

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

B E T W E E N:

CONSTANTINE ENTERPRISES INC.

Applicant

- and -

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

Respondents

**REPLY AFFIDAVIT OF ROBERT HISCOX
(sworn December 22, 2025)**

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

I. OVERVIEW

1. I am the co-founder and Chief Executive Officer of Constantine Enterprises Inc. ("**CEI**"), the applicant in the within proceedings. As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

2. Capitalized terms used in this affidavit and not otherwise defined have the meanings given to them in my affidavit sworn on October 29, 2025 (the "**First Hiscox Affidavit**").

3. I swear this affidavit in reply to the Affidavit of Sam Mizrahi sworn November 28, 2025 (the “**Mizrahi Affidavit**”), delivered in response to a motion brought by KSV Restructuring Inc., as receiver and manager (in such capacity, the “**Receiver**”) over the Property of Mizrahi (128 Hazelton) Inc. (“**Hazelton**”) and Mizrahi 128 Hazelton Retail Inc., seeking, among other things, judgment as against Mizrahi Inc. (“**MI**”) and Sam Mizrahi (“**Mizrahi**”) in the amount of \$1,564,322 for breaches of contract and fiduciary duty, returnable February 4, 2026 (the “**Breach of Fiduciary Duty Motion**”).

II. ONE-OFF AUTHORIZATION FOR MI TO ENGAGE CLARK CONSTRUCTION MANAGEMENT

4. Mizrahi implies at paragraphs 17 and 49 of the Mizrahi Affidavit that CEI’s (and my) approval of MI’s retention of Clark Construction Management (“**CCM**”) evidenced CEI’s expectation that MI would directly retain contractors, including after the October 2020 transition from CCM to MI as construction manager.

5. As set out at paragraphs 2.2.4 and 2.2.6 of the Fifth Report of the Receiver dated July 16, 2025 (the “**Fifth Report**”), the CMA does not contemplate MI retaining third-party contractors.

6. In reliance on Mizrahi’s representation that subcontracting construction management and labour to a third-party manager was MI’s standard approach and would advance construction consistent with the CEI-approved timelines and budget, I verbally agreed in advance and on a one-off basis to MI retaining CCM. MI retained CCM from July 2017, approximately three months after entering into the CMA, until October 30, 2020. The Construction Management Agreement between MI and CCM (the “**CCM Contract**”) is attached as Exhibit “F” to the Mizrahi Affidavit. A copy of the termination notice issued by MI to CCM is attached hereto as **Exhibit “A”**.

7. My understanding is that for the entire duration of CCM's contract, MI submitted CCM's original labour invoices to Hazelton for payment without mark-up and MI would pay the balance of CCM's fee from the construction management fee paid by Hazelton to MI.

8. My (and CEI's) approval on behalf of Hazelton for MI to retain CCM was not blanket consent for MI to retain other contractors, charge marked-up labour, or alter the CMA, nor did it change CEI's expectation that MI would not directly retain contractors.

III. MI REPRESENTED IT REPLACED CCM PRIMARILY TO REDUCE LABOUR COSTS

9. In August 2020, MI proposed transitioning CCM's construction management and labour services to MI by the end of October 2020, representing that the primary purpose was to reduce costs, particularly labour.

10. On August 26, 2020, MI's Mark Kilfoyle ("**Kilfoyle**") emailed Chris Donlan of CEI ("**Donlan**") and myself (the "**August 26, 2020 Email**") a general expenses budget workbook comparing financial projections using CCM and MI (the "**August GE Budget**"). A copy of the email and the August GE Budget is attached hereto as **Exhibit "B"**.

11. In the email, Kilfoyle stated:

- (a) the CCM projection for general expenses was \$1.1 million higher than MI's; and
- (b) continued use of CCM beyond February 2021 would be an additional \$100,000 of costs per month versus MI.

12. Kilfoyle also stated "major assumptions" for the MI projections, including:

- (a) MI's estimate used union labour, with potential additional savings of \$7,500 per month for 5 months (totalling \$37,500) if non-union labour were used; and

(b) staffing levels and experience were generally the same between MI and CCM.

