partnership and their past involvement with the Projects, Khash and Mahdi reasonably expected that:

- (a) they would have access to accurate information about the state of the Projects;
- (b) they would continue to participate in the management, financial affairs and marketing of the Projects;
- (c) Sam would properly manage the affairs of the Projects;
- (d) Sam would only use the assets of the Projects for the purposes of the Projects; and
- (e) Sam would provide a timely accounting of profits of each Project and upon completion of each Project, return Khash's capital contribution, and distribute to Khash his share of any profits from that particular Project.

69. By virtue of the conduct described herein, Sam has breached each of these reasonable expectations with conduct that amounts to oppression and that has unfairly prejudiced and disregarded the interests of Khash and Mahdi.

70. Sam has failed to properly manage the affairs of the Projects. He admitted that he made mistakes managing 181 Davenport and put the project at risk. Only Sam knows the full extent and nature of his negligent mismanagement, which will be particularized prior to trial.

71. Sam has also misused and misappropriated Project assets for his personal benefit, both directly and through the corporate and other individual defendants. Only Sam knows the full particulars of this misappropriation and misuse of Project assets, which will be particularized prior to trial.

72. However, the plaintiffs are now aware that Sam has caused millions of dollars to be misappropriated from the Projects, for his own benefit, by diverting funds intended for and belonging to the Projects, and withdrawing funds from the Projects' bank accounts. Sam has used these funds to purchase a private jet and cottage, fund the cost of private school for his

children, and make gratuitous and unjustified payments to Michal (his wife) and Ziba (his mother).

73. Coupled with Sam's mismanagement of the projects, Sam's misappropriation of Project-funds has placed the Projects and Khash's financial contribution to the Partnership in jeopardy. As partners in the Projects entitled to a 50% share of profits, Khash has suffered personal prejudice as a result of Sam's oppressive conduct.

IX. Breach of Contract and Breach of Fiduciary Duty

74. Sam owed Khash fiduciary duties by virtue of their Partnership. He also owed fiduciary duties to Khash as a result of his role as a trustee pursuant to the Trust Agreement.

75. Sam has breached the Partnership Agreement and his fiduciary duties to Khash through the conduct described herein.

76. In light of Sam's misconduct, Khash is entitled to an order dissolving the Partnership, either in accordance with the *Partnerships Act* or by way of an order for compensation for the fair market value of Khash's interest in the Partnership or, alternatively, for the fair market value of Khash's interests in the corporate defendants.

77. Khash is also entitled to dissolve the Trust Agreement and obtain all of the shares that are held pursuant to the Trust Agreement.

X. Unjust Enrichment, Conversion and Constructive Trust

78. Sam has used misappropriated Project assets for his own benefit, including millions of dollars that he has spent on a private jet, his family cottage, his children's private schooling, and gratuitous or unjustified payments to Michal and Ziba. These funds are impressed with a trust.

79. The Partnership also developed the Forest Hill Jewish Centre at 360 Spadina Road in Toronto. MI received construction management fees in relation to that project. Those fees are property of the Partnership. Sam and/or MI have misappropriated those fees for their own benefit.

80. Sam and his family have been unjustly enriched by the above funds, to the detriment of the Projects and/or Partnership without any juristic reason, and are therefore liable for their return.

81. As Khash and Mahdi made contributions to the Partnership through their skill, labour and capital contribution, they are personally prejudiced by this misappropriation.

82. In light of the misappropriation caused by Sam, Khash is entitled to a constructive trust over the misappropriated funds, and to an order tracing those funds into the hands of the defendants and any third parties and requiring them to account for and disgorge any such funds.

83. In the alternative, Khash and Mahdi are entitled to an order for compensation or *quantum meruit* for their contributions to the Projects.

84. In the further alternative, Sam, Michal and Ziba have unlawfully converted Project assets, including Khash's funds (or funds to which he is lawfully entitled) to their own use. Khash is

entitled to a constructive trust over the misappropriated funds, and to an order tracing those funds into the hands of the defendants and any third parties and requiring them to account for and disgorge any such funds.

XI. Claims relating to Unimax

85. Unimax was incorporated in April 2011 for the purpose of carrying on an import / export business. At the time of incorporation, Mahdi, Khash, and Sam were all officers and directors. Mahdi and Khash each held 30 common shares. Sam held 40 common shares.

86. When Unimax was formed, Khash invested \$1 million USD by way of a shareholder loan to allow Unimax to secure a \$7 million line of credit. To date, Khash is still owed \$381,045 CDN in regard to this line of credit.

87. On January 13, 2015, at Sam's request for the purpose of a proposed transaction between Unimax and an Israeli government ministry, Khash and Mahdi resigned as directors and officers of Unimax.

88. Although their resignation was back-dated to October 11, 2011, all actions taken in their capacity as officers and/or directors to January 13, 2015 were authorized and binding on the company.

89. Khash and Mahdi have since discovered that in or around January 2015, Sam caused the alteration of Unimax's minute books to falsely record that Khash and Mahdi had surrendered all of their shares in Unimax effective October 2011.

90. Since then, Sam has failed to provide Khash and Mahdi with the documents and corporate records that they are entitled to as shareholders.

91. At or around the same time and without their knowledge, Sam caused Unimax to issue 12.1 million preferred shares to MEI without any or sufficient consideration.

92. The effect of these steps by Sam was to purport to eliminate Khash and Mahdi's shareholder interest in Unimax and to misappropriate this interest for his own benefit.

93. This conduct and Sam's continued refusal to acknowledge Khash and Mahdi's shareholding in Unimax is oppressive, unfairly prejudicial and unfairly disregards Khash and Mahdi's interests as shareholders, and Khash's interest as a creditor, of Unimax.

94. Khash and Mahdi are accordingly entitled to the relief sought above, including orders recognizing their 60% shareholder interest in Unimax, compensating them for damages and directing Unimax to purchase their interests at fair market value.

XII. Defamation

95. After locking Khash and Mahdi out of the Projects, Sam has defamed Khash and Mahdi by telling others they are dishonest people who have stolen from Sam and the Projects. Only Sam knows the particulars of his statements, which will be provided prior to trial.

96. Sam told employees and contractors working on the Projects, and other members of the development community, that: (a) Khash and Mahdi have stolen from Sam and the Project Companies, and are thieves; (b) Khash and Mahdi have entered into agreements with trades for the Projects pursuant to which the trades were required to and did pay Khash and/or Meidj

kickbacks; (c) Khash and Mahdi have deliberately entered into improvident contracts relating to the finishings for various condominium units; and (d) Khash and Mahdi cannot and should not be trusted.

97. These statements made by Sam are false. They were made maliciously by Sam to damage the plaintiffs' reputations in the eyes of their colleagues and the development community, and to cover-up Sam's own dishonesty, misappropriation and mismanagement of the Projects.

98. Sam has also defamed the plaintiffs to various media outlets. In particular, Sam made defamatory statements about the plaintiffs to Laurent Bastien, a reporter for the Globe and Mail, which were published in an article on July 8, 2016.

99. Sam told Mr. Bastien, without limitation, that the plaintiffs: (a) embarked on an elaborate scheme to extort Sam; (b) threatened, intimidated and bullied Sam into continuing to do business with them; (c) are lying about the degree to which they worked closely with Sam, and in particular, their involvement in the Projects other than 133 Hazelton and 181 Davenport, in which Sam says they had no involvement; and (d) lied and threatened Sam to improperly extract funds from the Projects to which they were not entitled.

100. Sam's defamatory statements would lower the plaintiffs' reputation in the eyes of a reasonable person, and have caused them damage.

XIII. Damages

101. The misconduct of Sam and the other defendants have caused damages of \$125 million to the plaintiffs. The particulars of these damages will be provided prior to trial, but include:

- (a) Khash's 50% share of:
 - (i) \$11.5 million in profits from 133 Hazelton;
 - (ii) \$23.5 million in profits from 181 Davenport;
 - (iii) \$12.4 million in profits from 1451 Wellington;
 - (iv) \$1.3 million in profits from 129 Hazelton;
 - (v) \$10.5 million in profits from 128 Hazelton;
- (b) Khash's share of the \$204.9 million in profits from 1 Bloor.

102. The conduct of Sam, through the corporate defendants, is also sufficiently high-handed, reprehensible and malicious that it merits punitive, aggravated and exemplary damages.

103. The plaintiffs plead and rely upon:

- (a) sections 149, 161 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16; and
- (b) section 35 of the *Partnerships Act*, R.S.O. 1990, c. P.5.

104. The plaintiffs propose that this action be tried in the City of Toronto.

Schedule “A” – The Project Companies

1. 133 Hazelton Inc. (Corp No: 228916)
2. 133 Hazelton Inc. (Corp No: 1895309)
3. 133 Hazelton Inc. (Corp. No: 1927750)
4. 1834369 Ontario Inc.
5. Soaring Mizrahi Developments Inc.
6. Mizrahi Development Group (131 Hazelton) Inc.
7. Mizrahi Development Group (133 Hazelton) Inc.
8. One8one Davenport Inc. (Corp No: 2325793)
9. One8one Davenport Inc. (Corp No: 1912202)
10. One8one Davenport Inc. (Corp. No: 1927551)
11. Mizrahi Soaring Developments Inc.
12. Mizrahi Development Group (145 Davenport) Inc.
13. Mizrahi Development Group (185 Davenport) Inc.
14. Unimax International Ltd.
15. 129 Hazelton Inc.
16. Mizrahi Development Group (The One) Inc.
17. Mizrahi Residential (The One) Gp Inc.
18. Mizrahi Commercial (The One) Gp Inc.
19. Sam M. Inc.
20. S. & Z. Mizrahi Investment Ltd.
21. Mizrahi (128 Hazelton) Inc.
22. Mizrahi Development Group (1451 Wellington) Inc.
23. Mizrahi Khalili
24. Mizrahi (C-GMS0) Inc.

25. Northern Citadel Capital Inc.

Schedule “B” – The Projects

1. 133 Hazelton Avenue, Toronto
2. 181 Davenport Road, Toronto
3. 1451 Wellington Street West, Ottawa
4. 1 Bloor Street West, Toronto
5. 128 Hazelton Avenue, Toronto
6. 129 Hazelton Avenue, Toronto

Schedule "C" - Certificates of Pending Litigation

1 Bloor West Lands

1. 1 Bloor Street West, Toronto, Ontario
FIRSTLY: PT PARK LT 9 CON 1 FTB TWP OF YORK, AS IN EP142034 AND SECONDLY: PT PT PARK LT 9 CON 1 FTB TWP OF YORK DESIGNATED AS PT 15 ON PL 63R-3142, SIT OVER PT 15 ON PL 63R-3142 AS IN P77476; SIT OVER PT 15 ON 63R-3142 AS IN CT277770; SIT OVER PT 15 ON PL 63R-3142 AS IN CA695963; SIT OVER PT 15 ON PL 63R-3142 AS IN CT831646, SIT OVER PT 15 ON PL 63R-3142 AS IN CT708594, CITY OF TORONTO
2. 11 Bloor Street West, Toronto, Ontario
PT PARKL T 9 CON 1 FTB TWP OF YORK AS IN CT277770 EXCEPT THE EASEMENT THEREIN; CITY OF TORONTO
3. 768 Yonge Street, Toronto, Ontario
PT PARKL T 9 CON 1 FTB TWP OF YORK AS IN EP145729 EXCEPT THE EASEMENT THEREIN; CITY OF TORONTO
4. 770 Yonge Street, Toronto, Ontario
PT PARKL T 9 CON 1 FTB TWP OF YORK AS IN EP93304 EXCEPT THE EASEMENT THEREIN; CITY OF TORONTO
5. 774 Yonge Street, Toronto, Ontario
PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 64R16532; CITY OF TORONTO
6. 778 Yonge Street, Toronto, Ontario
PT PARKL T 9 CON 1 FTB TWP OF YORK PT 1 63R658; CITY OF TORONTO
7. 780 Yonge Street, Toronto, Ontario
PT PARKLT 9 CON 1 FTB 1WP OF YORK AS IN CA703847; CITY OF TORONTO

128 Hazelton Lands

8. 126 Hazelton Avenue and 128 Hazelton Avenue, Toronto, Ontario
PT BLK A PL 411 TORONTO AS IN CT97661 O; CITY OF TORONTO and L T1-2 PL 687E Toronto; CITY OF TORONTO

1451 Wellington Lands

9. 1451 Wellington Street West, Ottawa, Ontario L TS 1 & 2, PL 145, N/S RICHMOND ROAD (NOW WELLINGTON ST); OTTAWA

DuPere Units

10. Suites 101 and 205, 133 Hazelton Avenue, Toronto, Ontario, and certain parking spaces and storage lockers
- (i) UNIT 1, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2434 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENT AS SET OUT IN SCHEDULE A AS IN AT3830450;CITY OF TORONTO;
- (ii) UNIT 5, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2434 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3830450;CITY OF TORONTO;
- (iii) UNIT 1, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2434 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3830450;CITY OF TORONTO;
- (iv) UNIT 26, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2434 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3830450;CITY OF TORONTO;
- (v) UNIT 27, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2434 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3830450;CITY OF TORONTO;(vi) UNIT 28, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2434 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3830450;CITY OF TORONTO; and
- (vii) UNIT 38, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2434 AND ITS APPURTENANT INTEREST; SUBJECT TO

EASEMENTS AS SET OUT IN SCHEDULE A AS IN
AT3830450;CITY OF TORONTO;

Retail Units

11. Suite 103, 133 Hazelton Avenue, Toronto, Ontario
- (i) UNIT 3, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2434 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3830450;CITY OF TORONTO;
 - (ii) UNIT 4, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2434 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3830450; CITY OF TORONTO;
 - (iii) UNIT 5, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2434 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3830450;CITY OF TORONTO;
 - (iv) UNIT 1, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2434 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3830450;CITY OF TORONTO;
 - (v) UNIT 2, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2434 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3830450;CITY OF TORONTO; and
 - (vi) UNIT 42, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2434 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3830450;CITY OF TORONTO

181 Davenport Lands

12. 181 Davenport Road, PART OF LOTS 7 AND 8 PLAN 689E,
DESIGNATED AS PART 1 ON PLAN 66R20718;

Toronto, Ontario

SUBJECT TO AN EASEMENT AS IN AT3773749;
 SUBJECT TO AN EASEMENT AS IN AT3903195
 CITY OF TORONTO and also as PCL 5-1 SEC A689E;
 LT 5 SIS DAVENPORT RD PL 689E TORONTO; LT 6
 SIS DAVENPORT RD PL 689E TORONTO; PTLT 7
 SIS DAVENPORT RD PL 689E TORONTO; PT LT 8
 SIS DAVENPORT RD PL 689E TORONTO; PT LT K
 PL 401 TORONTO; PT LT4 PL 411 TORONTO
 COMM AT A POINT IN THE SLY LIMIT OF
 DAVENPORT RD DISTANT 56 FT 8 518 INCHES
 MEASURED ELYTHEREON FROM THE N WL Y
 ANGLE OF SAID LT 8; THENCE SLY IN A
 STRAIGHT LINE 81 FT 9 INCHES MORE OR LESS
 TO A POINT IN THE SLY LIMIT OF THE SAID LT 8
 DISTANT 30 FT MEASURED ELYTHEREON FROM
 THE S WL Y ANGLE THEREOF; THENCE WL Y
 ALONG THE SLY LIMIT OF SAID LT 8 BEING THE
 NL Y LIMIT OF LT 4 ON SAID REGISTERED PL
 411 (YORKVILLE) 40 FT 7 INCHES MORE OR LESS
 TO A POINT THEREIN DISTANT 105 FT 112 AN
 INCH ELYTHERE ALONG FROM THE NW ANGLE
 OF SAID LT; THENCE SLY AND PARALLEL TO
 THE ELY LIMIT OF HAZEL TON AV 28 FT TO A
 POINT; THENCE ELY PARALLEL TO THE NLY
 LIMIT OF SAID LT 4, 17 FT 8 112 INCHES MORE OR
 LESS TO THE WL Y FACE OF THE WL Y WALL
 OF AN OLD FRAME SHED SITUATE ON THE
 REAR PORTION OF THE SLY PT OF SAID LT 4 PL
 411 YORKVILLE; THENCE NLY ALONG SAID
 WLY FACE OF WALL 3 INCHES MORE OR LESS
 TO THE NW CORNER OF SAID FRAME SHED;
 THENCE ELY ALONG THE NL Y FACE OF THE NL
 Y WALL OF SAID FRAME SHED 17 FT 8 1/2
 INCHES MORE OR LESS TO THE N E CORNER OF
 SAID FRAME SHED; THENCE SLY ALONG THE
 ELY FACE OF THE ELY WALL OF SAID FRAME
 SHED 3 INCHES MORE OR LESS TO THE SLY
 LIMIT OF THE NL Y 28 FT OF SAID LT 4, PL
 411 (YORKVILLE); THENCE ELY ALONG SAID
 SLY LIMIT OF THE NL Y 28 FT OF SAID LT 4,
 PL 411 YORKVILLE AND ITS PRODUCTION ELY
 47 FT 11 INCHES MORE OR LESS TO THE ELY
 LIMIT OF LT K ACCORDING TO SAID
 REGISTERED PL 401, BEING ALSO THE WLY
 LIMIT OF LT 6 ACCORDING TO SAID
 REGISTERED PL 689E; THENCE SLY ALONG
 SAID WL Y LIMIT OF LT 6 AND ALONG THE WL Y

LIMIT OF SAID LT 5, 37FT 11 INCHES MORE OR LESS TO THE S WANGLE OF .SAID LT 5;THENCE ELY ALONG THE SLY LIMIT OF SAID LT 5, 96 FT 4 INCHES MORE OR LESS TO THE S WL Y LIMIT OF DAVENPORT RD; THENCE NW LY AND WLY ALONG THE S WLY AND SLY LIMITS OF DAVENPORT RD 170 FT 3/4 OF AN INCH MORE OR LESS TO THE POB; TORONTO ,CITY OF TORONTO; SUBJECT TO AN EASEMENT AS IN AT3773749;SUBJECT TO AN EASEMENT AS IN AT3903195; CITY OF TORONTO

Mizrahi Cottage

13. 104 Hemlock Court and 106 Hemlock Court, Thornbury, Ontario LT 23 PL 1127 T NV R450659; SIT R459306 THE BLUE MOUNTAINS and LT 22 PL 1127 TNV R450659; SIT R459305; THE BLUE MOUNTAINS

Mizrahi Residence

14. 189 Forest Hill Road, Toronto, Ontario and 185 Forest Hill Road, Toronto, Ontario PT LT 22 CON 3 FTB 1WP PF YORK AS IN FH31909; CITY OF TORONTO and PT LT 22 CON 3 FTB 1WP OF YORK AS IN CA694165; CITY OF TORONTO

Schedule "D" – The 133 Hazelton Project Companies

1. 133 Hazelton Inc. (Corp No: 228916)
2. 133 Hazelton Inc. (Corp No: 1895309)
3. 133 Hazelton Inc. (Corp. No: 1927750)
4. 1834369 Ontario Inc.
5. Soaring Mizrahi Developments Inc.
6. Mizrahi Development Group (131 Hazelton) Inc.
7. Mizrahi Development Group (133 Hazelton) Inc.

Schedule “E” – The 181 Davenport Project Companies

1. One8one Davenport Inc. (Corp No: 2325793)
2. One8one Davenport Inc. (Corp No: 1912202)
3. One8one Davenport Inc. (Corp. No: 1927551)
4. Mizrahi Soaring Developments Inc.
5. Mizrahi Development Group (145 Davenport) Inc.
6. Mizrahi Development Group (185 Davenport) Inc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
LIST**

Proceeding commenced at

FRESH AS AMENDED STATEMENT

Wardle Daley Bernstein Bieber
2104-401 Bay Street
P.O. Box 21
Toronto, ON M5H 2Y4

Peter C. Wardle LSUC#: 26411
Simon Bieber LSUC#: 562190
James Gibson LSUC#: 628580
Alex Fidler-Wener LSUC#: 68
Tel: (416) 351-2771/2781/277
Fax: (416) 351-9196

Lawyers for the Plaintiffs/Defendants
Khashayar Khavari and Mohamad
and the Defendants by Counterparties
Khashavari, Mandana Khalili Sha
Khalili Khavari Tajbakhsh

This is Exhibit "F" referred to in the Affidavit of Khashayar Khavari affirmed by Khashayar Khavari at the City of Toronto, in the Province of Ontario, before me on October 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

SEAN PIERCE

AMENDED THIS Feb. 17, 2017 PURSUANT TO
MODIFIÉE CE CONFORMÉMENT A
 RULE/LA RÈGLE 26.02 (A)

THE ORDER OF _____
L'ORDONNANCE DU _____
DATED / FAIT LE _____

Court File No. CV-15-11187-00CL

C. Irwin
REGISTRAR
SUPERIOR COURT OF JUSTICE
GREFFIER
COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

(Court Seal)

KHASHAYAR KHAVARI and MOHAMMAD MAHDI TAJBAKSHH

Plaintiffs/Defendants by Counterclaim

and

SAM MIZRAHI, MICHAL RENEE MIZRAHI, ZIBA MIZRAHI,
MIZRAHI ENTERPRISES INC., MIZRAHI INC., 133 HAZELTON INC.
(CORP NO: 2289816), 133 HAZELTON INC. (CORP NO: 1895309),
133 HAZELTON INC. (CORP NO: 1927750), 1834369 ONTARIO INC.,
SOARING MIZRAHI DEVELOPMENTS INC., MIZRAHI DEVELOPMENT
GROUP (131 HAZELTON) INC., MIZRAHI DEVELOPMENT GROUP (133
HAZELTON) INC., ONE8ONE DAVENPORT INC. (CORP NO: 2325793),
ONE8ONE DAVENPORT INC. (CORP NO: 1912202), ONE8ONE
DAVENPORT INC. (CORP. NO: 1927751), MIZRAHI SOARING
DEVELOPMENTS INC., MIZRAHI DEVELOPMENT GROUP (145
DAVENPORT) INC., MIZRAHI DEVELOPMENT GROUP (185
DAVENPORT) INC., UNIMAX INTERNATIONAL LTD., 129 HAZELTON
INC., MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., MIZRAHI
RESIDENTIAL (THE ONE) GP INC., MIZRAHI COMMERCIAL (THE ONE)
GP INC., SAM M. INC., S. & Z. MIZRAHI INVESTMENT LTD., MIZRAHI
(128 HAZELTON) INC., MIZRAHI DEVELOPMENT GROUP (1451
WELLINGTON) INC., MIZRAHI KHALILI INC., MIZRAHI (C-GMS0) INC.
and NORTHERN CITADEL CAPITAL INC.

Defendants/Plaintiffs by Counterclaim

and

MAHMOUD REZA KHAVARI, KHASHAYAR KHAVARI, MOHAMMAD
MAHDI TAJBAKSHH, ARDAVAN KHAVARI, NICHOLAS TYACKE, VRIA
INVESTMENT LTD., MANDANA KHALILI SHAVARINI, PARANDIS KHALILI
KHAVARI TAJBAKSHH and AYLAR MOUSSAVI

Defendants by Counterclaim

FRESH AS AMENDED STATEMENT OF DEFENCE AND
COUNTERCLAIM

TO THE DEFENDANT(S) TO THE COUNTERCLAIM

A LEGAL PROCEEDING has been commenced against you by way of a Counterclaim in an action in this Court. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS COUNTERCLAIM, you or an Ontario lawyer acting for you must prepare a Defence to Counterclaim in Form 27C prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff by counterclaim's lawyer or, where the Plaintiff by Counterclaim does not have a lawyer, serve it on the Plaintiff by Counterclaim, and file it, with proof of service, in this Court, WITHIN TWENTY DAYS after this Statement of Defence and Counterclaim is served on you.

If you are not already a party to the main action and you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

If you are not already a party to the main action, instead of serving and filing a Defence to Counterclaim, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your defence to Counterclaim.

IF YOU FAIL TO DEFEND THIS COUNTERCLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

C. Irwin
Registrar

Date Feb. 23, 2016

Issued by _____

Local Registrar

Address of court office: 330 University Avenue, 7th Floor
Toronto ON
M5G 1R7

AND TO: **STOCKWOODS LLP**
Barristers
TD North Tower, P.O. Box 140
77 King Street West, Suite 4130
Toronto, Ontario
M5K 1H1

Luisa Ritacca
Tel: (416) 593-7200
Fax: (416) 593-9345

Lawyers for the Defendant/Plaintiff by Counterclaim,
Unimax International Ltd.

AND TO: **WARDLE DALEY BERNSTEIN BIEBER LLP**
Barristers and Solicitors
401 Bay Street, Suite 2104
P.O. Box 21
Toronto, Ontario
M5H 2Y4

Simon Bieber
Alex Fidler-Werner
Tel: (416) 351-2770
Fax: (416) 351-9196

Lawyers for the Plaintiffs, Khashayar Khavari and Mohammed Tajbakhsh, and the
Defendants by Counterclaim, Mahmoud Reza Khavari, Mandana Khalili Shavarini,
Parandis Khalili Khavari Tajbakhsh

AND TO: **STROH PROFESSIONAL CORP.**
One Yonge Street, Suite 1506
Toronto, Ontario
M5E 1E5

Matthew M.A. Stroh
Tel: (416) 416-970-0852
Email: mstroh@strohlaw.com

Lawyer for the Defendants by Counterclaim,
Ardavan Khavari, Vria Investment Ltd. and Aylar Moussavi

1033

F3327

-4-

AND TO: **DIAMOND PANTEL LLP**
80 Richmond Street West
The Victory Building
Suite 1101
Toronto, Ontario
M5H 2A4

Adam Pantel
Tel: (416) 583-5758
Fax: (416) 583-1857

Lawyers for the Defendant by Counterclaim,
Nicholas Tyacke

F1059

STATEMENT OF DEFENCE

1. Except as hereinafter expressly admitted, the Defendants, Sam Mizrahi, Michal Renee Mizrahi, Ziba Mizrahi, Mizrahi Enterprises Inc., Mizrahi Inc., 129 Hazelton Inc., Mizrahi Development Group (The One) Inc., Mizrahi Residential (The One) GP Inc., Mizrahi Commercial (The One) GP Inc., Sam M. Inc., S. & Z. Mizrahi Investment Ltd., Mizrahi (128 Hazelton) Inc., Mizrahi Development Group (1451 Wellington) Inc., and Mizrahi (C-GMS0) Inc. (collectively, the “**Mizrahi Parties**” or the “**Defendants**”), deny all of the allegations in the Fresh as Amended Statement of Claim (the “**Amended Claim**”) and put the Plaintiffs to strict proof thereof.

THE PARTIES

(a) The Plaintiffs/Defendants by Counterclaim

2. Mahmoud Reza Khavari (“**Mahmoud**”) is an individual residing in Ontario. He is the former Chairman of Bank Melli, Iran’s state-owned bank. He is alleged to have participated in one of the largest embezzlement schemes in Iranian history. There is currently an outstanding Interpol warrant for his arrest.
3. Mandana Khalili Shavarini (“**Mandana**”) is an individual residing in Ontario. She is Mahmoud’s wife. She is a shareholder in Mizrahi Khalili Inc.
4. Khashayar Khavari (“**Khash**”) is an individual residing in Ontario. He is the son of Mahmoud and Mandana.
5. Mohammad Mahdi Tajbakhsh (“**Mahdi**”) is an individual residing in Ontario. He is Khash’s brother-in-law. He is married to Mahmoud’s daughter, Parandis Khalili Khavari Tajbakhsh (“**Parandis**”).
6. Parandis previously owned a house located at 26 Suncrest Drive in Toronto, which Mahmoud and Mandana transferred to her in October 2011, following news reports of Mahmoud’s alleged involvement in a fraud scandal in Iran. Parandis subsequently sold the house for \$2,925,000.

7. Ardavan Khavari (“**Ardavan**”) is an individual residing in Ontario. He is Khash’s brother and Mahmoud and Mandana’s son. He is the directing mind of Vria Investment Ltd. (“**Vria**”), a company incorporated pursuant to the laws of the province of Ontario, purportedly carrying on business as an investment firm.
8. Ardavan is married to Aylar Moussavi (“**Aylar**”). Aylar is the sole director and officer of Vria.
9. Mahmoud, Khash, Mahdi, Ardavan, Mandana, Parandis and Aylar shall be referred to collectively as the “**Khavaris**” or the “**Khavari Family**”.
10. Nicholas Tyacke (“**Mr. Tyacke**”) is the Khavari Family’s lawyer and operates from offices at 1 St. Clair Avenue East in Toronto, Ontario. He owns one or more trust accounts into which funds unlawfully taken by the Khavari Parties were deposited.

(b) The Defendants/Plaintiffs by Counterclaim

11. Mizrahi Enterprises Inc. (“**MEI**”) is a company incorporated pursuant to the laws of the province of Ontario. It holds and controls 100% of the issued and outstanding shares of 133 Hazelton Inc. (Corp. No: 2289816), 133 Hazelton Inc. (Corp. No: 1895309), 133 Hazelton Inc. (Corp. No: 1927750), 1834369 Ontario Inc., Soaring Mizrahi Developments Inc., Mizrahi Development Group (131 Hazelton) Inc., Mizrahi Development Group (133 Hazelton) Inc., One8One Davenport Inc. (Corp No: 2325793), One8One Davenport Inc. (Corp No: 1912202), One8One Davenport Inc. (Corp. No: 1927751), Mizrahi Soaring Developments Inc., Mizrahi Development Group (145 Davenport) Inc. and Mizrahi Development Group (185 Davenport) Inc. (collectively, the “**133/181 Companies**”), all of which are incorporated pursuant to the laws of the province of Ontario.
12. The 133/181 Companies are involved in the development of two residential condominiums in Toronto, located at 133 Hazelton Avenue and 181 Davenport Road (together, the “**133/181 Developments**”).
13. MEI is also the lawful owner of the domain name mizrahidevelopments.com and its accompanying Google Apps for Work account, as well as the domain names 133Hazelton.com and 181Davenport.com.

14. Sam Mizrahi (“**Mr. Mizrahi**”) is the sole director and officer of MEI. He owns and controls 100% of the issued and outstanding shares of MEI. Contrary to the allegations in paragraph 3 of the Amended Claim, Sam and Khash are not business partners. At no time did Sam and Khash agree to split profits of all development projects on a 50/50 basis. Their relationship is governed only by the terms of the Contract (as defined in paragraph 142 and following) and is limited to the 133/181 Developments.

15. Michal Renee Mizrahi (“**Michal**”) is Mr. Mizrahi’s wife.

16. Ziba Mizrahi (“**Ziba**”) is Mr. Mizrahi’s mother.

17. Neither Michal nor Ziba have any involvement in the events that give rise to this litigation. They have been sued for the sole purpose of harassing and applying pressure to Mr. Mizrahi in this litigation. The claims advanced against Michal and Ziba in their personal capacities have no basis in law or fact and should be dismissed against them with costs on a full indemnity basis.

18. Mizrahi Development Group (1451 Wellington) Inc. is a company incorporated pursuant to the laws of the province of Ontario. It carries on business as the developer of a residential condominium located at 1451 Wellington Street in Ottawa. Mr. Mizrahi is indirectly a shareholder of this company.

19. 129 Hazelton Inc. is a company incorporated pursuant to the laws of the province of Ontario, carrying on business as the developer of residential property located at 129 Hazelton Avenue in Toronto. MEI owns and controls 100% of the shares of this company.

20. Mizrahi (128 Hazelton) Inc. is a company incorporated pursuant to the laws of the province of Ontario, carrying on business as the developer of property located at 128 Hazelton Avenue in Toronto. Mr. Mizrahi is indirectly a shareholder of this company.

21. Sam M. Inc. is a company incorporated pursuant to the laws of the province of Ontario. Mr. Mizrahi is the sole officer, director and shareholder of Sam M. Inc., which in turn, holds shares in each of Mizrahi Residential (The One) GP Inc. and Mizrahi Commercial (The One) GP Inc.. Mizrahi Residential (The One) GP Inc. and Mizrahi Commercial (The One) GP Inc. hold 100% of the shares in Mizrahi Development Group (The One) Inc. These companies are

currently involved in the development of property located at One Bloor West, formerly occupied by Stollery's. These entities shall be referred to collectively as "**The One Bloor West Companies**".

22. The developments located at 1451 Wellington Street (Ottawa), 129 Hazelton Avenue (Toronto), 128 Hazelton Avenue (Toronto) and One Bloor West (Toronto) shall be referred to collectively as the "**Unrelated Developments**". Neither the Plaintiffs nor any member of the Khavari Family have any interest, financial or otherwise, in the Unrelated Developments.

23. Mizrahi Khalili Inc. is a company incorporated pursuant to the laws of the province of Ontario. With respect to the allegations in paragraphs 14 and 36 to 37 of the Amended Claim, the Defendants deny that any "Partnership" was carried on under the name Mizrahi Khalili or Mizrahi Developments or that any projects developed under those names form part of any "Partnership" between Sam and Khash. Mizrahi Khalili Inc.:

- (a) had a limited role in marketing and managing the 133/181 Developments:
- (b) became inactive in 2012, shortly after the shares in the 133/181 Companies were transferred to MEI, as further described below;
- (c) has had no operations, financial statements, tax returns, bank accounts or assets since 2012;
- (d) at all times carried on business as either Mizrahi Khalili Developments or MK Developments;
- (e) contrary to paragraph 14 of the Amended Claim, never carried on business as Mizrahi Developments. Mizrahi Developments is a trade name that Mr. Mizrahi has used for all of his developments and projects since 2008, two years before he first met the Khavaris; and
- (f) never marketed or managed any of the Unrelated Developments. It ceased all operations before any of the Unrelated Developments were commenced.

24. Mizrahi (C-GMS0) Inc. is a company incorporated pursuant to the laws of the province of Ontario. It is a holding company in respect of which Mr. Mizrahi is the sole director, officer

and shareholder. Neither the Plaintiffs nor any members of the Khavari family have any interest, financial or otherwise, in Mizrahi (C-GMSO) Inc..

25. Mizrahi Inc. ("MI") is a company incorporated pursuant to the laws of the province of Ontario. It carries on business as a general contractor in respect of the various developments owned and operated by the Mizrahi group of companies. It acted as the general contractor for the 133/181 Developments. It holds a Tarrion license, which is necessary to build developments in Ontario.

26. Mr. Mizrahi and Michal each hold 50% of the shares of MI. Neither the Plaintiffs nor any member of the Khavari family have any interest, financial or otherwise, in MI.

27. S & Z Mizrahi Investment Ltd. is a company incorporated pursuant to the laws of the province of Ontario which previously carried on business investing in real estate development from 1979 to 2003, when it ceased carrying on business. It is now a holding company for Mr. Mizrahi's parents. Mr. Mizrahi is not a shareholder, director or officer of this company.

28. Unimax International Ltd. ("Unimax") is a company incorporated pursuant to the laws of the province of Ontario. Mr. Mizrahi is the sole officer, director and shareholder of Unimax. The Plaintiffs were directors and shareholders of Unimax until October 11, 2011, when they resigned their positions and transferred their shareholdings back to treasury.

29. Northern Citadel Capital Inc. ("Northern Citadel") is a company incorporated pursuant to the laws of the province of Ontario. It carries on business as a holding company. Mr. Mizrahi is the sole officer, director and shareholder of Northern Citadel and has always been the sole officer, director and shareholder of Northern Citadel.

THE 133/181 DEVELOPMENTS

30. In or around 2010, Mr. Mizrahi entered into an agreement with Khash, acting on behalf of the Khavari Family, to develop two mid-rise luxury condominium developments:

- (a) the first development is located at 133 Hazelton Avenue and consists of 35 custom-designed condominium units, three town-homes and a retail unit (the "133 Hazelton Development"). The development was completed and registered as a condominium corporation in March 2015. While all the units have been sold,

there remain outstanding deficiencies, identified on Taron and customer deficiency lists, ongoing technical audits and other items that require completion;

- (b) the second development is located at 181 Davenport Road and consists of 68 high-end condominium units with multiple penthouse suites and a retail unit (the "**181 Davenport Development**"). This development is not completed.
31. As described above, these two developments are referred to herein as the "133/181 Developments".
32. When Mr. Mizrahi and Khash first embarked on the 133/181 Developments, they agreed that:
- (a) Mr. Mizrahi would identify the lands for development and arrange to have the lands rezoned;
- (b) Khash, with the assistance of his family, would contribute the equity required to purchase the lands for the developments, as well as the necessary construction financing to move forward with the developments;
- (c) Mr. Mizrahi would develop the lands, design and build the condominiums and undertake the marketing and sale of the condominiums; and
- (d) Mr. Mizrahi and Khash would split the profits from the sale of the developments on a 50/50 basis, after all debts, costs, expenses and interest (the "**Liabilities**") have been satisfied.
33. In accordance with this agreement, Mr. Mizrahi identified properties at 195 Davenport Road, 185 Davenport Road, 145 Davenport Road and 131 Hazelton Avenue in Toronto for the 133/181 Developments. The parties also incorporated various of the 133/181 Companies to hold title to the properties.
34. Khash, with the assistance of his family and Mahmoud in particular, invested approximately \$14 million (not \$17 million as alleged in paragraph 25 of the Amended Claim) in equity in the 133/181 Developments:

- (a) approximately \$11 million was used to purchase 131 Hazelton Avenue and 195 Davenport Road, which were subsequently combined to form 133 Hazelton Avenue;
- (b) \$1,758,600 was used to purchase part of 145 Davenport Road and \$1,051,198.99 was used to purchase part of 185 Davenport Road, which were later combined to form 181 Davenport Road.

35. Contrary to paragraph 13 of the Amended Claim, Mr. Mizrahi contributed the balance of the funds required to complete the purchases of 145 Davenport Road and later 185 Davenport Road by obtaining separate financing from private lenders when Khash failed to advance the remainder of the funds required pursuant to his agreement with Mr. Mizrahi. The financing was secured as against Mr. Mizrahi's personal assets and not the 133/181 Companies or the lands in respect of the 133/181 Developments.

36. Contrary to the allegations in paragraphs 16 and 30 of the Amended Claim, at no time did Mr. Mizrahi or anyone acting on his behalf represent or agree that the Plaintiffs would share equally or at all in any profits or fees earned, or costs savings achieved, by MI as general contractor for the 133/181 Developments or any other developments.

THE CONTRACT

37. In September and October 2011, the Toronto Star and the Globe and Mail reported that Mahmoud, the former Chairman of Iran's state-owned bank, Bank Melli, was alleged to have participated in one of the largest embezzlement and fraud schemes in Iranian history. Mahmoud fled to Canada on September 27, 2011. There is currently an outstanding Interpol warrant for his arrest. Iran's attempts to extradite Mahmoud have failed so far.

38. Following these reports, Khash advised Mr. Mizrahi that the Khavari family's assets had been frozen by the Toronto-Dominion Bank and that Mahmoud's passport had been surrendered to his criminal lawyer. As a result, Khash claimed that he could not provide the financing required for the 133/181 Developments. The allegation in paragraph 23 of the Amended Claim that Khash and his family could not contribute any further funds towards the developments because bank financing was not available until a certain stage of development is false.

39. Given that Khash could not advance the financing necessary to complete the purchase of the 133/181 development lands, Mr. Mizrahi suggested that they sell the lands at a profit and terminate the developments.
40. Khash and his family rejected this suggestion. Instead, they insisted that Mr. Mizrahi use his connections and reputation within the community to obtain financing from various lenders to move forward with the 133/181 Developments. At the behest of the Khavari Family, Mr. Mizrahi agreed to borrow funds from private lenders in lieu of the funds that were supposed to have been committed by the Khavaris in order to proceed with the 133/181 Developments. Then and at no time since did Mr. Mizrahi release Khash from his breach of his obligation to provide the funds required to construct and complete the 133/181 Developments, or waive any rights thereto.
41. Khash and Mahmoud reconfirmed to Mr. Mizrahi that all Liabilities would be repaid out of the proceeds of sale from the 133/181 Developments prior to any distributions to Khash.
42. To this end, Mr. Mizrahi and Khash agreed that:
- (a) Khash would convey and transfer to MEI all of his shares in the 133/181 Companies;
 - (b) Mr. Mizrahi would be the sole director and officer of the 133/181 Companies and would have sole signing authority in respect of those companies as well as the 133/181 Developments in general;
 - (c) Mr. Mizrahi, through MEI, would retain 100% control over the 133/181 Companies ("**Control**"); and
 - (d) Khash would not seek the return of the shares in the 133/181 Companies until both of the 133/181 Developments are completed and all Liabilities had been fully satisfied (collectively, with its addenda as described below, the "**Contract**").
43. Contrary to paragraph 32 of the Amended Claim, the Khavaris entered into the Contract because they could not fulfill their obligation to fund the 133/181 Developments once TD Bank froze their assets following the issuance of the Interpol warrant for Mahmoud's arrest. The Contract is not a "Partnership Agreement" and did not give rise to a "partnership" at law or in

fact, as alleged in paragraph 15 in the Amended Claim. To the contrary, in the contract Mr. Mizrahi and Khash specifically and expressly agreed that their relationship "is not one of partnership or joint venture".

44. On October 11, 2011, Khash transferred ownership of all of the shares in each of Soaring Mizrahi Developments Inc., 1834369 Ontario Inc., Mizrahi Soaring Developments Inc. and 133 Hazelton Inc. to MEI pursuant to a document styled as a "Trust Agreement".

45. That document was drafted by a lawyer for the Khavari Family on the Khavari Family's instructions. Mr. Mizrahi had no input into the language of the Contract before it was presented to him to sign. He was under significant stress at the time and feared for his safety and that of his family given the Khavari Family's circumstances.

46. Mizrahi retaining Control was the *sine qua non* of the Contract. The Khavari Family understood then, as it knows now, that it could not have Control over any of the 133/181 Companies because Mr. Mizrahi would be making representations to the banks and lenders on the strength of and in reliance upon the Contract that MEI owned and controlled the 133/181 Companies for the purpose of obtaining construction financing for the 133/181 Developments. The Contract states:

15. It is understood and agreed that the relationship between the Trustee and the Beneficiary is not one of partnership or joint venture.

47. In addition, pursuant to the Contract, Khash to release MEI from all liability for any act or omission of MEI or Mr. Mizrahi done pursuant to the Contract or with the authorization or direction of Khash. Khash also agreed to indemnify MEI for all costs incurred in relation to the 133/181 Developments. The Contract states:

10. The Trustee shall be indemnified by the Beneficiary from such obligations and from any and all loss, costs, claims or demands, arising from or out of its acting as trustee for the Beneficiary as aforesaid, save with respect to any such loss, claim or demand arising from the wilful default of the Trustee.

...

14. The Beneficiary hereby releases the Trustee from any and all liability that the Trustee, may incur in respect of any action taken by the Trustee either pursuant to the authorization or direction of the Beneficiary or pursuant to the terms of this Agreement. The Beneficiary shall indemnify and hold the Trustee harmless from all costs, expenses, losses, damages, claims, demands and liabilities of whatsoever kind and character that may arise out of any action taken by

the Trustee either pursuant to the authorization or direction of the Beneficiary or pursuant to the terms of this Agreement. (the "Indemnity")

48. Following the execution of the Contract, Mr. Mizrahi secured more than \$88 million in financing for the 133/181 Developments from various financial institutions, banks and private lenders at high rates of interest. Loans were advanced either directly to the Project Companies or through MEI or Northern Citadel.

49. This financing was secured on the basis of, among other things:

- (a) MEI having Control;
- (b) personal and corporate guarantees of the loans by Mr. Mizrahi and financing amounting to over \$40 million; and
- (c) the security granted to lenders in respect of the loans in the form of charges and mortgages registered on title to the lands, as well as pledges of shares of various of the 133/181 Companies.

50. Contrary to paragraph 26 of the Amended Claim, Khash and Mahdi were fully aware of the nature and extent of the financing secured by Mr. Mizrahi for the 133/181 Developments. They knew of and accepted the high rates of interest and costs of borrowing associated with the various loans and credit facilities in respect of the 133/181 Developments as a result of Khash and the Khavari Family's failure to fulfill their funding obligations in respect of the 133/181 Developments contrary to the promises and agreement made by Khash.