13. A side-by-side of the August GE Budget showed that nearly all the roughly \$1 million in projected savings derived from “General Conditions” (reflecting \$296,218 in savings) and “Site Labour” (reflecting \$740,789 in savings). General Conditions represents expenses such as overhead labour like a site manager and non-labour costs of operating a site office, with Site Labour representing the labour provided by CCM or MI, as applicable. A copy of the side-by-side is attached hereto as **Exhibit “C”**.

14. Late-October 2020 correspondence ahead of the transition likewise framed cost savings as the primary rationale. For example, in Kilfoyle’s October 27, 2020 email (the “**October 27, 2020 Email**”), attached as Exhibit “K” and referenced at paragraphs 41-42 of the Mizrahi Affidavit, he reiterated points made in the August 26, 2020 Email, including:

- (a) the \$1.1 million CCM versus MI differential;
- (b) the estimate is based on using union labour; and
- (c) staffing levels and experience were generally the same between MI and CCM.

15. The revised October 27, 2020 GE budget (the “**October GE Budget**”) attached to the October 27, 2020 Email reflected similar savings, with labour as the principal driver.

16. Those savings were incorporated into the October 2020 cash flow (the “**October 2020 Cash Flow**”) sent with Kilfoyle’s October 28, 2020 email (the “**October 28, 2020 Email**”), as further described below. The October 2020 Cash Flow is described at paragraph 43 of the Mizrahi Affidavit and attached as Exhibit “L” thereto.

IV. MI FAILED TO DISCLOSE ITS CONFLICT OF INTEREST

17. I disagree with Mizrahi's implication at paragraphs 46, 50, and 54-56 of the Mizrahi Affidavit that CEI authorized MI's labour rates because they matched CCM's time-based rates and because MI purportedly used those rates in the October GE Budget and October 2020 Cash Flow while providing the same services as CCM.

18. Mizrahi's statements ignore that

- (a) MI misled CEI and concealed a conflict of interest, expecting to extract more than \$1 million in additional profits (the "**MI Hidden Profits**") beyond compensation under the CMA; and
- (b) CCM and MI had different compensation structures, with CCM's time-based labour rates forming part of CCM's fee under the CCM Contract, but not part of MI's.

19. As described at paragraph 2.3.5-2.3.7 of the Fifth Report, the MI Hidden Profits arose from MI charging: (a) higher regular hourly rates than CLM charged MI; (b) overtime rates 50% above already inflated regular rates, even though CLM charged no overtime; and (c) more hours than CLM billed MI.

20. Mizrahi's explanation at paragraphs 52-53 of the Mizrahi Affidavit for charging overtime and more hours than CLM is incomprehensible.

21. MI did not pay CLM for overtime. Also, in my experience, trades issue invoices on a regular basis and are paid on those invoices without any need for reconciliations; I am unaware of circumstances where owners/managers estimate payments each month over multiple years with reconciliation only at project end.

22. The October 28, 2020 Email included the October 2020 Cash Flow, setting out cash needs through completion based on MI replacing CCM, and detailed major assumptions and variance explanations relative to the September 2020 cash flow.
23. The October 2020 Cash Flow forecasted construction management fees of \$1,965,068 (per worksheet "1.2 Variance Analysis Detail", cell E47) (the "**MI Construction Management Fee**"), summarized trade costs at worksheet "4.1 Trades Forecast" and provided 32 individual trade worksheets with approved/pending costs for the applicable trade.
24. The October 2020 Cash Flow did not list CLM as a trade or itemize forecasted payments to CLM, and MI never disclosed such forecast to CEI.
25. On December 18, 2020, David Ho of CEI ("**David**") emailed MI running minutes of CEI-MI project meetings. A copy of David's email is attached hereto as **Exhibit "D"**.
26. Those minutes show MI's incomplete disclosures concerning the transition. The relevant excerpts are as follows (emphasis added):

2. Clark Construction Management Plan:

The week of Oct 26th MIZ provided a transition Plan. CEI agreed to MIZ recommendation to remove CCM from the Project

However, the *Transition Plan due to CEI on Oct 27th was incomplete...*

On Friday Oct 30th Mark /Josh and Esteban to provide a transition plan for CCM replacement on by Tuesday NOV 3rd with details on showing:

- over 1 million in cost savings by MIZ taking over the Clark's work and a clear schedule acceleration for turning over the units to the Buyers

- *Josh and Esteban to provide justification and rationale for CCM's removal at 128 Hazelton Site only Not provided yet ... Josh to provide outstanding information*

...

As of the meeting on NOV 6th the above is still outstanding and MIZ is now saying that CEI will receive this information on Nov. 10th

- *This information was not received.*

5. 128 HAZ budget and schedule update

...

Mark to provide an updated project financial report by Wednesday Nov 4th not received now says Nov 12th. *Details to include monthly cash flow showing sources/uses of cash and timing/amounts of disbursements to CEI for principal and interest owing. Major assumptions like office construction costs and Berry unit re-sale to be documented for review/agreement by project ownership.*

...

27. The minutes and related reporting did not disclose MI's retention of CLM or any invoice mark-ups.

28. Contrary to paragraph 49 of the Mizrahi Affidavit, MI concealed that it would:

- (a) subcontract labour to CLM;
- (b) charge CCM-equivalent time-based rates despite paying CLM much lower rates;
- (c) charge overtime when CLM did not;
- (d) charge for hours in excess of CLM's charged hours; and
- (e) realize the MI Hidden Profits.

29. Including the MI Hidden Profits, MI's implied fee was 50% higher than represented in the October 2020 Cash Flow (i.e. the MI Construction Management Fee of approximately \$1.9 million from March 2017 to March 2023, being the last month of projections in the October GE Budget, plus about \$1 million in MI Hidden Profits from November 2020 to November 2022).

30. Under section 7 of the DMA, MI was to exercise its duties "in a reasonable commercial manner and in the best interest of [Hazelton]." MI's undisclosed mark-ups yielding over \$1 million in additional profit were neither commercially reasonable nor in Hazelton's best interest.

31. Given the benefit to MI, the CMA and DMA terms, and the relationship between MI and CEI, I expected transparent disclosure through:

- (a) the major assumptions in the August 26, 2020 Email, October 27, 2020 Email or October 28, 2020 Email;
- (b) the Transition Plan (attached as Exhibit "J" to the Mizrahi Affidavit);
- (c) the meetings leading up to the transition; or
- (d) a response to David's October 28, 2020 email (Exhibit "M" to the Mizrahi Affidavit) noting CEI's understanding that MI "will continue to seek all opportunities to improve schedule and cost savings to substantial completion."

32. No such disclosure was provided.

33. Although MI and CEI agreed in late October 2020 to replace CCM, MI did not disclose that it was marking up labour rates until May 2022, and only in response to outstanding MI invoices that MI said urgently needed to be paid and for which I required back-up to approve.

34. Internal MI e-mails (attached as Exhibit "P" to the Mizrahi Affidavit) show MI considered, but chose against, transparency concerning mark-ups and CLM subcontracting. On May 5, 2022, Kilfoyle requested labour rates and the related contract and noted payment would follow if I received them:

Can someone send me the contracted rates and the contract for 128 which shows the rates for labour.

If Robert gets this he will pay the MI cheque.

Best regards
Mark

35. MI's Joshua Lax ("**Lax**") appears to have attached the CCM time-based labour rate sheet and responds as follows:

These are the rates from the original CCM contract. The project has a contract with MI. MI previously had a contract with CCM and then took over that role directly.

Sam – What do you want to share?

36. No response from Mizrahi is included.

37. In response to receiving the rate sheet from Kilfoyle on May 6, 2022 (Exhibit "Q" to the Mizrahi Affidavit), Donlan replies on May 6, 2022 (Exhibit "R" to the Mizrahi Affidavit) expressing continuing concern with MI's lack of transparency regarding labour mark-ups and MI's related profits.

38. Despite repeated requests for back-up, MI did not disclose the terms of its engagement with CLM or CLM's underlying invoices evidencing the extent of the mark-ups.

39. As set out at paragraphs 20-22 and 30 of the First Hiscox Affidavit,

(a) I approved invoices to avoid construction delay costs; and

(b) CEI learned through its own efforts on March 22, 2023 that MI used CLM and what CLM's rates were.