51. Among others, loans were obtained from two lenders, Bridging Capital Inc. ("**Bridging**") and Ridgemount Capital Corp. ("**Ridgemount**"). Khash, Mahdi and the Khavari Family knew about the loans from these two companies. In particular, Khash and Mahdi:

- (a) signed and initialled numerous documents authorizing these loans, including term sheets and personal guarantees provided by Mr. Mizrahi as security for the loans;
- (b) authored, were copied on and received over 100 emails describing the loans obtained from Bridging and Ridgemount, and were heavily involved in preparing monthly reports to the lenders describing the status and progress of the 133/181 Developments; and

- (c) have since admitted during cross-examinations in respect of a motion to appoint an inspector that they knew about the Bridging and Ridgemount loans, including the terms and conditions of the loans and the fact that a change in Control contrary to the Contract could lead to lenders calling their loans, enforcing their security and seeking repayment of the loans from MEI and Mr. Mizrahi personally.

52. Moreover, as described further below, the parties subsequently formed an addendum to expressly authorize the loans Mr. Mizrahi had arranged to finance the Developments of 133/181. The last paragraph of the addendum states:

In addition, the beneficiary authorizes the trustee to proceed for working capital requirements and construction financing for the projects to proceed with the execution and signing of the trustee guarantees (sic) both corporate and personal for the necessary loans and registration requirements

53. The Plaintiffs have since used their knowledge of the terms and conditions of these loans to exert pressure upon Mr. Mizrahi by, among other things, commencing court proceedings for the transfer of shares of the 133/181 Companies from MEI to Khash, which would have had the effect of triggering a change in Control under the loans (described below as the “**Khavari Application**”). As set out in more detail below, the Plaintiffs’ application was heard in January 2016 and dismissed by this Honourable Court, in part due to the harm that a change of Control would have caused to the 133/181 Developments, stakeholders and Mr. Mizrahi himself.

THE CONTRACT IS AMENDED

54. For a period of time, the 133/181 Developments were marketed with the name “Khalili”. This was an assumed name the Khavaris had adopted to conceal their true identity. In or around November 2011, when allegations related to Mahmoud’s involvement in a major embezzlement scheme surfaced and an Interpol warrant was issued for his arrest, the Khavaris wanted to remove the name “Khalili” from the 133/181 Developments and all of the marketing and development materials.

55. The 133/181 Companies were also reorganized and new companies were incorporated to hold the properties in trust. Khash and Mahdi agreed to and participated in the reorganization. In connection with the reorganization, on December 5, 2011, the parties drafted and executed an

addendum to the document styled as a "Trust Agreement" which formed part of the Contract, reflecting the reorganization of the corporations and authorizing MEI to proceed with financing applications for working capital requirements and construction.

56. Pursuant to the addendum, Khash also transferred all of the shares he owned in Mizrahi Developments Group (185 Davenport) Inc. to MEI.

57. In or around March or April 2012, the parties agreed to a further addendum which formed part of the Contract to:

- (a) correct a mistaken reference in the Trust Agreement to Northern Citadel as the entity that would provide the funding necessary to purchase the lands and carry on the 133/181 Developments and the fact that Northern Citadel is 100% owned by Mr. Mizrahi;
- (b) confirm the removal of the "Khalili" name from all corporations and marketing materials related to the 133/181 Developments; and
- (c) confirm that Mr. Mizrahi, through MEI, would maintain Control and 100% ownership of the 133/181 Companies and that no shares would be returned to Khash until the 133/181 Developments are complete and all Liabilities have been fully satisfied.

58. This addendum to the Trust Agreement was signed by Khash and Mr. Mizrahi, with Mahdi as the witness. Mr. Mizrahi is unable to locate his copy of the addendum. As described below, the addendum was removed by Khash and Mahdi on or before July 7, 2015.

THE KHAVARI FAMILY'S UNLAWFUL ATTEMPTS TO STRIP THE EQUITY FROM THE 133/181 DEVELOPMENTS

59. Due to inclement winter weather conditions, environmental soil problems and other issues, the 133/181 Developments experienced significant delays.

60. As a result of the delays, the parties requested a loan extension from one of the project lenders, Bridging Finance. In support of the request for an extension, a detailed summary of the

anticipated profits and expenses in respect of the 133/181 Developments was provided to the lender (the "Summary").

61. The Summary, a copy of which was also provided to the Plaintiffs, demonstrated that while there were sufficient funds to repay the principal and the interest owing on the loan, there would be little to no equity left in the 133/181 Developments once all Liabilities had been paid given the costs of the construction delays, the high rate of interest payable to the various lenders and Khash and Mahdi's mismanagement of the 133/181 Developments, as described below.

62. In the winter of 2015, following their review of the Summary and the realization that the 133/181 Developments were unlikely to generate profits, the Khavaris began taking steps to strip the equity from the 133/181 Developments, for their own personal benefit, without regard to the impact of their actions and conduct on the financial viability of the 133/181 Companies and 133/181 Developments and their obligations to Mr. Mizrahi and other stakeholders.

63. The Khavaris acted unilaterally to take back their initial equity investment using deceitful means and to leave MEI, Mr. Mizrahi and the 133/181 Companies with all of the debt obligations, contrary to the Contract and the assurances and representations the Khavaris made to Mr. Mizrahi in 2011.

(a) The Khavari Family Converts \$7 million from the Developments

64. On April 20, 2015, during a meeting between Mr. Mizrahi and Mahmoud, Mahmoud fabricated a story that his son Ardavan (Defendant by Counterclaim) was in grave physical danger due to alleged financial difficulties experienced in Dubai in order to extract \$14 million from the closing proceeds of the sale of various units of 133 Hazelton Avenue.

65. When Mr. Mizrahi refused Mahmoud's demand for \$14 million, Mahmoud threatened to destroy Mr. Mizrahi's reputation within the community and his own financial stability, as well as that of his family. Mr. Mizrahi explained to Mahmoud and Khash that in addition to what is set out in the Contract and as a result of cost overruns, the high rate of interest payable to lenders as a result of the breach of their financial obligations under the Contract and delays in completing the 133/181 Developments, the sum of \$14 million that they were requesting could not possibly

be paid to the Khavaris until the developments were completed and all Liabilities were satisfied. Mahmoud told Mr. Mizrahi not to "challenge" him or he would suffer consequences.

66. Mr. Mizrahi reminded Mahmoud and Khash of the Contract and that no equity or profits would be distributed to Khash until the 133/181 Developments are complete and all Liabilities have been satisfied. Mahmoud acknowledged the Contract, but nonetheless pressed Mr. Mizrahi for payment. Mahmoud promised to replace the funds and that he would "take care" of the debts owed in respect of the 133/181 Developments.

67. Contrary to the allegations in paragraph 49 of the Amended Claim, at no time did Mr. Mizrahi represent that the 133/181 Developments had achieved or would achieve significant profits. The alleged representation is entirely inconsistent with the Summary, which was provided to Khash. Nor did Mr. Mizrahi ever agree to return \$7 million to Khash on account of the funds initially invested in the 133 Hazelton Development or the balance of the Khavaris' investment in the 133/181 Developments by June 2015.

68. As a result of the threats made by Mahmoud, and on the representation that the funds would be replaced to ensure repayment of debts, Mr. Mizrahi issued a cheque payable to Nicholas Tyacke in trust in the amount of \$7 million. The cheque was negotiated on April 20, 2015.

69. The claims made by the Khavaris' about the safety of Ardavan were false. They were fabricated to extract early repayment of the Khavaris' initial investment in the 133/181 Developments, contrary to the Contract and the assurances and representations made by the Khavaris to Mr. Mizrahi.

70. Mr. Mizrahi, on behalf of MEI and the 133/181 Companies, has since demanded the return of the \$7 million. To date, the funds have not been returned or replaced.

71. With respect to paragraph 52 of the Amended Claim, the amount of \$4.8 million was transferred to MEI's bank account for the express purpose of repaying one of the Ridgemount loans described above. Khash and Mahdi were fully aware of this and agreed to the repayment. Khash and Mahdi have copies of MEI's bank records and bank transfers, dated April 20, 2015, evidencing the repayment to Ridgemount.

(b) The Khavari Family's Efforts to Intimidate Mizrahi

72. On June 26, 2015, Mr. Mizrahi met with Mahmoud at the offices of 126 Hazelton Avenue. Mahdi was present during this meeting. Mahmoud asked Mr. Mizrahi if they were going to be partners in all of Mr. Mizrahi's developments, including One Bloor West. He had with him a notepad, with a card from the law firm, Gardiner Roberts LLP, pinned to the top of his notepad apparently to intimidate Mr. Mizrahi.

73. Mr. Mizrahi reminded Mahmoud that the Khavari Family's involvement was limited to the 133/181 Developments and that neither he nor any members of his family had any interest, financial or otherwise, in any of the Unrelated Developments.

74. Mr. Mizrahi confronted Mahmoud in respect of what he believed to be Mahmoud's plan to strip all of the equity from the 133/181 Developments to his benefit and that of his family, leaving behind all the Liabilities which Mr. Mizrahi, MEI and various of the 133/181 Companies had guaranteed.

75. As Mahmoud knew, and continues to know, to trigger a default in respect of the 133/181 Companies could lead the lenders to call their loans, enforce their security and seek repayment from Mr. Mizrahi, MEI and the 133/181 Companies, which would cause Mr. Mizrahi, his family and the developments irreparable harm.

76. It was a very emotional discussion at the conclusion of which Mahmoud told Mizrahi to "have a glass water", which, in the Iranian culture, is something that is said prior to a person's execution.

(c) The Khavari Family's Attempt to Convert a Further \$3 million

77. On June 30, 2015, after Mr. Mizrahi specifically asked Khash and Mahdi not to negotiate any cheques, Mr. Mizrahi received a telephone call from Mahmoud during which he again threatened Mr. Mizrahi, stating that he would "destroy [Mr. Mizrahi], [his] business and [his] reputation" and that he would "burn down [Mr. Mizrahi's] house and everything that [he] hold[s] dear if [he] did not allow his family to cash the cheques".

78. On July 6, 2015, during Mr. Mizrahi's absence from the office, the Khavari Family attempted to negotiate five further cheques written to "Nicholas Tyacke In Trust", totalling almost \$3 million, without authority to do so and despite being told by Mr. Mizrahi that there were not enough funds in the project accounts to honour the cheques.

79. The financial controller for the 133/181 Developments placed a stop payment in respect of these cheques before they could be negotiated.

(d) The Khavari Family's Abuse of the Judicial Process

80. The Khavaris subsequently instituted these proceedings. They did so for improper, collateral and indirect purposes to avoid the Contract, strip all remaining equity from the 133/181 Developments, unlawfully interfere in Mr. Mizrahi's economic relations and ultimately destroy Mr. Mizrahi, his family and his business.

81. Notwithstanding the Contract, the representations and assurances made by the Khavaris to Mr. Mizrahi and the fact that the 133/181 Developments are not yet complete and/or continue to have outstanding Liabilities, on July 24, 2015, Khash issued a notice of application against MEI seeking the transfer to him of 50% of the shares of the 133/188 Companies (the "**Khavari Application**").

82. The Khavari Application proceeded on January 6, 2016. It was dismissed. This Honourable Court decided that, based on the Contract, Khash is not a legal or beneficial owner of the shares in the 133/181 Companies. It also determined that a transfer of the shares to Khash would create events of default under the loan agreements and that the effect of granting an order transferring the shares would be the equivalent of allowing the Khavaris to resile from the Contract upon which MEI and Mr. Mizrahi have relied in their dealings with the lenders. This Court determined that "such a result would be unconscionable".

83. The Plaintiffs did not appeal the Court's decision.

84. On November 19, 2015, the parties attended an urgent case conference, at which time the Court:

- (a) ordered that neither party seek any *ex parte* relief for seven days; and

- (b) recommended that the parties attend a case conference with the case management judge to deal with the litigation in a “rational” and “orderly” manner.

85. The case conference resulted from the delivery of a purported settlement offer by the Khavaris, together with a draft of the Statement of Claim in this action.

86. The purported settlement offer expired at 5:00 pm on November 19, 2015, at which time it appeared that the Khavaris would move *ex parte* for Certificates of Pending Litigation and possibly other relief in respect of all of the Mizrahi developments (including developments in which the Khavaris have no involvement or interest, financial or otherwise), as well as property personally owned by Mr. Mizrahi and his family.

87. During the case conference, the Khavaris refused to provide any assurance that *ex parte* relief would not be sought absent an order of the Court despite acknowledging that the registration of CPLs on an *ex parte* basis would cause irreparable harm to the 133/181 Developments and the Unrelated Developments. As a result, the Court ordered a standstill between the parties in respect of any *ex parte* relief for seven days, pending a further case conference.

88. On November 20, 2015, the Plaintiffs issued the Statement of Claim in this action, drawing in all of the Unrelated Developments in respect of which the Khavaris have neither invested nor have an interest, financial or otherwise.

89. On November 27, 2015, the parties attended a further case conference during which the Court ordered that all motions are to be brought on reasonable notice to all parties, and that no motions for CPLs are to be brought without notice.

90. The Statement of Claim and now the Amended Claim are a concoction of deliberate distortions and vicious fabrications. The allegations advanced by the Plaintiffs are false and harmful to Mr. Mizrahi, his family and business, and have already caused significant and irreparable damage to the Defendants by their publication, including Mr. Mizrahi’s reputation in the development industry and in his community where he is most active, all of which are the objectives of the Khavari Family.

(e) **The Surreptitious Distribution of False Allegations to Mizrahi's Lenders**

91. On December 9 and 10, 2015, knowing that they could not take steps without notice or advance authorization from this Honourable Court, the Khavari Family and/or their agents delivered anonymous sealed brown envelopes to various of the lending institutions involved with not only the 133/181 Developments, but also other projects in which the Khavaris have no involvement or interest, financial or otherwise. These envelopes contained a copy of the Statement of Claim and other materials prepared by the Khavari Family and/or their counsel, including an accounting report from PriceWaterhouseCoopers ("PWC") procured by the Khavaris on the basis of false and misleading information, as further described below, making false assertions about the use of project funds.

92. The envelopes were delivered with the specific intent to harm and cause Mr. Mizrahi to capitulate to the Khavaris' demands and threats concerning the 133/181 Developments and the Unrelated Developments, by tarnishing Mr. Mizrahi's reputation, interfering with MEI's commercial relationships and contracts with homeowners, suppliers, subcontractors and lenders, and making good on the threats made by Mahmoud against Mr. Mizrahi. They were delivered for the predominant purpose of furthering the indirect and collateral objectives of this action.

93. The delivery of these envelopes to various project lenders is:

- (a) contrary to the spirit of the Orders made on November 19, 2015 and November 27, 2015, barring the Khavaris from bringing motions without reasonable notice. As described above, these Orders were required as a result of threats made by the Khavaris to take steps that would cause irreparable harm to MEI, the 133/181 Companies, Mr. Mizrahi and the various major developments that are currently under way (including One Bloor West) and in respect of which the Khavaris have no involvement or interest, financial or otherwise; and
- (b) consistent with the pattern of threats and intimidation that the Khavari Family, and Mahmoud in particular, have engaged in towards Mr. Mizrahi, his family and his business relationships. Indeed, in August 2015, counsel for the Khavaris wrote a letter to Mr. Mizrahi personally in which they threatened to contact his business counterparts and the project lenders, as well as other "intermediaries".

94. On cross-examination during the course of the Inspector Motion (defined below), members of the Khavari Family refused to deny that they were responsible for the delivery of the envelopes to Mr. Mizrahi's lenders, and refused to answer any questions about the envelopes or their involvement in the preparation and delivery of the envelopes.

95. The Khavaris are abusing the judicial process to carry out their threats, escape the Contract and cause irreparable harm not only to the 133/181 Developments, but to homeowners, suppliers, subcontractors, lenders, and to other Mizrahi projects in respect of which they have no involvement or interest, financial or otherwise.

96. This action is an artifice. It has been commenced by the Khavaris for collateral and ulterior purposes which should not be condoned by this Honourable Court. The Khavaris are liable for abuse of process.

(f) The Inspector Motion

97. Having lost the Khavari Application, the Plaintiffs next brought a motion to appoint an inspector over the 133/181 Companies (the "**Inspector Motion**"). That motion also forms part of the Plaintiffs' multifaceted campaign of false and misleading public statements and allegations made in these proceedings, and to Mr. Mizrahi's lenders, vendors, home owners, stakeholders and industry participants, all designed to threaten, intimidate and extort money from Mr. Mizrahi.

98. In support of the Inspector Motion, and as part of their conspiracy to harm Mr. Mizrahi, his family and his business, the Khavari Family procured an expert report from PWC based on false and misleading information. The Khavaris deliberately withheld their knowledge of the Bridging and Ridgemount loans from PWC. They did so to mislead PWC into preparing a report that misstates and distorts the financial situation of the 133/181 Developments and suggests that funds used to repay those loans and the interest accumulated had instead been misappropriated by Mr. Mizrahi. The Khavaris then sent a copy of the PWC report to Mr. Mizrahi's lenders and business contacts, all to further their goal of destroying him.

99. The Inspector Motion was heard on July 29, 2016. This Court dismissed the motion.

100. After reviewing the extensive evidence filed on the motion, this Honourable Court:
- (a) determined that the Court's earlier decision on the Khavari Application that Khash is not a shareholder of the Project Companies is binding on the Plaintiffs;
 - (b) found that the Khavaris had failed to establish a *prima facie* case of oppression because Mr. Mizrahi had rebutted their allegations "in specific detail"; and
 - (c) decided that, even if a *prima facie* of oppression had been established, an investigation is still not appropriate because, among other things:
 - (i) the Khavaris, who are not shareholders in the 133/181 Companies, already have access to far more financial information than any shareholder is entitled to receive, including the delivery of two independent forensic expert reports and all of the accompanying source documents and information from the 133/181 Companies;
 - (ii) it is premature at this point to conduct an accounting of the 133/181 Developments given that they are not complete from a financial perspective; and
 - (iii) it would not justify the significant and adverse consequences that would result if an inspector is appointed.

101. The Plaintiffs continued on their campaign to smear Mr. Mizrahi's reputation by seeking leave to appeal the decision of this Honourable Court. In their leave to appeal materials, they falsely alleged, without any evidentiary support, that Mr. Mizrahi had "misappropriated at least \$12 million from the business." Leave to appeal was denied by the Divisional Court.

THE OFFICES OF 126 HAZELTON AVENUE

102. The affairs and business of Mizrahi Developments are operated from offices located at 126 Hazelton Avenue in Toronto (the "Mizrahi Offices"). These offices are used for all of the developments and projects in which Mr. Mizrahi is involved, including those in which the Khavari family have no interest, financial or otherwise.

103. Before the lands on which the Mizrahi Offices are situated were purchased, MI paid all rents pursuant to the office lease. The lease was placed in Mizrahi Soaring Inc.'s name for purely technical corporate purposes. Mizrahi Soaring Inc. was a shell company with no assets.

104. Khash and Mahdi suggested that the lease be placed in the name of that company to protect 133/181 Developments against any defaults in respect of the lease. MI was always the *de facto* lessee as it paid the cost of the lease of the office. Mizrahi Soaring Inc. did not contribute any funds whatsoever for the office.

105. MI paid for all furniture, overhead and equipment in the office, including the office's main computer server (the "Main Server"). Khash did not personally contribute any funds for the acquisition of furniture and equipment for the offices. In the alternative, to the extent Khash incurred any such expenses, he was fully reimbursed by MI or Mr. Mizrahi.

106. In 2015, 126 Hazelton Avenue was purchased by Mizrahi (128 Hazelton) Inc. and other private investors. Khash did not want to participate in the purchase of the property, with the result that the acquisition did not move forward with Mizrahi Soaring Inc. as the purchaser.

107. As a result of their involvement with the 133/181 Developments, Khash and Mahdi were permitted to work from the Mizrahi Offices. They were responsible for managing the construction and development teams and they reported directly to Mr. Mizrahi.

108. As the 133/181 Developments proceeded, Khash and Mahdi:

- (a) had complete access to all of the bank accounts for the 133/181 Developments;
- (b) reviewed, or had the opportunity to review, each and every contract, document, invoice or other statement related to the 133/181 Developments;
- (c) either witnessed Mr. Mizrahi's signature or signed their name or initials below his signature on every major loan and contract, confirming their agreement and acceptance of the terms and conditions contained therein; and
- (d) at all material times, had complete knowledge of the financial state and arrangements of the 133/181 Developments and the 133/181 Companies. Indeed, they were responsible for directing the payment of all creditors, suppliers and

other third parties from the project bank accounts. They never raised any concerns or complaints until this litigation.

109. At no point were Khash or Mahdi authorized to access the personal, confidential, and in some cases, privileged, documents and information pertaining to other developments or other companies owned and operated by Mr. Mizrahi or the Mizrahi group of companies.

110. Rather, the banking and financial records and actions of MEI, MI, the Unrelated Developments, on the one hand, and the 133/181 Developments, on the other, were deliberately and rigorously separated. No funds from the bank accounts of 133/181 Developments were used to pay staff members of MI for their work on any of the Unrelated Developments. In addition, only Mr. Mizrahi and the financial controller for the various developments, Remy Dei Bel, were authorized to access the bank accounts and financial information for entities other than the 133/181 Companies.

THE KHAVARI FAMILY MISAPPROPRIATES CONFIDENTIAL AND PRIVILEGED INFORMATION

111. Following the unlawful conduct of the Khavari Family, including the threats made against Mr. Mizrahi and the unlawful attempts to negotiate company cheques, Mr. Mizrahi became concerned about the security of the company offices. On the evening of July 6, 2015, Mr. Mizrahi took steps to secure the Mizrahi Offices, including changing the locks.

112. Mahdi attended at 126 Hazelton Avenue on the morning of July 7, 2015. He was asked to remove his personal effects, as well as those belonging to Khash. He left with a computer. He was not holding any files or documents when he left.

113. The Defendants deny the allegations contained in paragraphs 60 and 61 of the Amended Claim. At no time did Mr. Mizrahi admit to removing funds from the 133/181 Developments nor did he threaten Khash in any manner whatsoever.