40. Given the mounting costs and projected losses for the Hazelton Project, and MI's cost-savings rationale for replacing CCM, CEI would not have agreed to the CCM to MI transition on the basis of the October GE Budget and October 2020 Cash Flow had MI disclosed the MI Hidden Profits, particularly as MI's compensation was already increasing due to additional project costs, as provided in the variance analysis in the October 28, 2020 Email.

41. CEI understood that MI's engagement terms, including compensation and reimbursable expenses, remained governed by the CMA. No new agreement was entered into. The CMA states that it is the entire agreement between the parties and requires any change to services be recorded in writing (see paragraph 2.2.6 of the Fifth Report and Section 5.2 of the General Conditions to the CMA).

42. Section 1.3.2 of the General Conditions also includes a no-waiver clause:

No action or failure to act by [Hazelton] or [MI] shall constitute a waiver of any right or duty afforded [*sic*] either of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

43. Hazelton (or CEI) never provided written approval or waiver authorizing MI to retain CLM or mark up labour, which the CMA did not permit or contemplate.

V. MI'S UNAUTHORIZED MARK-UPS UNILATERALLY INCREASED ITS CONSTRUCTION MANAGEMENT FEES

44. The CMA and the CCM Contract expressly set out the terms for compensation, summarized as follows:

Provision	CMA	CCM Contract
Section 5.2: Construction Manager's Fee	5% of the Construction Costs and an amount based on the time-based rates for personnel employed by the Construction Manager as described in Schedule C (set out at page 144 of the Receiver's motion record dated July 18, 2025).	2% of the Construction Costs and an amount based on the time-based rates for personnel employed by the Construction Manager as described in Schedule C and set forth in Appendix A (set out at page 216 of Mizrahi's motion record dated November 28, 2025 (" MI's Motion Record ").
Section 5.3: Reimbursable Expenses	15% administrative charge above actual expenses specified in Schedules A2 and B2.	2% administrative charge above actual expenses specified in Schedules A2 and B2

Provision	CMA	CCM Contract
	Schedules A2 and B2 do not include fees charged by contractors for construction-related work.	Schedule A2 incorporates by reference Appendix B which includes as reimbursable expenses, among others, the salaries, wages, assessments and benefits for CCM's personnel at the time-based rates described in Schedule C and set forth in Appendix A.

45. Other than with respect to CCM's time-based labour (which Hazelton paid to CCM as set out at paragraph 7 above), MI paid CCM its construction management fee out of MI's construction management fee such that the Hazelton Project incurred a total construction management fee equal to approximately 5% of construction costs.

46. Although both managers used time-based personnel rates, their fee structures were materially different. Part of CCM's fee was embedded in its time-based rates, whereas MI could not mark up labour and instead received a higher percentage fee plus administrative charge on specified reimbursables.

47. Mark-ups on time-based labour functionally increased the construction manager's fee. Where labour is not an express fee component, undisclosed mark-ups surreptitiously increase that fee.

48. Under the CMA, the time-based labour rates were not part of MI's fee (other than for the five individuals set out in Schedule C of the CMA), and fees charged by CLM were not reimbursable expenses subject to the 15% administrative charge under Schedules A2 and B2 (see paragraphs 2.2.3 and 2.3.9 of the Fifth Report).

49. As set out at paragraph 2.3.4 of the Fifth Report, MI did not forward CLM invoices for payment (with or without a fee); instead, MI invoiced without attributing CLM and charged an aggregate mark-up (including charging more hours than CLM billed) of 166%, as shown below

using the amounts in the invoice summary attached as Appendix K to the Fifth Report, with a “mark-up” column added to show the MI labour mark-up on a percentage basis:

Period	CLM Invoices A	MI Site Labour Invoices B	Mark-up (B-A)/A
Nov 7 – Dec 31, 2020	42,133	105,696	151%
Jan 1 – Dec 31, 2021	372,038	976,074	162%
Jan 1 – Nov 12, 2022	226,818	593,540	162%
Construction Invoice	-	30,000	N/A
Total	640,989	1,705,310	166%

50. I disagree with Mizrahi’s suggestion at paragraph 54 of the Mizrahi Affidavit that CEI agreed MI would supply labour at CCM’s time-based labour rates. CEI did not agree to MI’s excessive mark-ups. MI was already compensated under the CMA; time-based labour (other than for the five individuals set out in Schedule C of the CMA) was not part of MI’s compensation. There was no basis for MI to increase its fee, especially given delays, expected losses, and MI’s stated cost-savings rationale for the CCM to MI transition.