114. Following Khash and Mahdi's departure, the office staff discovered that drawers of files and documents had already been emptied. These files contained important confidential information, including but not limited to a copy of the March 2012 addendum to the Contract, Instruments of Transfer and Receipts in respect of the Unimax shares, and 110 pre-signed blank

cheques relating to the 133/181 Companies and other projects in which the Khavari family has no interest, financial or otherwise.

115. These files, documents and the blank cheques were removed sometime in June or July 2015 during which time Mr. Mizrahi travelled abroad on two separate occasions and also made day trips to New York.

116. During Mr. Mizrahi's absences:

- (a) Mahmoud attended at 126 Hazelton Avenue on almost a daily basis and reviewed, among other things, the books and records of the 133/181 Developments, as well as computer files related to other developments in which his family has no interest, financial or otherwise;
- (b) At no time did Mr. Mizrahi consent or agree to Mahmoud's attendance at the company offices or his review of confidential business information; and
- (c) One of the company's computer servers disappeared. Inquiries were made of Mahdi about the missing server. Mahdi advised that it was removed by Khash for repair.

117. During the course of this litigation, the Defendants have learned that, without the authorization or knowledge of Mr. Mizrahi:

- (a) Khash maintained a backup server (the "Backup Server"), which belongs to MI, at his personal residence on to which Khash and the Khavaris diverted and stored all information and documents contained on the Main Server, including confidential and privileged information belonging to Mr. Mizrahi, his family and the Unrelated Developments; and
- (b) beginning in late winter 2014 and early spring 2015, Mahdi began downloading key folders from the Main Server onto a USB device. This coincides with the time period during which the Khavaris began their attempts to strip the equity from the 133/181 Developments.

118. Despite repeated requests, the Khavaris repeatedly refused to return the information, documents, servers and the USB device forcing the Defendants to bring a motion for the return of such information. In addition, Khash discarded certain hard drives from one of the servers he originally removed from the 133/181 Developments prior to commencing this litigation in July 2015. The Khavaris are liable for spoliation.

THE KHAVARI FAMILY UNLAWFULLY ACCESSES AND READS CONFIDENTIAL AND PRIVILEGED EMAIL CORRESPONDENCE

119. Up until at the earliest October 2015, Khash and Mahdi had been unlawfully accessing and reading the email correspondence of Mr. Mizrahi and MI's staff, using the mizrahidevelopments.com email and domain account. The email correspondence, which the Khavaris read, not only contained personal financial and banking information belonging to Mr. Mizrahi and the staff, but also numerous solicitor-client privileged communications with various lawyers and communications with Mr. Mizrahi's accountants and other consultants.

120. At the outset of the 133/181 Developments, Mr. Mizrahi asked Khash to set up the domain name mizrahidevelopments.com and the email server account with Google Apps for Work. Khash purchased the domain name and set up the Google Apps for Work account using an anonymizer service, Domains by Proxy LLC. He named himself as the Administrator and the Super-Administrator. Khash was reimbursed by MI or MEI for the full amount of the expenses he incurred.

121. By virtue of his position as the Administrator and the Super-Administrator, Khash had and continues to have complete control over the Google Apps for Work account and the domain name www.mizrahidevelopments.com. Khash was able to access the email accounts of the staff of the Mizrahi group of companies, including Mr. Mizrahi himself.

122. Following the threats made by Mahmoud on June 26 and June 30, 2015, Mr. Mizrahi became concerned that the Khavari Family, who had already removed one of the servers from the office, was reading his emails, as well as the emails of the staff. Mr. Mizrahi instructed the staff to contact Google to take steps to protect the integrity of the company's email communications. It took approximately one week to reset each user's emails, update the credentials and passwords and add Mr. Mizrahi as an administrator.

123. Notwithstanding this, on July 9, 2015, Mr. Mizrahi discovered that his email account had been disabled. It became apparent that Khash had contacted Google and reversed the changes made to the Google Apps for Work account and the domain name, with the result that:

- (a) all of the mizrahidevelopments.com email accounts were disabled;
- (b) all email communications that occurred between July 7 and July 9, 2015 were deleted and have never since been restored;
- (c) Mr. Mizrahi was removed as an administrator;
- (d) MEI was locked out of the Google administrator controls preventing the company from making new accounts or dealing with the accounts in any way, including making changes to the accounts;
- (e) Khash regained the ability to make changes to various of the features of the email accounts, including the forwarding and archiving feature of all email communications;
- (f) Khash was able to, and did, reset all of the passwords for the email accounts bringing all of them back on line.

124. At the relevant times, Khash was the only individual who had administrator access to the mizrahidevelopments.com email accounts. After Khash brought the staff's email accounts back online, none of them made any changes to any of the features of their email accounts or set up any type of archiving or forwarding of incoming or outgoing email communications.

125. On numerous occasions, Mr. Mizrahi demanded that Khash transfer back ownership of the Google Apps for Work account and the domain name. To date, Khash has refused to comply with this request. In addition, the Khavaris have refused to return the confidential and proprietary documents and information misappropriated by the Khavaris prior to July 7, 2015.

126. Contrary to the allegations in paragraph 62 of the Amended Claim, following their departure on July 7, 2015, and notwithstanding the unlawful conduct of the Khavaris:

- (a) Mr. Mizrahi continued to work with Khash and Mahdi and to exchange correspondence with them in respect of the 133/181 Developments;

- (b) Staff members continued to correspond with Khash and Mahdi on issues related to the 133/181 Developments;
- (c) Khash and Mahdi had free access to attend the 133/181 Development sites at any time and to use the boardrooms or offices located at those sites;
- (d) Khash and Mahdi continued to use their respective mizrahidevelopments.com email accounts and to be provided with any and all information necessary for them to carry out their roles and responsibilities in respect of the 133/181 Developments;
- (e) The office telephone numbers for Mahdi and Khash were still active and all telephone calls for them were forwarded to their respective cellular telephones; and
- (f) Khash and Mahdi received information on a monthly basis in respect of the 133/181 Developments, including lists of payables and financing updates from lenders and insurance providers and monthly audited quantity cost survey reports.

127. With respect to paragraph 63 of the Amended Claim, Mr. Mizrahi has not refused to provide an accounting of profits, to carry out the Contract or to bring the 181 Development Project to completion. As already determined by this Honourable Court on the Inspector Motion, “the quantification of actual revenues, expenses and net profits for each of the Projects remains premature given that neither Project has been completed from a financial standpoint. Mizrahi has stated that he will provide a complete accounting to the Plaintiffs for each of the Projects upon their final completion.”

128. In addition, the flow of funds in and out of the Project Companies has already been quantified by two forensic accounting experts, PWC retained by the Plaintiffs and Duff & Phelps retained by the Defendants. The experts produced lengthy and detailed forensic accounting reports to the parties and this Honourable Court.

129. Both experts carried out essentially the same review and analysis, had access to all of the source documents underlying their respective reports and based their analysis and conclusions on the same source documents. They treated all advances to and from 133 Hazelton and 181

Davenport by each of Khash and Mizrahi as shareholder loans and reached identical conclusions on the quantification of the cash transactions, with the exception of two cash transactions and four defined contested assumptions which can only be determined by this Honourable Court. The Plaintiffs have the benefit of all of this information, which amounts to a forensic accounting of the 133/181 Developments.

130. The Plaintiffs' allegations that they have no or insufficient knowledge about the financial situation of the 133/181 Developments is completely false, unsupported and at odds with the extensive information they obtained prior to and during the course of this litigation. The Plaintiffs and the claims they advance are not credible and should not be given any weight by this Honourable Court.

THE KHAVARIS HAVE NO INTEREST IN THE UNRELATED DEVELOPMENTS

131. Khash and Mr. Mizrahi are not and have never been business partners in any of the Unrelated Developments or any other developments. As described in paragraphs 42-47 above, the Contract is not a "partnership". The relationship between Khash and Mr. Mizrahi is governed by the terms of the Contract, which is in essence a profit sharing arrangement in respect of the 133/181 Developments, and only those developments.

132. Neither the Plaintiffs nor any member of the Khavari Family have any interest whatsoever, financial or otherwise, in any property, project or development owned or operated by the Mizrahi Parties, or any companies associated therewith, including but not limited to: 126 Hazelton Avenue, 128 Hazelton Avenue, Mizrahi (128 Hazelton) Inc., 129 Hazelton Avenue, 129 Hazelton Inc., 1451 Wellington Street West, Mizrahi Development Group (1451 Wellington) Inc., 1 Bloor West, Sam M Inc., Mizrahi Development Group (The One Inc.), Mizrahi Residential (The One) GP Inc. and Mizrahi Commercial (The One) GP Inc.. They are accordingly not entitled to any of the relief they seek in respect of those entities.

133. Contrary to the allegations in the Amended Claim:

- (a) Funds received from the financing in respect of the 133/181 Developments were not used for any of the Unrelated Developments, either to acquire the properties of the Unrelated Developments or otherwise;

- (b) Mr. Mizrahi never agreed, either orally or in writing, that Khash, Mahdi or any other member of the Khavari Family would have any interest or entitlement pertaining to the Unrelated Developments;
- (c) The Khavaris never invested any money in the Unrelated Developments. While they were offered opportunities to become equity investors in various of the Unrelated Developments, they chose not to invest any money, advising that they did not have the necessary funds to invest. In particular:
- (i) At Khash's instruction, \$1 million was transferred from the bank account of 133 Hazelton Inc. to Mizrahi (128 Hazelton) Inc. to serve as a partial deposit for purchasing land located at 128 Hazelton Avenue. Shortly after the money was transferred, Khash advised Mr. Mizrahi that he and his family did not want and could not afford to invest in the project. The money was returned to 133 Hazelton Inc. at Khash's request. Contrary to the allegations in the Amended Claim, the acquisition of 128 Hazelton Avenue was not funded with monies belonging to the 133/181 Developments;
- (ii) Mr. Mizrahi also offered Khash and his family the opportunity to become equity investors in the development of three projects in Ottawa: one at Arts Court, one in the ByWard Market and one at 1451 Wellington Street. Khash advised Mr. Mizrahi that he and his family did not want and could not afford to invest in these projects. The Arts Court and ByWard Market projects were pursued by other developers. Mr. Mizrahi went ahead with the development of 1451 Wellington without any investment from Khash or the Khavari Family.

134. Prior to November 20, 2015, when this action was commenced, the Plaintiffs focussed all of their efforts on the transfer of shares to Khash in respect of the 133/181 Companies. They never claimed to be shareholders in any of the companies operating the Unrelated Developments because they have no interest in those companies or in the Unrelated Developments. The

allegations advanced by the Plaintiffs in this regard are not supported by any evidence and are entirely without foundation.

NO DEFAMATION

135. Mr. Mizrahi denies that he at any time defamed Khash and Mahdi in the manner alleged in the Amended Claim, the Notice of Intended Action under the *Libel and Slander Act*, R.S.O. 1990, c. L.12 dated August 18, 2016 or in any other manner. Mr. Mizrahi also denies that he at any time defamed Mahmoud as alleged in the Notice of Intended Action under the *Libel and Slander Act*, R.S.O. 1990, c. L.12 dated July 14, 2016 or in any other manner.

136. As described in the Counterclaim, it is the Khavari Parties who have engaged in character assassination of and threats to Mr. Mizrahi and his family, and who have in concert carried out a course of conduct designed to destroy Mr. Mizrahi's reputation.

137. In the alternative, any statements made by Mr. Mizrahi about Khash and/or Mahdi are true, or were made in good faith and with a reasonable belief as to their truth, or are opinions and commentary and not statements of fact. In any event, the Mizrahi Parties deny the Plaintiffs were caused any embarrassment or suffered any harm whatsoever as a result of the alleged statements.

NO MISAPPROPRIATION OF FUNDS OR PROJECT MISMANAGEMENT

138. Mr. Mizrahi denies that he has at any time, directly or indirectly, misappropriated or misused any funds from the 133/181 Companies or the 133/181 Developments as alleged in the Amended Claim or in any other manner whatsoever.

139. The allegations by the Plaintiffs that funds from the Developments were improperly spent on jet planes, cottages and other personal expenses are entirely false and have always been known by the Plaintiffs to be false. As described above, the parties each retained independent forensic accounting experts to review all cash transactions in and out of the 133/181 Developments.

140. PWC, retained by the Plaintiffs, was also asked to review cash transactions in and out of MI. In particular, the Plaintiffs requested PWC to prove their allegation that Mr. Mizrahi paid

personal expenses from the 133 Hazelton and 181 Davenport bank accounts, including his private jet plane, cottage, school tuition and other expenses.

141. PWC could not do so and has since admitted that these allegations were all based on the falsehoods that the Khavaris told PWC about MI and project lenders, and the Plaintiffs' active concealment of important documents (including the CCDC contracts between MI and the 133/181 Companies). PWC has specifically admitted that not one dollar was paid from either accounts of the 133 Hazelton Development or 181 Davenport Development for any of Mr. Mizrahi personal expenses.

142. Mr. Mizrahi also denies the allegations of mismanagement advanced by the Plaintiffs in paragraph 70 of the Amended Claim. To the contrary, as described in the Counterclaim, Khash and Mahdi are solely responsible for the mismanagement of the 133/181 Developments and the associated cost overruns and expenses.

143. At all material times, at the request of the lenders for the 133/181 Developments, the Altus Group have approved and certified all monthly draws and payments made to MI and any other entities in respect of the construction of the 133/181 Developments. Altus Group acts as a monitor of the project costs and certifies every cheque as against supplier and contractor invoices. Altus Group verifies that all suppliers and contractors are fully paid and that the developments are current on payments. No cheques, payments or fund transfers are permitted if not directly related to the 133/181 Developments. The lenders require certification and approval of all cheques by Altus Group in advance of releasing monthly draws.

144. All tradespersons and consultants have been paid in a timely manner. No liens have ever been registered against either the 133 Hazelton Development or the 181 Davenport Development, nor have any claims ever been issued against either of the two developments, with the exception of this action commenced by the Plaintiffs.

THE PLAINTIFFS ARE NOT ENTITLED TO ANY RELIEF

145. The Defendants deny that there is any basis whatsoever for the relief claimed in paragraphs 1 and 101 to 102 of the Amended Claim.

146. The Defendants have not engaged in any conduct that is oppressive to the interests and rights of the Plaintiffs within the meaning of the *Business Corporations Act* (Ontario) nor have they breached any agreements or duties owed to the Plaintiffs. There is no basis for any declaration that the business and affairs of the Project Companies have been carried on by Mr. Mizrahi or any of the Defendants in a manner that is oppressive and unfairly prejudicial to the Plaintiffs.

147. At no time did Mr. Mizrahi or any of the Defendants engage in any self-dealing contrary to the interests of the Plaintiffs nor did they misappropriate or convert any funds, profits or other assets from the 133/181 Developments. The Plaintiffs have no right in law or equity to any tracing order, accounting, or rectification of the corporate documents and records, nor are they entitled to a constructive trust or other interest in Mr. Mizrahi's assets or in respect of any of the Defendant corporations.

148. The Defendants deny that they owed any fiduciary duties to the Plaintiffs. At all material times, the Plaintiffs acted as independent contractors in respect of their management of the 133/181 Developments. Mr. Mizrahi and Khash were not partners. Their relationship was governed by the Contract, which was, in essence, a profit sharing arrangement. No special relationship existed between the parties, with the result that no fiduciary duties were owed to the Plaintiffs.

149. The Defendants further deny having received any benefits at the expense of the Plaintiffs such that there are no monies to be accounted for or disgorged. Nor are the Plaintiffs entitled to any constructive trust or other interest in the assets of Michal, Ziba, MEI or MI as pleaded in the Amended Claim.

150. In any event, the Plaintiffs cannot claim, nor do they have any right to, any equitable relief, including any equitable tracing orders, constructive trusts or other similar relief, because they do not come to this Honourable Court with clean hands.

151. The Plaintiffs have no right to Certificates of Pending Litigation in respect of the lands on which the 133/181 Developments, the Dupere Units and the Unrelated Developments are situated and have no right to Certificates of Pending Litigation on any of the lands personally

owned by Mr. Mizrahi and/or members of his family. The Plaintiffs have no interest, financial or otherwise, in those lands.

NO DAMAGES

152. The Defendants deny that the Plaintiffs have sustained the damages alleged in the Amended Claim and put the Plaintiffs to the strict proof thereof. If the Plaintiffs have sustained any damages as alleged in the Amended Claim, which is specifically denied, those damages are not attributable in whole or in part to any actionable act or omission on the part of the Defendants.

153. In the alternative, the damages claims by the Plaintiffs are excessive and too remote to be recoverable at law against the Defendants.

154. To the extent the Plaintiffs suffered damages, which is denied, such damages arise in whole as a result of the Plaintiffs' own conduct which includes, among other things:

- (a) their conversion of funds from the 133/181 Developments;
- (b) their attempts to unlawfully strip the equity from the 133/181 Developments, their defamatory and libelous conduct towards Mr. Mizrahi;
- (c) the threats made by Mahmoud against Mr. Mizrahi, the Khavaris' misappropriation of confidential and privileged information;
- (d) the Plaintiffs' complete failure to manage the 133/181 Developments in an efficient, diligent and professional manner resulting in significant cost overruns and other expenses in respect of those developments; and
- (e) their breach of contract and failure to fulfill the obligation to capitalize the 133/181 Developments with the result that the projects have incurred significant interest expenses and other costs, which have had a detrimental impact on the profitability of the two developments.

155. Accordingly, if the Defendants are liable to the Plaintiffs, which is not admitted but expressly denied, the Plaintiffs were contributorily negligent to the full extent of the losses they

allegedly suffered. The Defendants plead and rely upon the Negligence Act, R.S.O. 1990, c. N-1.

156. There is no basis in fact or in law for an award of punitive damages against the Defendants.

DISPOSITION

157. The Defendants request that the Plaintiffs' claims be dismissed with costs on a full indemnity basis.

COUNTERCLAIM

158. The Mizrahi Parties, Plaintiffs by Counterclaim, claim as against the Defendants by Counterclaim, Khashayar Khavari, Mohammad Mahdi Tajbakhsh, Mahmoud Reza Khavari, Ardavan Khavari, Nicholas Tyacke, Vria Investment Ltd., Mandana Khalili Shavarini, Parandis Khalili Khavari Tajbakhsh, and Aylar Moussavi:

- (a) damages in the amount of \$125 million for conspiracy, abuse of process, breach of contract, breach of the duty of good faith, negligence, fraudulent misrepresentation, negligent misrepresentation, conversion, unjust enrichment, intimidation, tortious interference with economic relations, conspiracy to cause economic harm, intrusion upon seclusion and defamation;
- (b) a declaration that MEI has 100% ownership of, and Control over, the 133/181 Companies until such time as the 133/181 Developments are complete and all Liabilities have been fully satisfied;
- (c) a declaration that MEI is not required to transfer any shares in the 133/181 Developments to Khash, until such time as the 133/181 Developments are complete and all Liabilities have been fully satisfied;
- (d) an interim, interlocutory and/or permanent injunction restraining the Defendants by Counterclaim from removing or attempting to remove any cash, equity or other assets belonging to the 133/181 Developments or aiding or facilitating such

removal, until further Order of this Honourable Court or as specifically authorized in writing by MEI;

- (e) an interim, interlocutory and/or permanent injunction restraining the Defendants by Counterclaim from:
- (i) interfering in any way in the business relationships of any of the Plaintiffs by Counterclaim, including barring any communications or other contact with lenders and other intermediaries in respect of the 133/181 Developments, the Unrelated Developments or any other developments; and
 - (ii) continuing any of the other wrongful conduct described in this Statement of Defence and Counterclaim, including but not limited to, publishing, reproducing or repeating the Defamatory Statements (as defined in this Counterclaim) in any manner, whether electronically or otherwise, and making false statements in respect of the involvement of the Defendants by Counterclaim in the 133/181 Developments, the Unrelated Developments or any other developments on the H & Co. Developments' website, or any other website, social media site or other publication venue;
- (f) an order compelling the Khavaris to forthwith deliver to the lawyers for the Mizrahi Parties a full accounting of the \$7 million unlawfully removed by the Defendants by Counterclaim from the 133/181 Developments and deposited into the trust account of Nicholas Tyacke on April 20, 2015 (the "Project Funds"), including the current location of the Project Funds, full particulars of any account or accounts into which the Project Funds have been deposited, all individuals or entities having possession or control of the Project Funds and all disbursements or payments from or of the Project Funds since April 20, 2015 (including full particulars of the recipients);
- (g) if necessary, a tracing order with respect to the Project Funds;

- (h) an order directing any bank or other financial institution or third party, including Nicholas Tyacke, in possession or control of the Project Funds to forthwith freeze and prevent any removal or transfer of the Project Funds held in any account or on credit on behalf of the Defendants by Counterclaim or any of them, until further Order of this Honourable Court;
- (i) an order under Rule 45.02 of the Rules of Civil Procedure securing the Project Funds on such terms as are just;
- (j) a declaration and order for contribution and indemnity in respect of all expenses, losses, damages, claims, demands and liabilities of whatsoever kind in favour of MEI in respect of the 133/181 Developments in accordance with the Indemnity as defined in the Statement of Defence;
- (k) a constructive trust over the Project Funds in favour of 133 Hazelton Inc.;
- (l) a declaration that no funds are payable by Unimax to Vria;
- (m) a declaration that Mr. Mizrahi owns 100% of the issued and outstanding shares of Unimax and that Khash and Mahdi have no ownership interests in Unimax whatsoever;
- (n) a declaration that Mr. Mizrahi owns 100% of the issued and outstanding shares of Northern Citadel and that Khash and Mahdi have no ownership interests in Northern Citadel whatsoever;
- (o) an order requiring the Defendants by Counterclaim to return all property, information and documents taken by them and/or members of their family from the Mizrahi offices at 126 Hazelton Avenue, including but not limited to all physical files and documents, servers, electronic devices, passcodes and IT information and any other confidential information;
- (p) an order requiring Khash to transfer the domain names www.mizrahidevelopments.com, www.133Hazelton.com and www.181Davenport.com and the Google Apps for Work Account which are currently registered to the anonymizer service, Domains by Proxy LLC, to MEI;

- (q) a declaration that the Khavari Parties have no ownership interest, financial or otherwise, in the Unrelated Developments;
- (r) an order that any individual or entity having notice of any order of this Honourable Court is bound by the result of the action;
- (s) aggravated, exemplary and punitive damages in the amount of \$15,000,000;
- (t) pre-judgment interest in accordance with section 128 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;
- (u) post-judgment interest in accordance with section 129 of the Courts of Justice Act;
- (v) the costs of this proceeding on a full indemnity basis plus all applicable taxes; and
- (w) such further and other relief as counsel may advise and this Honourable Court permits.