51. Given the extent of the mark-ups, it is unsurprising MI withheld the CLM invoices from CEI.

52. MI did not disclose its labour rates until May 2022, eighteen months post-transition, and the scale of the embedded mark-up was not revealed until March 2023 after repeated CEI requests; even then MI provided only one CLM invoice. As stated at paragraph 34 of the First Hiscox Affidavit, I learned the full extent of MI’s mark-ups upon reviewing the Fifth Report.

VI. CEI DID NOT AUTHORIZE MI’S EXCESSIVE MARK-UPS

53. Mizrahi asserts at paragraphs 57 and 65 of the Mizrahi Affidavit that CEI authorized MI’s marked-up labour costs because MI disclosed in May 2022 that its rates matched CCM’s, and I thereafter signed cheques.

54. I signed certain cheques to avoid delay costs, not to authorize mark-ups. As set out at paragraph 39 above and at paragraphs 21–22 of the First Hiscox Affidavit, I did so reluctantly to and on the understanding that the rates were high due to the labour force being unionized employees of MI, not due to the fees being marked up. CEI consistently contested the labour charges and repeatedly requested support from MI.

55. I also disagree with the implication at paragraphs 26-28 of the Mizrahi Affidavit that CEI's role in construction draws, the Altus reports (Exhibits "I1"–"I31" to the Mizrahi Affidavit), or DUCA Financial Service Credit Union Ltd.'s ("**DUCA**") funding evidenced authorization or safe harbour for MI's mark-ups.

56. MI was entitled or not entitled to payments based on the CMA. DUCA's funding decisions, and the related reporting prepared by Altus, did not alter the contractual arrangement between Hazelton and MI. As set out in the Commitment Letter between DUCA and Hazelton (the "**DUCA Commitment Letter**"), in subsection (11) of the Conditions Precedent to All Advances, the construction draw process and Altus reports were for the sole benefit of DUCA and intended to facilitate DUCA's decision to advance funds (or not) to Hazelton, not create or change the CMA payment terms. A copy of the DUCA Commitment Letter is attached hereto as **Exhibit "E"**.

57. Similarly, I disagree with the assertion at paragraphs 73-80 of the Mizrahi Affidavit. Including MI's outstanding labour invoices in the cash flow provided to Third Eye Capital demonstrates that those amounts were listed in Hazelton's books as accounts payable, not that CEI agreed to them.

58. Such deemed authorization was impossible absent the disclosure I expected from MI.

VII. MIZRAHI'S CLAIMED BELIEF THAT THE LABOUR WAS UNIONIZED IS EITHER NEGLIGENT OR NOT CREDIBLE

59. At paragraph 81 of the Mizrahi Affidavit, Mizrahi concedes that MI represented to CEI that the MI labour was unionized. As described above, these representations were made in (i) the August 26, 2020 Email (Exhibit "B" hereto), (ii) the Transition Plan (Exhibit "J" to the Mizrahi Affidavit), (iii) the October 27, 2020 Email (Exhibit "K" to the Mizrahi Affidavit) and (iv) March 2023 meetings described at paragraphs 24 and 28 of the First Hiscox Affidavit. MI relied on the purported union status to justify its labour rates.

60. For example, in the October 27, 2020 Email, Kilfoyle wrote:

Mizrahi estimate is using union labour. If we use non-union we will save an additional \$7,500 per month for 5 months - \$37,500. However this has risks in that union workers might shut or slow down the site.

61. Mizrahi similarly states at paragraphs 85 and 86 of the Mizrahi Affidavit that he would not have agreed to non-union labour given risks of unionization and that MI has always retained third-party providers to supply unionized labour given a 2014 unionization application against Mizrahi Developments Inc. ("**MDI**").