159. The Mizrahi Parties repeat and rely upon the allegations in the Statement of Defence.

KHASH AND MAHDI'S MISMANAGEMENT OF THE 133/181 DEVELOPMENTS

160. The allegation in paragraph 22 of the Amended Claim that Khash and Mahdi did not receive any remuneration for their work in respect of the 133/181 Developments is false. Khash and Mahdi, who acted as independent contractors, were paid approximately \$2.185 million in fees, to their independent consulting company, MYPTA, for their work in managing and overseeing the 133/181 Developments. The fees were paid to MYPTA in advance of completion of the 133/181 Developments and were subject to an express or implied condition that Khash and Mahdi would perform and complete their duties and obligations in good faith and with reasonable skill and diligence.

161. Khash and Mahdi owed Mr. Mizrahi and the Plaintiffs by Counterclaim a duty to manage the affairs and construction of the 133/181 Developments in good faith, and in an efficient, diligent and professional manner.

162. Contrary to their duties and obligations, Khash and Mahdi either intentionally or negligently mismanaged the 133/181 Developments, all of which is within their knowledge. As at the date of this Counterclaim, Mr. Mizrahi has discovered that Khash and Mahdi:

- (a) provided negligent instructions to subcontractors, including, among other things, directing painters to carry out and complete dry-walling at the same time as painting in common areas, resulting in cross-contamination which had to be cured by hiring additional painters and subcontractors at an increased cost to the Project Companies;
- (b) failed or refused to order the precast concrete materials and provide the necessary drawings to the supplier for the exterior building envelope of the 181 Davenport Development in a timely manner;
- (c) failed or refused to order the windows or provide the necessary shop drawings to the supplier for the windows of the 181 Davenport Development in a timely manner;
- (d) negotiated and changed subcontracts with the window supplier to allow back charging for delays and scheduling changes;
- (e) added extra windows to the architectural suites without the authorization or knowledge of Mr. Mizrahi and failed or refused to properly charge for the extra windows or cancel the replacement windows with the suppliers;
- (f) agreed to discounts or reductions to home owners as well as unit upgrades without the authorization or knowledge of Mr. Mizrahi, and failed or deliberately elected not to document any of the discounts, reductions or upgrades to purchasers in the agreements of purchase and sale for various units;
- (g) neglected to inform subcontractors of upgrades and other specifications agreed to with home owners, resulting in additional subcontractor costs associated with having to redo parts of certain units to account for the upgrades or specifications agreed to by the Plaintiffs without Mr. Mizrahi's authorization or knowledge ;

- (h) made architectural changes to the plans for the 181 Davenport Development without the authorization or knowledge of Mr. Mizrahi;
- (i) failed or refused to order the brick for the balconies of the 181 Davenport Development;
- (j) agreed to pay for extra costs and services with various sub-contractors on the 133/181 Developments without the authorization or knowledge of Mr. Mizrahi; and
- (k) held back invoices issued by suppliers or contractors, or alternatively, instructed suppliers or contractors to hold back invoices until after the 133/181 Developments are completed.

163. All the particulars of Khash and Mahdi's mismanagement of the 133/181 Developments are not known to the Mizrahi Parties but are in the full knowledge of Khash and Mahdi. Moreover, the Khavaris' breach of contract and failure to fulfill the obligation to capitalize the 133/181 Developments have resulted in the projects incurring significant interest expenses and other costs, which have had a detrimental impact on the profitability of the two developments.

164. As a result of the Khavaris' breach of contract and mismanagement of the two projects, completion of the 133 Hazelton Development cost significantly more than the budget originally provided and the 181 Davenport Development was significantly delayed. The 133/181 Developments have suffered and continues to suffer damages, including but not limited to:

- (a) additional costs of supplies and services Khash and Mahdi failed or refused to order, which later had to be ordered on an urgent basis, at an increased cost;
- (b) additional supplies and services Khash and Mahdi ordered without the authorization or knowledge of Mr. Mizrahi, which were not necessary for the 133/181 Developments;
- (c) lost revenue as a result of the discounts and reductions Khash and Mahdi agreed to with purchasers without the authorization or knowledge of Mr. Mizrahi;

- (d) new and unknown invoices submitted by suppliers and subcontractors which Khash and Mahdi either purposefully held back prior to their departure on July 7, 2015, or alternatively, surreptitiously instructed the suppliers and subcontractors to hold back; and
- (e) the interest payments due to banks, lenders and other third parties as a result of the delays experienced by the 133/181 Developments at the hands of Khash and Mahdi and the high interest expenses and other costs resulting from the Khavari's breach of contract and failure to fund the developments.

165. Khash and Mahdi breached their duty to perform their obligations in good faith by failing to have appropriate regard for the contractual and business interests of Mr. Mizrahi and the 133/181 Developments. Khash and Mahdi owed Mr. Mizrahi and the 133/181 Developments and 133/181 Companies a duty of care, which they have breached through their mismanagement of the developments. They have caused significant losses to the 133/181 Developments as described above.

166. With respect to the 133/181 Developments, multiple change orders were required and agreed upon to complete that development. MI also incurred additional and unnecessary expenses as a result of the Plaintiffs' negligent mismanagement of the 133/181 developments, all of which will be particularized prior to trial.

167. The full measure of damages and additional expenses in respect of the 133/181 Developments are not yet fully known, but will be proven at the trial of this Action.

THE KHAVARIS' UNLAWFUL CONDUCT

168. The Khavaris are liable for conversion and fraudulent misrepresentation. They converted the Project Funds and attempted to convert a further \$3 million from 133/181 Developments, as well as an additional \$780,000 from Unimax by forging documents, making misrepresentations to Mr. Mizrahi and others and fabricating stories about the safety of certain family members.

169. As described in the Statement of Defence, the Khavaris repeatedly promised, represented to, and assured, Mr. Mizrahi, among other things, that:

- (a) Mr. Mizrahi would retain Control of the 131/188 Developments until such time as both of those developments are completed and all Liabilities have been satisfied;
- (b) Khash would not seek to transfer the shares in the 133/181 Companies until such time as the 133/181 Developments are completed and all Liabilities have been satisfied;
- (c) the Khavaris would not seek the repayment of the advance of funds to Unimax until the 133 Hazelton Development is completed and all Liabilities have been satisfied; and
- (d) the Khavaris needed the Project Funds to avoid harm to Ardavan and his family, and would immediately repay the Project Funds to the 133 Hazelton Development.

170. These representations, among others as pleaded in the Statement of Defence, were made with the intention that they would be relied upon by Mr. Mizrahi, who did in fact rely on the representations to obtain financing for the 133/181 Developments and to transfer \$7 million to Mr. Tyacke in trust at Mahmoud's demand. At the time, Mr. Mizrahi trusted the Khavaris and reasonably relied upon their representations in either transferring or agreeing to transfer funds to the Khavaris.

171. The Khavaris knew that these representations were false or were reckless as to their truth. Following their review of the Summary in early 2015, the Khavaris embarked upon a strategy of intimidation, deceit and threatening behaviour in an effort to strip the equity from the 133/181 Developments, contrary to the Contract, and the representations they made to Mr. Mizrahi.

172. As described in paragraphs 97 to 99 above, the Khavaris, including Mahdi, either conspired with or deliberately misled PWC in order to obtain an expert report from PWC based on false and misleading information. The Khavaris, including Mahdi, deliberately withheld and concealed from PWC the facts (and their knowledge at the time about those facts) about the Bridging and Ridgemount loans, and the fixed price CCDC contracts between MI and each of the 133/181 Developments. They also gave PWC false information about the history, purpose and role of MI. They did all of this deliberately and intentionally for the purpose of obtaining a false and misleading report from PWC.

173. The Khavaris, including Mahdi, knew that the resulting PWC Report falsely describes the costs and potential profits of the 133/181 Developments, and otherwise misstates and distorts the financial situation of the 133/181 Developments, and falsely suggests that funds used to repay the Bridging and Ridgemount loans with the knowledge and consent of Khash and Mahdi, had instead been misappropriated by Mr. Mizrahi. The Khavaris, including Mahdi, knew the PWC Report contains false conclusions and opinions, and knew it was based on false and misleading information, including false information they gave to PWC, and information they deliberately withheld or concealed from PWC.

174. The Khavaris, including Mahdi, then used the PWC Report, as a weapon in their unlawful attempts to intimidate and cause losses and other harm to Mr. Mizrahi. As described herein, they distributed the PWC Report to lenders, potential lenders, homeowners, potential unit purchasers, suppliers, subcontractors, bankers, and other business contacts of Mr. Mizrahi. They also filed the PWC Report in Court and relied upon it. They did all of this knowing the PWC Report contains false opinions and conclusions, and was based on false and misleading information, including false information they gave to PWC, and information they deliberately withheld or concealed from PWC.

175. The Khavaris are liable to Mr. Mizrahi and the Mizrahi Parties for the causes of action described in paragraph 158 above, including conspiracy, fraudulent misrepresentation and intimidation. Mr. Mizrahi has and will continue to suffer damages as a result of his reliance on the false and fraudulent representations knowingly made by the Khavaris.

176. In the alternative, the Khavaris are liable to Mr. Mizrahi and the Mizrahi Parties for negligent misrepresentation. The Khavaris owed Mr. Mizrahi a duty of care. The representations described were untrue, inaccurate or misleading and the Khavari Parties were negligent in making them. Mr. Mizrahi reasonably relied on the misrepresentations to his detriment and has suffered damages as a result.

177. In the further alternative, the Khavaris have been unjustly enriched in respect of:

- (a) the \$7 million transferred to the trust account belonging to Nicholas Tyacke and to which they have no right for the reasons described in the Statement of Defence; and

- (b) approximately \$2.185 million in fees, pre-paid to Khash and Mahdi's consulting company, MYPTA, for their management of the 133/181 Developments which they wholly failed to perform in an efficient, diligent and professional manner, as detailed in this Counterclaim.

178. Mr. Mizrahi and the 133/181 Developments have suffered a corresponding deprivation in respect of these amounts for which there is no juristic reason.

179. Beginning in the winter of 2015 and continuing to the present day, in breach of their agreement and assurances, the Khavaris have attempted to strip all the equity from the 133/181 Developments and leave Mr. Mizrahi, MEI and the 133/181 Companies with the debt. The Khavaris have engaged in a pattern of threats, intimidation and serial harassment towards Mr. Mizrahi, including threatening to "destroy him" financially and his reputation, and to "burn down his house and everything he holds dear" if he did not pay the Khavaris millions of dollars.

180. Various of the 133/181 Companies are parties and/or guarantors in respect of construction financing provided by lenders. The loan facilities contain express change in control provisions which provide that any change in control is an event of default upon which the lenders can exercise their security rights, including, among other things, seizing the assets and property of the 133/181 Developments, as well as the shares of the Project Companies. The transfer of the shares previously owned by Khash in the 133/181 Companies would be a change in control and would create an event of default.

181. To avoid undue prejudice to the 133/181 Developments, MEI and Mr. Mizrahi, as well as to the lenders, subcontractors, homeowners and suppliers, this Honourable Court made orders preventing the Khavaris from bringing motions or taking any steps without reasonable notice. Those orders were required as a result of threats made by the Khavaris to take steps that would cause irreparable harm to the 133/181 Developments, as well as other projects that are currently under way (including One Bloor West) in respect of which the Khavaris have no interest, financial or otherwise.

182. The Khavaris acted in combination and were complicit in each of the breaches and the unlawful conduct pleaded in the Statement of Defence and Counterclaim and/or facilitated and

supported such breaches and/or unlawful conduct. They knew or ought to have known that injury to the Mizrahi Parties would occur from their unlawful conduct.

183. The actions of the Khavaris form part of a deliberate and methodical pattern of conduct carried out in bad faith and with the intention to harm, and interfere with, economic relationships between the Mizrahi Parties and third parties, including lenders, contractors, suppliers and financial institutions.

184. The Khavaris acted in concert to elicit financial benefits, harm the 133/181 Developments and the Unrelated Developments and participated in efforts to cover up and conceal their deceitful conduct, the purpose of which was to injure the Mizrahi Parties and to profit from their wrongful conduct. The Mizrahi Parties, including the 133/181 Developments, have suffered substantial economic and other losses at the hands of the defendants.

THE KHAVARIS' INTERFERENCE WITH THE DEFENDANTS' ECONOMIC RELATIONS AND DEFAMATORY CONDUCT

185. Consistent with the pattern of threats and intimidation in which the Khavaris have engaged, and notwithstanding this Honourable Court's orders, in December 2015, sealed brown envelopes were anonymously delivered to lenders involved in the 133/181 Developments. The envelopes contained a copy of the Statement of Claim and other materials filed in the action, including the report prepared by PWC based on false and misleading information provided by the Khavaris.

186. These envelopes were delivered by the Khavaris or their agents with the specific intent not only to harm the 133/181 Developments, but to destroy and damage Mr. Mizrahi's reputation and interfere with his commercial relationships and contracts. As a direct result, one of the lenders revoked a loan term sheet and another advised that it will not carry through on its promise to advance constructing financing in respect of one of Mr. Mizrahi's developments.

187. In addition, since at least April 2015, the Khavaris have made statements that are false and defamatory to third parties. Khash, Mahdi and/or Mahmoud have told contractors, suppliers, tradespeople and others in the development industry in Toronto that Mr. Mizrahi is a thief, that

he has stolen money from the 133/181 Developments to support an extravagant lifestyle, and that he is insolvent, negligent and dishonest.

188. In addition, using a series of misnomer names, the Khavaris, and/or other unidentified persons acting in concert with them and/or at their direction, have made postings and modifications to Mr. Mizrahi's Wikipedia page. In or around November 2016, unauthorized edits were made to Mr. Mizrahi's Wikipedia page using the pseudonym "masterofthename" to falsely claim or infer that:

- (a) Mr. Mizrahi's mother is Muslim;
- (b) Mr. Mizrahi is not Jewish; and
- (c) Mr. Mizrahi is not Canadian.

189. After reviewing the postings, Wikipedia determined that these statements were false and issued a warning to "masterofthename".

190. Thereafter, in or around December 2016, members of the Khavari Family and/or their agents created a new pseudonym, "Orange Relish", which they used to edit Mr. Mizrahi's Wikipedia page to again falsely claim or infer that:

- (a) Mr. Mizrahi's mother is Muslim;
- (b) Mr. Mizrahi is not Jewish; and
- (c) Mr. Mizrahi is not Canadian.

191. Wikipedia reviewed the postings and, again, determined that these statements were false. In determining that the postings were false, Wikipedia observed that "Orange Relish" had been created shortly after "masterofthename" received a warning from Wikipedia, that "Orange Relish's" only edits were to Mr. Mizrahi's Wikipedia page, and that the edits were very similar in wording and style to the previous edits made by masterofthename. Accordingly, Wikipedia removed the postings by "Orange Relish".

192. The statements referred to in paragraphs 185 to 191 above are referred to collectively as the "Defamatory Statements".

193. These Defamatory Statements were made by Khash, Mahdi, Ardavan, Mahmoud and/or their agents acting at their direction without any basis or justification:

- (a) they were made maliciously for the express purpose of damaging Mr. Mizrahi's reputation in the industry and the community, including the Jewish community in Toronto, and interfering in his business relationships; and
- (b) they have had the effect of lowering, if not destroying, Mr. Mizrahi's reputation in the estimation of right-thinking members of the real estate investment and development industry, which is primarily driven by and built upon considerations of integrity, honesty, commitment to service and overall reputation.

194. Following publication of the Defamatory Statements, the Plaintiffs incorporated a new company, H & Co. Developments, and created a new website promoting the company. On the website, the Plaintiffs:

- (a) fraudulently misrepresent their role as builders and designers of various of the Unrelated Developments, including the Forest Hill Jewish Centre and 1451 Wellington Street West in Ottawa, as well as other residential and custom-home projects in Toronto; and
- (b) reproduce photographs and architectural drawings without authorization or permission of the Mizrahi Parties who are the rightful owners of such materials.

195. Mr. Mizrahi has suffered serious damage to his reputation in the industry by virtue of the statements made by Khash, Mahdi, Ardavan and Mahmoud, and/or statements made by others at their direction. Among other things, various Tier 1 financial institutions and other capital/equity lenders have advised Mr. Mizrahi that they are not in a position to advance financing to or invest in any projects or developments owned and operated by Mr. Mizrahi as a result of the vicious allegations made by the Khavaris publicly, and in this litigation. In addition, the financial institution where Mr. Mizrahi carried on his personal and commercial banking has terminated its relationship with Mr. Mizrahi as a result of the litigation and defamatory statements made by the Khavari Family.

196. Mr. Mizrahi will continue to suffer harm as a result of the Khavaris' defamatory conduct and interference with Mr. Mizrahi's contractual relationships, including but not limited to lost financing opportunities and the costs of additional due diligence being performed by current lenders.

UNIMAX

(a) No Funds Payable to Vria

197. Unimax was incorporated on April 14, 2011. At the time of incorporation, Khash and Mahdi were both directors of Unimax. They resigned on the same day that the Trust Agreement was executed (October 11, 2011).

198. In mid-2011, the Khavari Family advanced the sum of \$780,103.85 to Unimax in connection with the 133 Hazelton Development. At the time, Mr. Mizrahi agreed and understood that the funds would be repaid following completion of the 133 Hazelton Development and the repayment of all Liabilities in connection with that development. At Ardavan's suggestion, the parties did not exchange any documents or correspondence memorializing the agreement.

199. In breach of the agreement, in late June 2015, Ardavan, in concert with and at the direction of the Khavari Family, demanded repayment of the funds notwithstanding that there still remained one unit, known to the parties as the "**Dupere Unit**", which had not yet closed but which was scheduled to close on June 30, 2015.

200. Notwithstanding this, Mr. Mizrahi, acting reasonably, authorized the issuance of post-dated cheques for June 30, 2015. However, the Dupere Unit did not close on June 30, 2015 due to a variety of issues caused by Khash and Mahdi, all of which are within the knowledge of the Plaintiffs and Ardavan who are intimately familiar with the closing delays related to the Dupere Unit. As a result, Mr. Mizrahi instructed Khash and Mahdi not to cash the cheques.

201. Subsequently, Vria, at the direction of Ardavan and the Khavaris, retained Gardiner Roberts LLP to secure repayment of the funds advanced to Unimax. Gardiner Roberts is also counsel to the purchaser of the Dupere Unit as well as one of the lenders to the 133 Hazelton Development.

202. On August 4, 2015, Mahdi delivered what purported to be a Promissory Note, dated January 1, 2012 and a Loan Agreement, dated January 1, 2012, between Unimax and Vria, neither of which Mr. Mizrahi had previously seen. The Loan Agreement is signed by Aylar on behalf of Vria.

203. The Promissory Note and Loan Agreement were signed by Mahdi on behalf of Unimax without any authority whatsoever. Mahdi resigned as a director and officer of Unimax on October 11, 2011, the same date on which the Trust Agreement was signed by Mr. Mizrahi and Khash.

204. Mahdi had no authority to act on behalf of Unimax in respect of the Promissory Note or the Loan Agreement. The allegation in paragraph 88 of the Amended Claim that all actions taken by Khash and Mahdi between October 11, 2011 and January 13, 2015 were authorized and binding on Unimax is false and without any foundation in fact or in law.

205. In any event, these documents were fabricated by Mahdi, at the direction and with the assistance of Khash, Ardavan and Mahmoud, after the fact to legitimize Vria's demand for funds. The documents were fabricated as part of the Khavari Family's unlawful scheme and conspiracy to divert money away from the 133/181 Developments and the Mizrahi Parties.

206. Vria has no right to any money from Unimax or any of the Mizrahi Parties.

(b) Mr. Mizrahi is the 100% shareholder of Unimax

207. Khash and Mahdi are not shareholders of Unimax. They transferred their shares to treasury on October 11, 2011, the same day on which they resigned as officers and directors of Unimax:

- (a) Khash and Mahdi signed Instruments of Transfer and Receipts on October 11, 2011;
- (b) the originally executed instruments and receipts were contained in files that Khash and Mahdi unlawfully removed from the offices at 126 Hazelton Avenue on or before July 7, 2015; and

- (c) the Share Transfer Register from the corporate Minute Books reflects the fact that Khash and Mahdi transferred their shares to treasury on October 11, 2011.

208. The transfer of shares formed part of the series of transactions that occurred on October 11, 2011 and by which the Plaintiffs divested themselves of any legal interest in the various development companies associated with the 133/181 Developments.

209. The allegation in paragraph 89 of the Amended Claim that Mr. Mizrahi and/or his then-counsel altered the minute books to falsely record the transfer of shares to treasury is a complete falsehood, aimed again at tarnishing Mr. Mizrahi's reputation in the industry. With respect to paragraph 90 of the Amended Claim, the documents and corporate records with respect to the share transfers have been provided to the Plaintiffs both prior to and during the course of this litigation.

210. With respect to the allegations in paragraph 91 of the Amended Claim, as of October 11, 2011, Khash and Mahdi had transferred their shares in Unimax to treasury and were no longer shareholders of Unimax. The 12.1 million preferred shares issued to MEI were subsequently returned to Unimax on January 16, 2015.

211. The Defendants deny that the Plaintiffs have any right to the relief they seek in paragraph 94 of the Amended Claim.

INTRUSION UPON SECLUSION

212. Khash, Mahdi and Mahmoud are liable for the conversion of documents, information and computer servers from the Mizrahi Offices, which they, to date, have refused to return to the Mizrahi Parties despite requests that they do so. They are also liable for intrusion upon seclusion.