62. Notwithstanding those concerns, MI appears to have failed to (i) verify CLM's union status before November 2025; (ii) enter into a written contract with CLM; or (iii) investigate why CLM's costs were substantially lower than CCM's purported market rates for unionized labour (per paragraph 24 of the Mizrahi Affidavit) or the rates in the March 14, 2023 email from Esteban Yanquelevech attached as Exhibit "C" to the First Hiscox Affidavit (and defined therein as the Breakdown Email).

63. I believe MI understated non-union labour savings to justify continued mark-ups by attributing higher costs to unionization, including in the August 26, 2020 Email, October 27, 2020

Email, Breakdown Email and March 16, 2023 meeting (described at paragraph 23 of the First Hiscox Affidavit).

64. Based on MI Hidden Profits of \$1,064,322, using non-union labour with no mark-up, consistent with the CMA, Hazelton would have saved approximately \$44,346 per month between November 2020–November 2022 (being the 24 months period MI labour invoices were paid per Appendix K to the Fifth Report), approximately six times the \$7,500 per month savings represented by MI.

VII. THE RECEIVER IN “THE ONE” HAS ALSO CHALLENGED MI’S PAYMENT PRACTICES

65. I understand from CEI’s counsel, Cassels Brock & Blackwell LLP, that MI’s payment practices, including excessive mark-ups for project labour, are also at issue in a motion by the Court-appointed receiver in receivership proceedings for “The One,” (a large Mizrahi Group development project located at 1 Bloor Street West—at the corner of Yonge Street and Bloor Street—in Toronto) initially Court File No. CV-23-00707839-00CL, later converted to CCAA proceedings as Court File No. CV-25-00740512-00CL, in each case before the Ontario Superior Court of Justice (Commercial List). The motion was heard earlier this year and remains under reserve.

66. MI also used CCM at The One and terminated CCM shortly before doing so on the Hazelton Project; MI cited the termination at The One in support of transitioning the Hazelton Project from CCM to MI (as I understand from the statement in the October 27, 2020 Email attached as Exhibit “K” to the Mizrahi Affidavit that “Mizrahi has terminated CCM on Bloor”).

67. I am concerned that coordinated CCM terminations across projects were intended, in part, to generate significant profits for MI at partners’ expense.

VIII. MI BREACHED THE DMA

68. Mizrahi does not deny MI breached the DMA; rather, at paragraphs 93 and 94 of the Mizrahi Affidavit, he argues that the breaches do not oblige MI to return development fees because CEI blocked refinancing efforts.

69. I disagree. CEI was not obligated to obtain financing or accept MI-proposed financing on terms not reasonably acceptable to CEI (or Hazelton).

70. MI's breaches pre-dated the November 2023 Third Eye Capital refinancing proposal (the "**TEC Refinancing**"), including due to the MI Hidden Profits. MI seeks to blame CEI's refusal to accept an eleventh-hour mitigation plan.

71. At paragraphs 98-106 of the Mizrahi Affidavit, MI asserts CEI should have approved the TEC Refinancing. CEI rejected it because, among other things:

- (a) MI would not enter into a CEI required guarantee and indemnity, contribution or other global settlement agreement that gave CEI assurance that MI would share equally in the burden of satisfying the obligations under the TEC Refinancing;
- (b) the TEC Refinancing terms were materially more expensive than DUCA's and CEI was unwilling to assume those terms given the Hazelton Project's financial outlook;
- (c) additional covenants and restrictions appeared that were absent from the November 21, 2023 proposal;
- (d) myself, Mr. Edward S. Rogers III and CEI were unwilling to provide the required Third Eye Capital guarantees;

- (e) the TEC Refinancing imposed a postponement, subordination, and standstill of claims between the “Credit Parties” in respect of the other “Credit Parties”. The Credit Parties were defined to include CEI, Mr. Rogers, myself, Mizrahi, MDI and Hazelton. At the time, CEI was considering its options with respect to claims against Mizrahi and entities related to him, including with respect to loans that had come due on August 31, 2022, for which CEI had sent demands and notices of intention to enforce security pursuant to the *Bankruptcy and Insolvency Act* (Canada). None of CEI, Mr. Rogers, or myself, were willing to agree to a standstill on our claims against Mizrahi and MDI; and
- (f) The One had only weeks earlier been put into receivership. One of the events of default in the non-binding proposal with TEC was the insolvency of a credit party, including Mizrahi. I was aware from the court filings that Mizrahi had personally guaranteed the defaulted debt on The One, and the amount owing was asserted to be over \$1,000,000,000. CEI was concerned that receivership with respect to The One could trigger a default under the TEC Refinancing.