213. Following their departure from the Mizrahi Offices, and as described in the Statement of Defence, Mr. Mizrahi discovered that Khash, Mahdi and Mahmoud had unlawfully reviewed and removed confidential, personal and, in some cases, privileged information belonging to Mr. Mizrahi and to the Unrelated Development, in respect of which they have no interest, financial or otherwise.

214. The Khavaris have since used that information for the purpose of litigation and causing Mr. Mizrahi and his family to suffer financial losses and other harm in order to unlawfully pressure and induce him to pay money to Khash and Mahdi. In so doing, Khash, Mahdi and/or Mahmoud have intentionally invaded, without lawful justification, Mr. Mizrahi's private affairs in a manner that would reasonably be regarded as highly offensive causing distress or anguish. The conduct of the Khavaris amounts to an intrusion upon seclusion.

RELIEF REQUESTED

215. By their actions and conduct, as set out above, the Khavaris, among other things:
- (a) have committed breach of trust, conversion and intrusion upon seclusion in respect of funds and property belonging to Mr. Mizrahi, MEI, MI, the 133/181 Developments and the Unrelated Developments;
 - (b) conspired together to cause economic injury to Mr. Mizrahi, his family, his companies and the developments owned and/or operated by the Mizrahi group of companies;
 - (c) are liable for fraudulent misrepresentation, negligent misrepresentation, abuse of process and defamation as pleaded in the Statement of Defence and Counterclaim;
 - (d) have caused significant damages to the 133/181 Developments by virtue of their mismanagement of the developments and their failure to carry out their duties and obligations owed to the 133/181 Developments and Mr. Mizrahi in an efficient, diligent and professional manner. The full particulars of Khash and Mahdi's mismanagement are not presently known by the Mizrahi Parties but are known by the Khavaris;
 - (e) have been enriched by their unlawful activities for which there is no lawful or juristic reason. The Mizrahi Parties have suffered a corresponding deprivation and are entitled to the imposition of a constructive trust over the value of all the monies received by the Khavaris, as well as disgorgement of the profits and benefits which the Khavaris enjoyed and continue to enjoy;

- (f) have unlawfully interfered in the Mizrahi Parties' economic relations by, among other things, delivering anonymous brown envelopes to third parties in an attempt to achieve what they cannot otherwise achieve through the court process as a result of various Orders obtained by the Mizrahi Parties. In an effort to destroy Mr. Mizrahi and irreparably harm him, his family and his business, the Khavaris conspired together to misappropriate and misuse confidential and privileged information belonging to Mr. Mizrahi and his companies, made fraudulent misrepresentations to Mr. Mizrahi, breached the Contract and have continuously and systematically defamed Mr. Mizrahi to others.

216. The Mizrahi Parties have suffered and will continue to suffer damages by reason of the unlawful conduct of the Khavaris, as described in the Statement of Defence and Counterclaim, including, among other things losses and expenses incurred as a result of the unsupported allegations of fraud against Mr. Mizrahi and the Defamatory Statements, including but not limited to, the increased costs of financing because lenders will not lend to Mr. Mizrahi or any projects operated by him, and losses arising from purchasers who have advised that they no longer want to purchase units in any of Mr. Mizrahi's developments.

217. The Mizrahi Parties are entitled to the relief claimed in this Counterclaim, including the interim and interlocutory remedies which are required to assist in investigating the extent and nature of the wrongful conduct perpetrated by the Khavaris.

218. The Mizrahi Parties are entitled to trace and follow the value of the monies and other assets into the hands of all Defendants by Counterclaim who have received them. The Mizrahi Parties seek an accounting from the Defendants by Counterclaim for all monies diverted away from the Mizrahi Parties and the 133/181 Developments as part of their unlawful scheme, including the \$7 million. The Mizrahi Parties are also entitled to the return of all documents, information and property unlawfully removed from the Mizrahi Offices.

219. The conduct of the Defendants by Counterclaim demonstrates high-handed, wanton and callous disregard for the rights and interest of the Mizrahi Parties, which have, as a result, suffered significant losses, both financial and reputational. An award of aggravated, exemplary

and punitive damages is necessary in the circumstances of this case to deter this type of scheming and fraudulent conduct.

220. If the relief requested is not granted, the Mizrahi Parties will suffer irreparable harm.

TRIAL OF COUNTERCLAIM

221. The Defendants propose that this counterclaim be tried at the same time as the main action.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LISTING**

PROCEEDING COMMENCED AT

**FRESH AS AMENDED STATEMENTS
AND COUNTERCLAIMS**

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

Barristers
Suite 2600
130 Adelaide Street West
Toronto ON M5H 3P5

Lawrence E. Thacker (36939M)

Tel: (416) 865-3097

Fax: (416) 865-9010

Email: lthacker@litigate.com

Chris Kinnear Hunter (65545D)

Tel: (416) 865-2874

Fax: (416) 865-2866

Email: chunter@litigate.com

Lawyers for the Defendants, Plaintiffs

This is Exhibit "G" referred to in the Affidavit of Khashayar Khavari affirmed by Khashayar Khavari at the City of Toronto, in the Province of Ontario, before me on October 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)


SEAN PIERCE

AMENDED THIS Mar 22 / 17 PURSUANT TO
MODIFIÉ CE _____ CONFORMÉMENT À
 RULE/LA RÈGLE 26.02 (A)

1087
F3381

THE ORDER OF _____
L'ORDONNANCE DU _____
DATED / FAIT LE _____

Court File No.: CV-15-11187-00CL

.....
REGISTRAR  CLERK
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE
ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

BETWEEN:

KHASHAYAR KHAVARI and MOHAMMAD MAHDI TAJBAKHS

Plaintiffs/Defendants by Counterclaim

- and -

SAM MIZRAHI, MICHAEL RENEE MIZRAHI, ZIBA MIZRAHI, MIZRAHI ENTERPRISES INC., MIZRAHI INC., 133 HAZELTON INC. (CORP NO: 228916), 133 HAZELTON INC. (CORP NO: 1895309), 133 HAZELTON INC. (CORP. NO: 1927750), 1834369 ONTARIO INC., SOARING MIZRAHI DEVELOPMENTS INC., MIZRAHI DEVELOPMENT GROUP (131 HAZELTON) INC. MIZRAHI DEVELOPMENT GROUP (133 HAZELTON) INC., ONE8ONE DAVENPORT INC., (CORP NO: 2325793), ONE8ONE DAVENPORT INC. (CORP NO: 1912202), ONE8ONE DAVENPORT INC. (CORP. NO: 1927551), MIZRAHI SOARING DEVELOPMENTS INC., MIZRAHI DEVELOPMENT GROUP (145 DAVENPORT) INC., MIZRAHI DEVELOPMENT GROUP (185 DAVENPORT) INC., UNIMAX INTERNATIONAL LTD., 129 HAZELTON INC., MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., MIZRAHI RESIDENTIAL (THE ONE) GP INC., MIZRAHI COMMERCIAL (THE ONE) GP INC., SAM M. INC., S.& Z. MIZRAHI INVESTMENT LTD., MIZRAHI (128 HAZELTON) INC., MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC., MIZRAHI KHALILI INC., MIZRAHI (C-GMS0) INC. and NORTHERN CITADEL CAPITAL INC.

Defendants/Plaintiffs by Counterclaim

- and-

MAHMOUD REZA KHAVARI, KHASHAYAR KHAVARI, MOHAMMAD MAHDI TAJBAKHS, ARDAVAN KHAVARI, NICHOLAS TYACKE, VRIA INVESTMENT LTD., MANDANA KHALILI SHAVARINI, PARANDIS KHALILI KHAVARI TAJBAKHS and AYLAR MOUSSAVI

Defendants by Counterclaim

- and -

VRIA INVESTMENT LTD.

Defendant by Counterclaim/Plaintiff by Counterclaim

F1113

- and-

SAM MIZRAHI, UNIMAX INTERNATIONAL LTD., 133 HAZELTON INC. (CORP NO. 2289816), 133 HAZELTON INC. (CORP NO. 1895309), 133 HAZELTON INC. (CORP NO. 1927750)

Defendants by Counterclaim of Vria Investment Ltd.

- and-

MAHMOUD REZA KHAVARI

Defendant by Counterclaim/Plaintiff by Counterclaim

FRESH AS AMENDED REPLY AND DEFENCE TO COUNTERCLAIM

1. The Plaintiffs/Defendants by Counterclaim, Khashayar Khavari (“**Khash**”) and Mohammad Mahdi Tajbakhsh (“**Mahdi**”), and the Defendants by Counterclaim, Mahmoud Reza Khavari (“**Mahmoud**”), Mandana Khalili Shavarini (“**Mandana**”) and Parandis Khalili Khavari Tajbakhsh (“**Parandis**”) (collectively, the “**Defendants by Counterclaim**”), deny each of the allegations in the Fresh as Amended Statement of Defence and Counterclaim of the Mizrahi Parties (the “**Mizrahi Defence**”).

2. The “Mizrahi Parties” are defined in paragraph 1 of the Mizrahi Defence. All other defined terms have the same meaning as in the either the Mizrahi Defence or the Plaintiffs’ Fresh as Amended Statement of Claim. The Defendants by Counterclaim rely on the Fresh as Amended Statement of Claim and incorporate it by reference into this pleading.

3. The Mizrahi Defence is an attempt to sling mud at the Khavari family and litigate about the conduct of this litigation. Most of these allegations have nothing to do with the substance of the litigation and are an attempt to distract from the real issues, namely the Partnership between Khash and Sam, and Sam’s misappropriation of more than \$10 million.

Sam and Khash are Partners

4. Khash and Sam intended to and did engage in the real estate development business as partners. They agreed that Khash and Sam would split all profits on each development project on a 50-50 basis, and that they would each have equal ownership of any companies incorporated in

relation to these projects (i.e. the Project Companies, other than Unimax, of which Khash and Mahdi own 60%, and Northern Citadel, of which Khash owns 100%).¹

5. To the extent Sam (or companies that he controlled) held legal title, Khash was the beneficial owner of 50% of the shares of any of the Project Companies incorporated in relation to the Projects pursued by the Partnership. Sam or companies under his control hold Khash's interest in trust.

6. Khash fulfilled his obligations to the Partnership. Khash contributed the funds that he was obligated to contribute, and more. He acted in good faith and fulfilled his duties as a partner.

7. Khash did not, and has never represented that, he acted on behalf of his entire family. No member of Khash's family other than Mahdi is involved in the Partnership. Khash is not a proxy for his entire family.

8. It was Khash and Sam who were business partners. It was Khash and Sam that started the business. It was Khash and Sam who planned the first development.

9. Once Mahdi joined the business, he became very involved in every aspect of the Partnership.

10. The three of them (Khash, Sam and Mahdi) were close. They carried out the Partnership's business together. They made decisions together.

11. Sam fostered and then betrayed Khash and Mahdi's trust. Sam took advantage of them and has sought to appropriate all of the Partnership's assets for himself. He claims that the Partnership was unprofitable while he has taken millions of dollars from the Partnership to buy luxurious properties and a private jet.

12. Sam held Khash out as his partner until Khash began asking questions about millions of dollars that seemed to be missing from the Partnership. Sam then attempted to deny that he and Khash were partners. He locked Khash out of the business and claims that lucrative real estate developments, valued at approximately \$2 billion, are his and his alone.

¹ Khash's 100% ownership of Northern Citadel is confirmed in the Trust Agreement, discussed below.

13. Sam makes these allegations notwithstanding that he never invested a single penny in any of the Projects. Sam's story – that he alone now owns \$2 billion of real estate without ever putting a penny of his own money into the business – defies common sense.

14. Khash seeded the Partnership with approximately \$17 million. Khash, Mahdi and Sam built the business. They used the Partnership's assets to acquire increasingly valuable real estate, culminating in their acquisition of the properties that form 1 Bloor.

15. Khash is entitled to have the assets of the Partnership (namely the Projects) valued and his interest bought out.

The Roles of the Individuals Named in this Action

Michael and Ziba

16. Michael is Sam's wife. She is named as a defendant because she is a shareholder of MI and has benefited directly and indirectly from Sam's misappropriation of Project funds. In short, Sam stole money from the Projects and the Partnership and funneled it to Michael.

17. Ziba is Sam's mother. She has also benefited directly and indirectly from Sam's misappropriation of Project funds. She has received such funds from Sam and/or the companies under his control.

18. Neither Michael nor Ziba have made any contributions to the Projects. There is no justification for their receipt of Project-related (or Partnership) funds.

Parandis and Mandana

19. In the 221 paragraphs of the Mizrahi Defence, the Mizrahi Parties have made only one allegation about each of Parandis (Mahdi's wife) and Mandana (Khash's mother).

20. At paragraph 6, Sam alleges that Parandis owned a house that she sold for \$2.9 million.

21. At paragraph 3, Sam alleges that Mandana is a shareholder of Mizrahi Khalili Inc. She is not.

22. Parandis and Mandana have no involvement in the events giving rise to this litigation. They have been sued for the sole purpose of harassing the Khavari family, and to pressure Khash and Mahdi in this litigation.

23. The claims against Parandis and Mandana have no basis in fact or law, and should be dismissed with costs on a full indemnity basis.

Nicholas Tyacke

24. Nicholas Tyacke (“**Mr. Tyacke**”) is Khash’s lawyer. Sam has named him as a party to this litigation to obtain documents and discovery rights from Mr. Tyacke. There are no allegations made against him and there is no suggestion of any misconduct involving him.

Mahmoud

25. Khash’s father is Mahmoud Khavari. Sam has targeted Mahmoud in his pleading and attempted to smear Mahmoud’s reputation to distract from the core issue: the Partnership between Sam and Khash.

26. Mahmoud was not involved in the Partnership. At Khash and Sam’s request, he assisted Khash, Mahdi and Sam in attempting to understand certain accounting issues relating to 133 Hazelton and 181 Davenport.

27. This was not done surreptitiously. It was done with Sam’s full knowledge and consent. Mahmoud attended at the Partnership’s offices during normal business hours to assist Sam and Khash with the accounting issues.

28. Mahmoud was not compensated for his help and played no other role in the events giving rise to this litigation.

29. Nonetheless, Sam has put Mahmoud front and centre in his pleading by repeating unsubstantiated allegations from the Islamic Republic of Iran and by making allegations about Mahmoud that are simply false. This is another example of Sam’s mud-slinging.

30. The Islamic Republic of Iran has alleged that Mahmoud was involved in an embezzlement scandal. The allegations have never been proven. Mahmoud has never been charged with anything by anyone. Sam has repeated the allegations to paint Mahmoud as a criminal, impugn his credibility, and imply that his family members are similarly untrustworthy. The allegations are completely false and irrelevant to the issues in this litigation.

31. Sam also alleges that there is an outstanding Interpol warrant for Mahmoud. This allegation is false. Because there is no evidence that Mahmoud was involved in a crime, there is no outstanding warrant.

32. The dispute in this litigation has nothing to do with Mahmoud. Sam is attempting to use Mahmoud as a scapegoat. He is parroting sensational allegations from the Islamic Republic of Iran to distract from his own wrongdoing.

33. Sam has publicized the allegations knowing that extremists may target Mahmoud or his family. Sam's conduct in this regard has put the safety of Mahmoud and his family at risk.

34. Mahmoud repeats and relies on his Statement of Defence and Counterclaim.

133 Hazelton and 181 Davenport are Independent Projects

35. The Mizrahi Defence refers to the projects at 133 Hazelton and 181 Davenport collectively, as the "133/181 Developments". The Mizrahi Defence distorts the chronology to suggest that these projects are linked and isolated from the other Projects. This is not true.

36. 133 Hazelton and 181 Davenport came to existence under different circumstances and at different times.

37. Sam and Khash began working on 133 Hazelton approximately one year before the opportunity for the 181 Davenport development even arose.

38. The only similarities between the two projects are that (i) they are both in Yorkville, and (ii) they are both owned by Sam and Khash (through the Partnership). That is it.

39. The two projects have different sources of financing. They required different amounts of financing. They were structured using independent legal entities. 133 Hazelton is finished. 181 Davenport is still under construction.

40. Sam and Khash agreed that when a Project was substantially complete, there would be an accounting to determine the profit on the particular Project. The Partnership could, and sometimes did, decide to use the profits from one Project, or the funds borrowed against the assets of one Project, to invest in another. But even that required a separate accounting for each Project (to determine how much profit was available from one Project to invest in another, and how much interest expense would be borne by each Project).

41. At no point did Khash or Mahdi agree to treat 133 Hazelton and 181 Davenport differently than any of the other Projects.

42. 133 Hazelton is complete. The condominium was registered in March 2015. All units are occupied and the construction financing was repaid two years ago. There should be a final accounting, calculation and distribution of profit.

Each of the Projects is Part of the Partnership

43. Sam's characterization of the all Projects except for 133 Hazelton and 181 Davenport as the "Unrelated Projects" is false and misleading.

44. All of the Projects identified in the Fresh as Amended Statement of Claim were developed by and belong to the Partnership.

45. The Projects were all purchased and developed with funds belonging to the Partnership. More specifically, funds borrowed against the assets of 133 Hazelton and 181 Davenport have been used to invest in the other Projects.

46. These funds were deployed on the basis that these new Projects formed part of the Partnership, and would be developed and owned on the same terms. As a result, prior to the Lock Out, Khash and Mahdi were heavily involved in developing each of the Projects.

47. Contrary to paragraph 110 of the Mizrahi Defence, the banking and financial records of MEI, MI and the supposedly “Unrelated Developments” were not separate from those of 133 Hazelton and 181 Davenport. First, the financial and accounting records show that 133 Hazelton and 181 Davenport were treated no differently than any of the other Projects. Second, funds regularly flowed between the Projects, and from the Projects to MI and MEI.

48. In particular, the Partnership withdrew funds from 133 Hazelton and 181 Davenport (and from the companies that had borrowed money on behalf of those Projects) and deposited those funds into MI and/or MEI. MI and/or MEI then used the funds to invest in the other Projects.

49. Moreover, the Partnership’s staff did not track their time on a Project-by-Project basis. Their salaries were paid without regard to which Project(s) they were working on because all of the Projects belonged to the Partnership.

50. To the extent that Sam or companies under his control hold legal title, Khash is the beneficial owner of 50% of the shares of any of the Project Companies incorporated in relation to the Projects pursued by the Partnership. Sam (or companies that he controls) holds Khash’s interest in trust.

The Trust Agreement

51. Contrary to paragraphs 37 to 46 of the Mizrahi Defence, the Trust Agreement was Sam’s idea. It was drafted by Sam and his lawyer(s).

52. Sam manipulated Khash into signing it, stating that if he did not, the Projects would fail and Khash would lose the \$17 million he had invested in the Partnership.

53. Sam was comfortable making this threat because Khash was the only one who had invested funds in the business. Sam had invested nothing. He had nothing to lose.

54. Khash signed the Trust Agreement under duress.

55. Contrary to paragraphs 38-40 of the Mizrahi Defence:

- (a) The Toronto Dominion Bank has never frozen Khash's bank accounts. In fact, no bank has ever frozen any of Khash's bank accounts; and
- (b) By the time of the Trust Agreement, Khash had fulfilled his financing commitments. He had already contributed the funds that he said he would contribute to the Partnership, and more.

56. The Trust Agreement was intended to transfer Khash's legal interest in the Projects to Sam, with Khash retaining his status as a beneficial shareholder. The language used in the Trust Agreement is clear that Sam held Khash's shares as "bare trustee" and that "all attributes of beneficial ownership shall be and remain in the Beneficiary."

57. The Trust Agreement only expressly contemplates 133 Hazelton and 181 Davenport because, at the time it was executed, those were the only Projects that had Project Companies holding title to Partnership assets.

58. The Trust Agreement did not contemplate Sam having exclusive control over the Projects. The Trust Agreement explicitly requires Sam to report to and follow Khash's instructions regarding Khash's shares. For example:

- (a) "The Trustee agrees to hold the said Beneficiary Shares for and on behalf of the Beneficiary to deal with only as specifically directed by the Beneficiary in writing and that it will do no act relating to the said Beneficiary Shares without the express authorization and direction of the Beneficiary in writing".
- (b) "The Trustee shall promptly transmit to the Beneficiary copies of all notices, claims, demands, or other communications which the Trustee may receive and which relate in any way to the Beneficiary Shares".
- (c) "Upon demand by the Beneficiary, the Trustee shall assign, transfer, and convey the Beneficiary Shares to the Beneficiary".

59. The Trust Agreement does not address when Khash would be entitled to the repayment of his investment. It does not mention Khash's investment. Sam and Khash had already agreed that

each of the Partnership's projects would have separate accounting. The Trust Agreement did not change this.

60. At paragraphs 57 to 58 of the Mizrahi Defence, Sam alleges that there is a second addendum to the Trust Agreement that he cannot locate. According to Sam, this phantom addendum says that Khash would not seek the return of his shares in 133 Hazelton and 181 Davenport until both projects were complete, and all liabilities satisfied.

61. These allegations are false. There never was a second addendum and that is the reason Sam cannot produce it.

Khash Fulfilled his Funding Obligations to the Partnership

62. At paragraphs 38 to 40 of the Mizrahi Defence, Sam alleges that (i) after the TD Bank froze Khash's accounts, he could not fulfill his commitment to provide all of the funding required to develop 133 Hazelton and 181 Davenport, and (ii) Khash insisted that Sam use his connections and reputation within the community to obtain the necessary financing to advance the Projects.

63. These allegations are a complete fabrication. Sam had no such reputation. Aside from piloting a business known as Dove Cleaners into bankruptcy, Sam's experience developing real estate was limited to a few small scale residential projects, most of which were for Khash.

64. Khash seeded the Partnership with \$17 million.² Khash and Sam agreed that they would obtain financing to fund the rest of the cost of developing 133 Hazelton, 181 Davenport and other Projects.

65. This is a typical strategy for developing real estate: the developer contributes some initial funding to the project but the bulk of funds for development and construction costs are financed. Khash and Sam adopted this strategy.

² Khash initially invested \$7 million to develop 133 Hazelton. This was the only money Khash committed to contribute to the Partnership. Khash subsequently invested a further \$3.5 million in 133 Hazelton, and \$6.5 million to enable the Partnership to take advantage of the opportunity to develop 181 Davenport and to accelerate the growth of the Partnership.

66. Khash never agreed to provide all of the funds required to develop and construct the Projects.

67. It defies common sense that Khash would agree to contribute the almost \$150 million required to build 133 Hazelton and 181 Davenport in exchange for 50% of the profits, while agreeing that Sam would contribute nothing and also be entitled to 50% of the profits.

68. That was never the deal. Khash agreed to seed the Partnership. Khash and Sam agreed to finance the rest.

69. Accordingly, Sam sought loans for 133 Hazelton and 181 Davenport. But Sam had no reputation as a developer. He had never built a condominium. He had no relationships with lenders of any significance.

70. HSBC and United Overseas Bank provided construction financing for 133 Hazelton and 181 Davenport, respectively, at competitive rates based on Khash's investment and the fact that a sufficient number of units had sold to reduce the Projects' risk.

71. To complete 181 Davenport and grow the Partnership, Sam obtained further financing from private lenders – the Private Loans – at interest rates of approximately 16% to 20%. These exorbitant interest rates were a direct result of Sam being a complete unknown in the condominium development community.

72. In any event, Khash fulfilled his financial commitments to the Partnership and went beyond his initial commitments to build the Partnership. Sam obtained the high interest rate Private Loans, secured by the Projects, to finance part of the development and construction costs for 181 Davenport, and acquire other Projects.

Shared Offices

73. From the beginning of their business relationship, Khash, Mahdi and Sam shared office space. At first, they operated out of 195 Davenport (the property that became 133 Hazelton), followed by 185 Davenport (the property that became 181 Davenport), and most recently, 126 Hazelton Avenue (the "**Shared Office**").

74. The Shared Office became the Partnership's principal place of business. Sam and Khash worked together so closely that they shared a single office, with desks located across from each other.

75. Contrary to paragraphs 102 to 107 of the Mizrahi Defence, the rent and other office expenses were paid by the Partnership with Project funds, typically through MI.

76. Given that 133 Hazelton and 181 Davenport were the most advanced of the Projects (i.e., they were the only ones with any revenue and construction financing prior to the Lock Out), the Shared Office's expenses were paid predominantly with funds from those two Projects.

77. Sam is correct that the other Projects were nevertheless run out of the Shared Office. That the other Projects benefited from the Shared Office without making proportional contributions to its expenses is consistent with the Partnership extending to those Projects.

78. The lease for the Shared Office is in the name of Mizrahi Soaring Inc. This is one of the first companies that Khash and Sam incorporated together, and owned 50-50.

79. The lease stated that the tenant – Mizrahi Soaring Inc. (owned 50-50 by Khash and Sam) – would subsequently purchase the building for redevelopment. This became the 128 Hazelton development.

80. 128 Hazelton is one of the Projects. Khash and Sam own it 50-50.

No Attempts to “Strip” the Equity from 133 Hazelton and 181 Davenport

81. Sam's allegation (at paragraphs 62 to 79 of his pleading) that Khash and his family have attempted to strip the equity out of the Projects, and leave Sam on the hook for the liabilities, is false. Sam has fabricated this narrative to distract from his own misappropriation of millions of dollars.

82. The \$7 million that Khash received came from 133 Hazelton. Sam agreed that Khash was entitled to this money. It represented a partial repayment of his \$10.5 million investment in 133 Hazelton.

83. At the time of the repayment, 133 Hazelton was complete. Sam and Khash knew it was profitable. But as a result of Sam's convoluted accounting practices, they did not know how profitable.

84. Khash's withdrawal did not leave Sam on the hook for any unpaid liabilities. Absent Sam stealing money from the Projects, there was sufficient revenue to pay all liabilities.

85. It is true that Khash originally requested a payment of \$14 million. This represented the sum of his investment in 133 Hazelton and 50% of the project's projected profits, less \$3 million to pay any outstanding invoices that Sam insisted would continue to trickle in.

86. After extended discussions and attempts to reconcile 133 Hazelton's finances, Khash, Sam and Mahdi ultimately agreed that the Partnership would return Khash's initial investment in 133 Hazelton, with profits to be distributed shortly thereafter once the accounting issues were resolved.

87. To this end, Sam wrote Khash a cheque for \$7 million, and post-dated cheques for the remainder of his investment in 133 Hazelton.

88. Contrary to their agreement, Sam subsequently changed his mind regarding the post-dated cheques and stopped payment on them. But this does not mean Khash's attempts to deposit these cheques were in any way nefarious.

89. Neither Khash nor any member of his family fabricated any stories to convince Sam to agree to these repayments. Nor did anyone threaten Sam. Khash did not need an elaborate story. And Sam did not need coaxing. As 133 Hazelton was complete and the construction financing had been repaid, Khash was entitled to these funds. And Sam knew it.

90. Sam has fabricated these allegations to sling mud and distract from his own wrongdoing.

91. In particular, Sam is using Mahmoud as a scapegoat. Mahmoud has never threatened Sam. Sam signed cheques to Khash because the Partnership owed Khash the money.

92. In reality, it is Sam who has "stripped" funds from the Projects.

The Lock Out and the Hack

93. The explanation for the Lock Out at paragraph 111 of the Mizrahi Defence is completely false.

94. Neither Mahmoud nor any of the Defendants by Counterclaim have ever threatened Sam. And there have been no unlawful attempts to negotiate company cheques. Khash and Mahdi attempted to cash cheques that Sam agreed to write to repay a portion of Khash's investment. Sam changed his mind, and placed a stop order on the cheques. Khash and Mahdi did nothing wrong.

95. Sam locked Khash and Mahdi out because they had started asking questions about the Projects' finances. They were on their way to uncovering Sam's fraud, and were finally taking steps to get to the bottom of it. Sam could not justify his removal of the funds from the Projects. He panicked. He locked Khash and Mahdi out to eliminate their access to records of their Partnership and documents showing his wrongdoing.

96. On June 6, 2015, Khash sent Sam a letter formally demanding, *inter alia*, financial information regarding the Projects and requiring that MEI transfer back to him those shares that had been transferred to MEI pursuant to the Trust Agreement. The next day, Sam locked Khash and Mahdi out of the Shared Office (the "**Lock Out**").

97. It is now clear that, even before the Lock Out, Sam took secret steps to eliminate Khash and Mahdi's access to documents related to the Projects. For example, Sam directed Joshua Lax to contact Google and effect changes that would compromise the Partnership's email accounts and erase the content of those accounts, content that would substantiate the Partnership and Khash and Mahdi's involvement in the Projects (the "**Hack**").

98. Fortunately, Khash learned of the Hack when he became unable to access his email. He was able to provide Google with sufficient information to save most, but not all, of the information that had been deleted as a result of the Hack. The Lock Out and the Hack nevertheless pushed the Partnership to a breaking point.

The Application before Mr. Justice Wilton-Siegel

99. These proceedings were initiated after Sam refused to return Khash's investment and distribute the profits from 133 Hazelton, and it had become clear that Sam had stolen from the Partnership.

100. Khash brought an application to obtain legal title to the shares of the 133 Hazelton and 181 Davenport Project Companies that Sam held in trust for him pursuant to the Trust Agreement (the "**Trust Application**").

101. Sam responded with a cross-application accusing Khash, Mahdi and their family members of various misconduct. Essentially, Sam sought to create an evidentiary record with factual disputes such that the matter could not proceed as an application. This was an attempt to delay the hearing of the Trust Application and convert it into an action.

102. The Trust Application was argued and decided on the assumption – *for the purposes of that motion only* – that Sam's version of the facts was true. In other words, for the purpose of the Trust Application (and only the Trust Application), the Court accepted Sam's story. This included Sam's false allegation that there was a second addendum to the Trust Agreement stating that Khash is not entitled to the return of his shares until both 133 Hazelton and 181 Davenport are complete, and all liabilities satisfied.

103. Mr. Justice Wilton-Siegel ultimately held that, *assuming everything Sam said was true*, the Trust Agreement was a contract designed to give Sam 100% legal ownership and control over the 133 Hazelton and 181 Davenport through to completion. Upon completion, the profits would be split 50-50 between Sam and Khash. Accordingly, Mr. Justice Wilton-Siegel dismissed the Trust Application and refused to return legal title to the shares to Khash.

104. However, Mr. Justice Wilton-Siegel was clear "**that the Court's determination on the issue of the existence of a trust is based on, and limited to, the facts assumed for the purposes of this motion**" (para. 39).

105. Accordingly, Sam's suggestion that the assumed facts and Mr. Justice Wilton-Siegel's legal conclusions based on those facts somehow govern this action is highly misleading.

The Alleged Confidential Information is Not Confidential

106. At paragraphs 114 to 118 of the Mizrahi Defence, Sam has alleged that in the weeks preceding the Lock Out, Khash and Mahdi removed important confidential paper records from filing cabinets at the Shared Office.

107. These allegations are entirely false. It simply never happened.

108. Sam also alleges (at paragraph 117 of the Mizrahi Defence) that Khash improperly maintained a Backup Server and has misappropriated documents through his possession of the Backup Server.

109. This is another example of Sam attempting to sling mud at Khash and insert colourful and prejudicial allegations into his pleading.

110. In accordance with standard Information and Technology practices, Sam, Khash and Mahdi agreed to establish a Backup Server. It was to be maintained by Khash offsite.

111. It was important for the Backup Server to be offsite should anything happen to the Main Server at the Shared Office. To keep the Backup Server at the same location as the Main Server would defeat the purpose of having a backup in the event of a problem at the Shared Office.

112. Mahdi began downloading folders onto a backup USB device when the Shared Office began experiencing problems with its internet access and, as a result, the Backup Server began malfunctioning.

113. After the Lock Out, nothing changed in respect of the Backup Server. Khash continued to maintain it offsite.

114. When Khash and Mahdi delivered their expert report on the Inspector Motion, Sam brought the Confidentiality Motion, whereby he sought to exclude Khash and Mahdi's expert report asserting that it was based on confidential information, to which they were not entitled. In short, Sam's allegation was that Khash and Mahdi were not entitled to use the information on the Backup Server.

115. Sam also sought the return of the allegedly confidential information, including the Backup Server, that he said Khash, Mahdi and Mahmoud reviewed and removed from the Shared Office.

116. There was no legal or factual basis for the Confidentiality Motion. And Sam had again named Mahmoud as a distraction. On the eve of the motion, Sam withdrew it and paid costs to Khash, Mahdi and Mahmoud.

117. The agreement settling the Confidentiality Motion (the “**Settlement Agreement**”) stated:

It is understood and agreed that...the Mizrahi Parties do not object, and will not object in the future, to Khash and Mahdi accessing, or relying in this litigation, on any of the documents or information referred to in the Mizrahi Parties’ motion materials as the Confidential Information, including:

- (a) documents and information contained on the Backup Server;
- (b) documents and information contained on the USB Device;
- (c) the PwC Report dated November 30, 2015 and the documents and information contained on the USB Device marked as Exhibit 3 to the affidavit of Lori-Ann Beausoleil sworn January 22, 2016;
- (d) documents and information included in the PST Set referred to above; and
- (e) any documents or information contained in our clients’ mizrahidevelopments.com, 181davenport.com and 133hazelton.com e-mail accounts, or any backups of those e-mail accounts.

118. Notwithstanding these terms, Sam has revived the issue in his pleading. He has again failed to comply with the terms of an agreement into which he has entered. He continues to complain about Khash and Mahdi having access to and relying on allegedly confidential information. These are the same allegations he raised, withdrew, and then resolved in the Settlement Agreement.

119. These allegations are abusive and in breach of the Settlement Agreement. They have no merit, and Sam knows it. Khash and Mahdi have never unlawfully accessed or read confidential or privileged documents or email correspondence. All of this information belongs to the Partnership. Khash and Mahdi created much of the information stored on the Backup Server.

120. Sam's pleading in this regard is another attempt to sling mud and distract from the real issues.

Sam's Mismanagement of the Partnership's Projects

121. Before the Lock Out, Khash and Mahdi were involved in all of the Projects on a daily basis. They took steps to bring 133 Hazelton and 181 Davenport to completion, and to push the other Projects forward. These efforts were discussed with and agreed to by Sam, as their partner.

122. Khash and Mahdi's actions in this regard were thoughtful, in good faith, and in the best interests of these developments and the Partnership. Sam was at all times aware of and in agreement with their actions. If there were any additional costs, Sam knew about and approved them.

123. Indeed, Khash and Mahdi's good management and diligence are the primary reason that the Projects progressed in a meaningful fashion until the Lock Out.

124. The allegations of mismanagement at paragraphs 162 to 167 of the Mizrahi Defence are false. At the time of the lockout, 133 Hazelton was substantially complete. It had been registered as a condominium corporation and the construction financing had been repaid. And 181 Davenport was advancing well. The impact of cold weather and soil contamination referred to at paragraph 59 of the Mizrahi Defence were planned and accounted for in the development budgets and schedules.

125. Sam's allegations that Khash and Mahdi mismanaged 133 Hazelton and 181 Davenport, and are responsible for their alleged failure, is inconsistent with his position that MI – a company in which Sam says Khash and Mahdi have never had any involvement – was the general contractor responsible for those Projects.

126. Sam cannot have it both ways. His story cannot be that he brought the experience and know-how into the Partnership (and that MI was under his control and the general contractor for each Project), while also maintaining that Khash and Mahdi had control over the operation of the Projects such that they alone are responsible for delays and cost overruns.

127. The simple truth is that before the Lock Out, Khash and Mahdi were responsible for the operations of the Partnership. Sam had no experience building condominiums and was incompetent. Under Khash and Mahdi's management, both 133 Hazelton and 181 Davenport were on budget in all material respects and experiencing only minor delays, typical for such developments.

128. Since the Lock Out, there has been little progress on any of the Projects. This is because Sam is out of his depth. Sam does not have the experience, skills, or resources to bring the Projects to completion. The Projects are now stalled because Sam is incapable of bringing them to completion. For example:

- (a) Sam has tried to create the illusion of progress by focusing his efforts on making the exterior of 181 Davenport appear complete. However, the top floors remain unfinished and require months of work before the building can be registered and closed.
- (b) Sam has been unable to complete the construction of the Forest Hill Jewish Centre. As a result of Sam's incompetence, the owners of the Forest Hill Jewish Center (on whose behalf the Partnership was working) have taken control and now deal with the trades directly.

129. In addition, to the extent that the Projects are short on funds, it is because Sam is stealing from them. He is misappropriating Project funds for his and his family's personal use. The Projects are funding his extravagant lifestyle – a private jet, a luxurious cottage and other personal properties, private school tuition for his children, and other personal expenses within Sam's knowledge. By using the Projects as his own personal bank account, Sam is bankrupting the Projects and thwarting their ability to progress.

130. To this end, Sam has also acted without Khash's consent to encumber the Partnership's assets and change the share structures of the Partnership's Project Companies. For example, Sam has mortgaged certain units in 133 Hazelton. The particulars of these encumbrances and changes in share structure are within Sam's knowledge.

131. These changes and encumbrances are ineffective without Khash's consent. They must either be unwound or Sam is liable to Khash for the consequent damages.

132. If the Projects are in the dire financial condition that Sam suggests, it is the result of his theft and mismanagement.

133. At paragraphs 143 to 144 of the Mizrahi Defence, Sam alleges that Altus Group Limited ("Altus") reviewed and approved all movement of money on 133 Hazelton and 181 Davenport. Sam's allegations are misleading and inaccurate. Altus was retained by the construction lenders to monitor project expenses. However, Sam overstates Altus' role.

134. In respect of both 133 Hazelton and 181 Davenport, the Mizrahi Defence ignores the fact that Altus was only engaged to oversee the use of the construction financing. The Projects had other sources of financing, including the Private Loans from Bridging and Ridgemount. Altus did not know about these loans. Altus did not ensure Sam was not siphoning these funds for his personal use.

135. More importantly, Sam and his controller, Remy ("Remy"), kept material facts (such as the existence of the Private Loans) from Altus. Sam and Remy hid revenue from Altus.

136. At Sam's direction, Remy kept two sets of financial records, one to share with Altus (which was incomplete and misleading) and one that accurately reflected the financial state of the Projects.

137. Sam and Remy were not transparent about how MI, the general contractor for the Projects, was using funds.

138. At Sam's direction, Remy hid transactions from Altus, Khash and Mahdi. As a result, the financial records were misleading and inaccurate. Sam and Remy attempted to conceal that Sam was pillaging the Projects and the Partnership to fund his lifestyle.

Mizrahi Khalili Inc. and Mizrahi Developments Inc.

139. Mizrahi Developments is the development company and marketing arm of the Partnership.

140. Mizrahi Developments is the successor to Mizrahi Khalili.

141. Mizrahi Khalili was incorporated in 2011.

142. Prior to the Trust Agreement, the Partnership was marketed as Mizrahi Khalili, or MK Developments. These names appeared on all marketing and promotional materials. Sam, Khash and Mahdi's business cards and email signatures identified them as "Partners" of "MK Developments".

143. Around the time that Trust Agreement was executed, Sam insisted on dropping Khalili from the Partnership's name.

144. Accordingly, Mizrahi Khalili Developments became Mizrahi Developments. This fact is not in dispute. Sam admits it at paragraphs 54 to 57 of the Mizrahi Defence. He has also given sworn evidence to this effect:

(a) In his affidavit sworn August 27, 2015, Sam plainly states that "Mizrahi-Khalili Developments became Mizrahi Developments."

(b) In his affidavit sworn December 1, 2015, Sam states that "[i]n or about March 2012, Mizrahi Khalili began operating under the business name Mizrahi Developments."

145. The name change was meant to be temporary. The intention was to return to using the name Mizrahi Khalili to market the Partnership when the adverse publicity surrounding the Islamic Republic of Iran's allegations against Mahmoud died down.

146. It was only after the Lock Out and the breakdown in his relationship with Khash that Sam incorporated Mizrahi Developments.

Mizrahi Inc. ("MI") and Mizrahi Enterprise Inc. ("MEI")

147. MI was appointed as the general contractor for the Projects on Sam's insistence. Contrary to the allegation at paragraph 36 of the Mizrahi Defence, Sam agreed that the Partnership would

share equally in all profits and fees earned, or costs savings achieved, by MI in its capacity as the Projects' general contractor.

148. Sam's suggestion is that Khash (i) invested \$17 million in the Partnership; (ii) agreed to use a general contractor with no track record for building developments at the scale contemplated; (iii) gave up any interest in the profits earned by the general contractor; and (iv) agreed that his partner Sam, who did not invest a penny in the Partnership and who owned MI, would be entitled to earn significant profits from MI acting as the general contractor.

149. In short, Sam's allegation is that Khash agreed to allow Sam to engage in self-dealing and profit at Khash's expense.

150. This is not only false, it makes no sense.

151. From 2011 forward, MI and MEI had no meaningful business or operations beyond their work and involvement with the Partnership.

152. Any significant amount of funds that MI or MEI received either (i) came from the Projects, or (ii) were loans in relation to the Projects or secured by Project assets.

153. All of these funds in MI and MEI either (i) were to be used solely for purposes of the Projects, or (ii) are an asset of the Partnership to be split 50-50 between Sam and Khash.

154. Sam used MEI and MI to misappropriate funds from all of the Projects. Sam used MEI and MI to steal money from the Projects and the Partnership.

155. Sam withdrew money from the Projects (and from the Projects' loans) and deposited it into MI and MEI, where the funds of all the Projects were comingled.

156. Sam initiated and/or directed an unnecessary volume of transfers between MI, MEI and the Project Companies to cause confusion and hide his theft.

157. To the extent Khash and Mahdi knew about such comingling and did not oppose it, Sam represented and led them to believe the funds were being used exclusively for the purpose of the Partnership's business.

158. Unbeknownst to Khash and Mahdi, Sam was misappropriating these funds through MI and MEI for his personal use. He spent the money that he misappropriated (through MI and MEI) on his extravagant lifestyle, including the purchase of a private jet, a luxurious cottage, and private school tuition for his children.

159. MI and MEI would divert funds from the Projects to Sam, his wife, his mother, or entities controlled by one or more of them.

160. MI and MEI would also pay Sam's personal expenses and credit card bills using Project funds. This was improper. It is further misappropriation by Sam.

161. To the extent Sam, his family or any corporations under their control have acquired property or assets with these funds, the assets/property are held in trust for the benefit of the Partnership.

Khash and Mahdi Received Development Fees as Partners

162. Paragraph 160 of the Mizrahi Defence alleges that Khash and Mahdi were paid approximately \$2.185 million for their work managing and overseeing 133 Hazelton and 181 Davenport. The suggestion is that they were employees and this was employment income.

163. The allegation is false. These funds were a portion of the development fees that were received by the Projects, as described in the development budgets by Altus. As part of the Partnership Agreement, Sam and Khash agreed that they would split any such fees 50-50, with Khash's portion to be shared by him and Mahdi.

164. Accordingly, these fees are part of the compensation Khash and Mahdi received as Sam's partners. They are not wages.

165. In accordance with the 50-50 Partnership Agreement, Sam received the same compensation.

166. The agreement to share development fees 50-50 governed each of the Partnership's Projects. Sam has collected development fees on 128 Hazelton and 1 Bloor and failed to pay Khash his 50 percent. Sam is obliged to do so.

PriceWaterhouseCoopers

167. For the purposes of the Inspector Motion, PriceWaterhouseCoopers (“**PwC**”) delivered an expert report authored by Lori-Ann Beusoleil (“**Ms. Beusoleil**”) explaining that there was at least \$12-\$19 million of unexplained withdrawals by Sam from the Projects.

168. Ms. Beusoleil was cross-examined on two occasions: in advance of the Confidentiality Motion, and then again in advance of the Inspector Motion.

169. Ms. Beusoleil’s second cross-examination was initially scheduled for April 29, 2016. However, on April 26, 2016 her father died unexpectedly, and her cross-examination was postponed to May 12, 2016.

170. On May 11, 2016, a day before her scheduled cross-examination, Ms. Beusoleil’s long-time professional assistant died from cancer.

171. Despite these personal circumstances, Ms. Beusoleil believed she was capable of being cross-examined on May 12, 2016. She testified that she had not received certain documents and information before completing her reports.

172. After the cross-examinations, Ms. Beusoleil realized that she had been in no condition to give evidence, and that her testimony in this regard was inaccurate. Her grief had clouded her judgment and recollection.

173. Ms. Beusoleil reviewed her file. She confirmed that, before preparing and swearing her expert reports, she had all of the documents and information that she said she did not have during her cross-examination.

174. Ms. Beusoleil tried to correct her mistake. She swore an affidavit explaining the tragic circumstances, the impact on her mental state, and the resulting inaccuracies in her evidence.

175. This affidavit was delivered to Sam’s counsel.

176. Ms. Beausoleil also produced her entire file to Sam's counsel, which demonstrated that she had all of the documents and information and that her evidence on cross-examination was inaccurate.

177. Accordingly, Sam knows his allegations about PwC are false. He has pleaded them as a sideshow. Khash and Mahdi never misled their expert.

178. The fact remains that Sam, through MI and MEI, has withdrawn at least \$12 million from the Projects that neither PwC nor his own expert (Duff & Phelps) has been able to link to legitimate Project expenses.

No Defamation

179. The defamation allegations at paragraphs 185 to 196 of the Mizrahi Defence are barred by the limitations period.

180. Sam did not provide notice of such claims within six weeks of becoming aware of the alleged Defamatory Statements. Nor did Sam commence an action for defamation within three months of becoming aware.

181. In any event:

- (a) Neither Khash, Mahdi nor any of the other Defendants by Counterclaim made any of the alleged Defamatory Statements, or directed anyone to do so;
- (b) None of the Defendants by Counterclaim had anything to do with the statements on Sam's Wikipedia page. They know nothing of those statements or who made them; and
- (c) The alleged Defamatory Statements are not defamatory. In particular, it is not defamatory to say a person is Muslim. Or not Jewish. Or not Canadian.

182. In addition, neither Khash, Mahdi nor any of the other Defendants by Counterclaim has had anything to do with the Wikipedia pseudonyms "masterofthename" and "Orange Relish".

183. In the alternative, to the extent the Defendants by Counterclaim made any of the alleged Defamatory Statements (which is denied), they were true (or made in good faith and with reasonable belief as to their truth), or are opinions and commentary rather than statements of fact. Either way, no statements were made for the purpose of damaging Sam's reputation.

184. At paragraph 194 of the Mizrahi Defence, Sam complains about a website for a business called H & Co. Developments. There is nothing unlawful or inappropriate regarding Khash and Mahdi's website for H & Co. Developments. The website accurately states that the principals of H & Co. Developments (Khash and Mahdi) served as the developers, builders and construction and development managers on the listed Projects.

185. The Defendants by Counterclaim plead and rely on the *Libel and Slander Act*, R.S.O. 1990, c. L.12 and the *Limitations Act, 2002*, S.O. 2002, c. 24.

Unimax

186. Unimax is owned 30% by Khash, 30% by Mahdi, and 40% by Sam.

187. Unimax's corporate documents were created by Jeff Hallman ("**Mr. Hallman**"), and executed at his office. Mr. Hallman is Sam's lawyer. Mr. Hallman retained Unimax's minute book until Sam removed it from Mr. Hallman's possession in August 2015, shortly after the start of this litigation.

188. At no point have Khash and Mahdi consented to any transfer of their shares in Unimax. They have not consented to any changes to the company's share structure. They never surrendered their shares.

189. Sam may have unlawfully altered the books and records of Unimax. He may have forged documents that purport to transfer Khash and Mahdi's back to Unimax's treasury. But these documents are inoperative. There is no valid document altering Khash and Mahdi's shareholding.

190. Khash and Mahdi resigned as officers/directors of Unimax in January 2015. They did so at Sam's request to facilitate a business agreement with the Israeli government. The resignations

were signed in January 2015, but were made effective to October 2011. However, this did not undo Khash and Mahdi's actions as officers/directors in the intervening period.

No Tenable Cause of Action

191. Khash and Mahdi engaged in the real estate development business with Sam. They did so as partners and in good faith, only to learn that Sam had betrayed their trust and stolen millions of dollars.

192. There has been no conspiracy or other misconduct by the Khavari family. In particular, none of Khash, Mahdi, Mandana, Mahmoud or Parandis had anything to do with the "brown envelopes".

193. The Defendants by Counterclaim have not been unjustly enriched, nor are they liable for conversion:

- (a) Khash was entitled to withdraw \$7 million of the \$10.5 million he invested in 133 Hazelton. Sam agreed to it.
- (b) Khash was also entitled to the further \$3 million, for which Sam agreed to write post-dated cheques. Sam subsequently reneged on this agreement by stopping payment on the cheques.
- (c) Khash and Mahdi were entitled to receive \$2.185 million in partial development fees. In accordance with the 50-50 Partnership, Sam has received the same amount.
- (d) Vria Investments Ltd.'s January 2012 loan to Unimax for \$780,000 is legitimate. Sam authorized it and knew about it. Any requests for repayment are similarly legitimate.

194. Any detriment to Sam is his own fault. He has stolen from and mismanaged the Projects.

195. In any event, each of Sam's causes of action complains about the conduct of this litigation. See especially paragraphs 80 to 101 of the Mizrahi Defence. Sam says that this action

itself, Khash and Mahdi's pleadings, and each of their motions form part of their supposed conspiracy to intimidate and ruin him.

196. Most striking is the inconsistency in these allegations. On the one hand, Sam suggests that Khash and Mahdi's decision not to appeal the Trust Application demonstrates that the Trust Application was itself unconscionable and an abuse of process (see paragraphs 82-83 of the Mizrahi Defence). Just a few paragraphs later, however, Sam says that Khash and Mahdi's decision to appeal the Inspector Motion was part of their campaign to smear Sam's reputation.

197. It seems that whatever Khash and Mahdi do in this litigation, Sam pleads about it. These allegations are entirely inappropriate and are barred by the doctrine of absolute privilege.

No Damages

198. The Mizrahi Parties have sustained no damages.

199. If the Mizrahi Parties have sustained any damages (which is not admitted, and is expressly denied), they are not attributable in whole or part to any actionable act or omission by Khash or Mahdi (or any of the other Defendants by Counterclaim).

200. Any such damages are Sam's fault. They are the result of his mismanagement and theft.

201. In the alternative, to the extent the Mizrahi Parties have suffered any actionable damages, they were contributorily negligent to the full extent of those losses. The Defendants by Counterclaim plead and rely on the *Negligence Act*, R.S.O. 1990, c. N-1.

202. In the further alternative:

(a) the damages claimed by the Mizrahi Parties are excessive and too remote to be recoverable at law against Khash and Mahdi, or any of the other Defendants by Counterclaim; and

(b) the Mizrahi Parties have failed to mitigate any damages which they are found to have suffered.

203. There is no basis in fact or law for an award of punitive damages.

Conclusion

204. The Mizrahi Defence is an attempt to sling mud and litigate about the conduct of this litigation. There is no merit to any of Sam's allegations.
205. The bottom line is that Sam has stolen tens of million of dollars. He has taken advantage of and abused Khash and Mahdi's trust.
206. He has taken extraordinary steps to cover his tracks and impede Khash and Mahdi from getting paid their entitlements. In this regard, Sam's conduct is not only outrageous, it is dangerous. He has placed the life and safety of Mahmoud at risk by inciting extremists.
207. Sam litigates about the conduct of this litigation. He brings frivolous motions, withdraws them on terms, breaches the terms, and then attempts to revive the motions in his pleading.
208. Sam's conduct is abusive. It deserves sanction from this Court.
209. The Mizrahi Defendants' claims should be dismissed with costs on a full indemnity basis.

March 22, 2017

WARDLE DALEY BERNSTEIN BIEBER LLP
2104-401 Bay Street
P.O. Box 21
Toronto ON M5H 2Y4
Simon Bieber LSUC#: 56219Q
Alex Fidler-Wener LSUC#: 68408M
Tel: (416) 351-2781 / (416) 351-2791
Fax: (416) 351-9196

Lawyers for the Plaintiffs/Defendants by
Counterclaim, Defendants by Counterclaim,
Mandana Khalili Shavarini and Parandis Khalili
Khavari Tajbakhsh, and Defendant by
Counterclaim/Plaintiff by Counterclaim, Mahmoud
Reza Khavari

TO: LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP
2600-130 Adelaide Street West
Toronto, ON M5H 3P5

Lawrence E. Thacker LSUC #: 36939M
Tel: (416) 865-3097
Fax: (416)865-9010
Email: lthacker@litigate.com

Chris Kinnear Hunter LSUC#: 65545D
Tel: (416) 865-2874
Fax: (416) 865-2866
Email: chunter@litigate.com

Lawyers for the Defendants/Plaintiffs by Counterclaim

AND TO: STROH PROFESSIONAL CORP.
One Yonge Street, Suite 1506
Toronto, ON M5E 1E5

Matthew M.A. Stroh
Tel: (416) 970-0852

Lawyers for the Defendants by Counterclaim, Ardavan Khavari, Vria Investments Ltd. and
Aylar Mousavi

AND TO: DIAMOND PANTEL LLP
1101-80 Richmond Street West
Toronto, ON M5H 2A4

Adam Pantel
Tel: (416) 583-5758
Fax: (416) 583-1857

Lawyers for the Defendant by Counterclaim, Nicholas Tyacke

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL DIVISION**

Proceeding commenced by

REPLY AND DEFENCE

Wardle Daley Bernstein
2104-401 Bay Street
Toronto, ON M5H 2Y4

Simon Bieber LSUC#: 31100
Alex Fidler-Wener LSUC#: 31100
Tel: (416) 351-2781/2791
Fax: (416) 351-9196

Lawyers for the Plaintiff
Counterclaim, Defendant
Mandana Khalili Shavari
Khavari Tajbakhsh, and
Counterclaim/Plaintiff
Mahmoud Reza Khavari

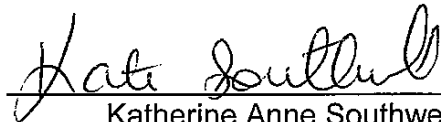
This is Exhibit "H" referred to in the Affidavit of Khashayar Khavari affirmed by Khashayar Khavari at the City of Toronto, in the Province of Ontario, before me on October 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

SEAN PIERCE

This is Exhibit B to the
affidavit of Khashayar Khavari sworn
December 7, 2015



Katherine Anne Southwell
A commissioner for taking affidavits

THIS TRUST AGREEMENT made as of the 11th day of October, 2011

B E T W E E N:

MIZRAHI ENTERPRISES INC. (hereinafter referred to as the "Trustee")

OF THE FIRST PART

-and-

KHASHAYAR KHAVARI, an individual residing in the Province of Ontario
(hereinafter referred to as the "Beneficiary")

OF THE SECOND PART

WHEREAS the Beneficiary is the sole beneficial owner of 50% of the issued common shares being the only issued shares of the Corporation **Soaring Mizrahi Developments Inc.** which owns the property municipally known as 195 Davenport Rd., Toronto, Ontario, Canada (hereinafter referred to as the "First Property");

AND WHEREAS the Beneficiary is the sole beneficial owner of 50% of the issued common shares being the only issued shares of the Corporation **1834369 Ontario Inc.** which owns the property municipally known as 131 Hazelton Ave, Toronto, Ontario, Canada (hereinafter referred to as the "Second Property");

AND WHEREAS the Beneficiary is the sole beneficial owner of 50% of the issued common shares being the only issued shares of the Corporation **Mizrahi Soaring Developments Inc.** which owns the property municipally known as 145 Davenport Rd., Toronto, Ontario (hereinafter referred to as the "Third Property");

AND WHEREAS company **Northern Citadel Capital Inc.** will be providing the funding necessary for the First Property, the Second Property and the Third Property (hereinafter collectively referred to as "The Properties") and the business related to the Property and it will be registered on title as First Mortgagee with regard to the First

Property and Second Property and will be registered on title as Third Mortgagee with regard to the Third Property;

AND WHEREAS all of the shares of that company **Northern Citadel Capital Inc** are beneficially owned by the Beneficiary;

All the shares of company **Northern Citadel Capital Inc** are held by the Trustee in trust for the Beneficiary.

Company **133 Hazelton Inc.** is a company which owns the project known as **133 Hazelton Residences** which includes the development on the First Property and the Second Property. 50% of the shares of company **133 Hazelton Inc.** are beneficially owned by the Beneficiary and will be held in trust by the Trustee on behalf of the Beneficiary;

AND WHEREAS the Trustee has agreed to hold all of these shares ("Beneficiary Shares") in its name in trust and to hold same for and on behalf of the Beneficiary in accordance with the terms hereof;

AND WHEREAS the Trustee has received the sum of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged;

AND WHEREAS the Trustee has agreed that whenever requested by the Beneficiary, the Trustee shall transfer all or part of the Beneficiary Shares held in trust to the Beneficiary or as the Beneficiary may direct;

AND WHEREAS the Trustee has agreed not to deal with any of the Beneficiary Shares in any way without the written consent of the Beneficiary;

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AND WHEREAS the Trustee has agreed to hold those Beneficiary Shares in trust and not to use them or deal with them in any way other than to hold them as Trustee;

AND WHEREAS the Beneficiary has agreed to indemnify the Trustee for any losses which the Trustee may incur as a result of his holding these Beneficiary Shares in trust;

NOW THIS AGREEMENT WITNESSETH THAT in consideration of the covenants and agreements hereinafter set forth and for other good and valuable consideration the receipt of sufficiency whereof the parties hereby acknowledge, the Beneficiary and the Trustee do hereby covenant and agree as follows:

- 1. The recitals set out above are true and correct and form a part of this bare trust agreement.
- 2. The Trustee acknowledges that it holds the Beneficiary Shares as bare trustee for and on behalf of the Beneficiary solely in its capacity as trustee for the Beneficiary and only the person beneficially interested in and entitled to the said Beneficiary Shares held in trust and that all attributes of beneficial ownership shall be and remain in the Beneficiary.
- 3. The Trustee agrees to hold the said Beneficiary Shares for and on behalf of the Beneficiary to deal with only as specifically directed by the Beneficiary in writing and that it will do no act relating to the said Beneficiary Shares without the express authorization and direction of the Beneficiary in writing.
- 4. The Trustee acknowledges and agrees that all income, profit, dividends or other receipts of any nature or kind arising from the Beneficiary Shares or the use thereof shall belong legally and beneficially to the Beneficiary so long as the Beneficiary retains its interests in the Beneficiary Shares and that the Trustee has no legal or beneficial interest in the said funds. The Trustee shall, upon the request of the Beneficiary promptly remit to the Beneficiary all such funds that may be received. All such funds

(Handwritten initials)

shall not be included in the income of the Trustee, but shall be included in the income of the Beneficiary or as he may direct.

5. The Trustee shall incur no liability to any party for making such remittances as directed and such remittances shall be treated as expenses by and for the account of the Beneficiary in connection with the Beneficiary Shares and shall not be considered as an expense of the Trustee nor shall the Trustee be entitled to claim any allowance against its income in respect of such payments as may have been made by it in connection with the administration of the Beneficiary Shares.

6. The Trustee shall, at the request and expense of the Beneficiary account to the Beneficiary for all sums received and remitted with respect to the Beneficiary Shares.

7. The Trustee shall promptly deliver to the Beneficiary all documents, instruments or other information with respect to the Beneficiary Shares together with all recording information relative thereto, to the extent that it may come into the possession of the Trustee and it is requested by the Beneficiary.

8. The Trustee shall promptly transmit to the Beneficiary copies of all notices, claims, demands, or other communications which the Trustee may receive and which relate in any way to the Beneficiary Shares.

9. The Trustee, upon the request of the Beneficiary, shall be a nominal party to any action in response to or as a consequence of any matter affecting the Beneficiary Shares. Any such action, proceeding, negotiation or other response shall be conducted by the Beneficiary with counsel selected by it and the Trustee shall not nor shall it be obligated to take any action itself, its only obligation being that of a nominal party thereto on the condition stated herein. The Beneficiary will be responsible for all costs related thereto.

10. The Trustee shall, at the sole discretion of the Beneficiary and from time to time make such payments on account of any liabilities that may from time to time arise with

respect to the Beneficiary Shares and in respect of all obligations assumed by it for and on behalf of the Beneficiary. The Trustee shall be indemnified by the Beneficiary from such obligations and from any and all loss, costs, claims or demands, arising from or out of its acting as trustee for the Beneficiary as aforesaid, save with respect to any such loss, claim or demand arising from the wilful default of the Trustee.

11. To the extent that the Beneficiary has advanced monies to or for the account of the Trustee in satisfaction of the Beneficiary's obligations to indemnify the Trustee as set forth herein, such payment shall be treated as expenses by and for the account of the Beneficiary in connection with the Beneficiary Shares and shall not be considered as part of the income of the Trustee nor shall the Trustee be entitled to claim any allowance against its income in respect of such payments as may have been made by it in connection with the administration of the Beneficiary Shares.

12. Upon demand by the Beneficiary, the Trustee shall assign, transfer and convey the Beneficiary Shares to the Beneficiary, at the cost and expense of the Beneficiary, or as the Beneficiary may otherwise direct and the full benefits of any such arrangements shall be assigned, transferred and conveyed to the Beneficiary and the Trustee shall execute all deeds, assignments or other instruments necessary to effectually complete such assignment, transfer and conveyance.

13. The Trustee has no active duties to perform in connection with the Beneficiary Shares except those set out herein and that all obligations, responsibilities, acts or omissions pertaining to the Beneficiary Shares shall be performed by or be the responsibility of the Beneficiary.

14. The Beneficiary hereby releases the Trustee from any and all liability that the Trustee may incur in respect of any action taken by the Trustee either pursuant to the authorization or direction of the Beneficiary or pursuant to the terms of this Agreement. The Beneficiary shall indemnify and hold the Trustee harmless from all costs, expenses, losses, damages, claims, demands and liabilities of whatsoever kind and character that

may arise out of any action taken by the Trustee either pursuant to the authorization or direction of the Beneficiary or pursuant to the terms of this Agreement.

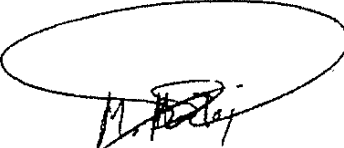
15. It is understood and agreed that the relationship between the Trustee and the Beneficiary is not one of partnership or joint venture.

16. Except as expressly herein provided, this Agreement shall inure to the benefit of and be binding upon the parties hereto their heirs, executors, administrators, successors, and permitted assigns.

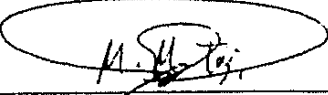
17. This trust shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein, and the situs of the trust shall be Ontario.

IN WITNESS WHEREOF the parties have duly executed this Agreement on the day, month and year above first written.

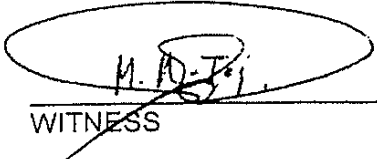
SIGNED, SEALED AND DELIVERED
in the presence of




WITNESS




WITNESS



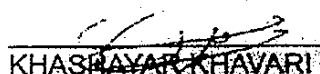
WITNESS



MIZRAHI ENTERPRISES INC.



NORTHERN CITADEL CAPITAL INC.



KHASRAYAN KHAVARI

TRUST AGREEMENT

ADDENDUM TO THE TRUST AGREEMENT DATED OCTOBER 11, 2011 BETWEEN MIZRAHI ENTERPRISES INC. AND KHASHAYAR KHAVARI

THIS ADDENDUM CONFIRMS THAT THE TRUSTEE HAS INCORPORATED BARE TRUSTEE CORPORATION IN THE FOLLOWING NAMES RELATING TO THE FOLLOWING PROPERTIES:

1. 1834369 ONTARIO INC'S BARE TRUSTEE CORPORATION IS NAMED MIZRAHI DEVELOPMENT GROUP (131 HAZELTON) INC. IN REGARDS TO 131 HAZELTON
2. SOARING MIZRAHI DEVELOPMENTS INC'S BARE TRUSTEE CORPORATION IS NAMED MIZRAHI DEVELOPMENT GROUP (133 HAZELTON) INC IN REGARDS TO 195 DAVENPORT RD.
3. MIZRAHI DEVELOPMENT GROUP (185 DAVENPORT) INC IN REGARDS TO 185 DAVENPORT RD. IS A NEW COMPANY THAT IS ADDED TO THE SAME TERMS AND CONDITIONS AS THE ORIGINAL COMPANIES IN THE TRUST AGREEMENT DATED OCTOBER 11 2011.
4. MIZRAHI SOARING DEVELOPMENTS INC'S BARE TUSTREE CORPORATION IS NAMED MIZRAHI DEVELOPMENT GROUP (145 DAVENPORT) INC IN REGARDS TO 145 DAVENPORT RD.

IN ADDITION, THE BENEFICIARY AUTHORIZES THE TRUSTEE TO PROCEED FOR WORKING CAPITAL REQUIREMENTS AND CONSTRUCTION FINANCING FOR THE PROJECTS TO PROCEED WITH THE EXECUTION AND SIGNING OF THE TRUSTEES GURANTEES BOTH CORPORATE AND PERSONAL FOR THE NECESSARY LOANS AND REGISTRATIONS REQUIRED.

IN WITNESS WHEREOF THE PARTIES HAVE DULY EXECUTED THIS ADDENDUM ON THE 5TH DAY OF DECEMBER 2011.

SIGNED, SEALED AND DELIVERED
IN THE PRESCENCE OF



WITNESS


MIZRAHI ENTERPRISES INC.


NORTHERN CITADEL CAPITAL INC.


KHASHAYAR KHAVARI

WATERHOUSECOOPERS INC.
nt

-and- NORTHERN CITADEL CAPITAL INC. et al.
Respondents

F34

Court File No. CV-22-006852-0

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**MOTION RECORD OF THE
NON-PARTY KHASAYAR KHAVARI**

ADAIR GOLDBLATT BIEBER LLP

95 Wellington Street West
Suite 1830, P.O. Box 14
Toronto ON M5J 2N7

Simon Bieber (56219Q)

Tel: 416.351.2781

Email: sbieber@agblp.com

Sean Pierce (78100M)

Tel: 647.237.3314

Email: spierce@agblp.com

Tel: 416.499.9940

Lawyers for the Non-Party Khashayar Khavari

F11