72. CEI communicated certain of these issues to MI, including in my February 12, 2024 email at pages 4168-4171 of MI’s Motion Record.

73. I also disagree with paragraph 112 of the Mizrahi Affidavit asserting MI’s failure to keep costs within the DMA “Budget” was not a termination ground, citing Altus-reported changes due to delays, COVID-19 costs, and financing issues.

74. The DMA defines “Budget” as “the budget and report issued by Altus Group Limited on April 24, 2015, as amended from time to time with the prior written approval of [CEI]”. Formal amendments to the budget were not agreed to in writing for purposes of each Altus report; rather,

the MI team would send the Altus reports to CEI after they were prepared. There is no evidence in the Mizrahi Affidavit demonstrating CEI's written approval of budget amendments.

75. In any event,

- (a) the budget in the Altus reports did not include increases in CEI loan interest due to construction extensions, thereby understating costs; CEI questioned this practice, which was implemented at MI or DUCA's instruction, in an email between Donlan and Altus attached hereto as **Exhibit "F"**; and
- (b) the budget in the last Altus report (Exhibit "I31" of the Mizrahi Affidavit) of \$85,958,812 was exceeded as it was based on closing all units in the Hazelton Project in November 2022, while certain units continue to remain unsold as of the date of swearing this Affidavit (which is after the June 21, 2024 date of the Receiver's DMA termination letter to MI, attached as Appendix O to the Fifth Report)—despite the cost savings rationale, none ever materialized from the CCM to MI transition.

76. In reply to the allegations of self-dealing in paragraph 112 of the Mizrahi Affidavit, the Fresh as Amended Statement of Claim (the "**Fresh SOC**") will be vigorously defended and is the subject of a motion to strike. Neither Mizrahi nor MI has submitted any evidence to support Mizrahi's bald assertions. CEI and I deny that either of us has engaged in self-dealing. CEI and I have at all times acted in good faith in our dealings with Mizrahi and the other plaintiffs (128 Hazelton Retail Inc., Sam M (180 SAW) LP Inc., Sam M (180 SAW) Inc. and 1000041090 Ontario Inc., and collectively with Mizrahi, the "**Plaintiffs**").

77. The Fresh SOC relates to an action (the "**Mizrahi Action**") commenced by the Plaintiffs or about April 5, 2024 (and attached to Mizrahi's affidavit affirmed the same date in opposition to

the receivership application in the within proceeding (the “**Receivership Application**”)) alleging wrongdoing by the defendants CEI, Mr. Rogers and myself (collectively, the “**Defendants**”) in connection with the Hazelton Project and another development project located at 180 Steeles Avenue West in Toronto (the “**180 SAW Project**”). The original statement of claim in the Mizrahi Action was dated April 5, 2024 and was amended and re-issued on April 8, 2024 (the “**SOC**”).

78. Following the issuance of the receivership orders in this proceeding and in the receivership proceeding commenced by CEI against Sam M (180 SAW) LP Inc. and Sam M (180 SAW) Inc. in respect of their interests in the 180 SAW Project (which was heard at the same time as the Receivership Application), the Defendants brought a motion to strike the SOC on the ground that it disclosed no reasonable cause of action, among other reasons. Justice Cavanagh heard the motion to strike on April 17, 2025. On July 31, 2025, His Honour issued an endorsement striking the SOC with leave to amend. A copy of the endorsement is attached hereto as **Exhibit “G”**.

79. The Notice of Motion for the Defendants’ motion to strike the Fresh SOC was served on the Plaintiffs on December 17, 2025. The Notice of Motion is attached hereto as **Exhibit “H”**.

IX. CONCLUSION

80. I swear this reply affidavit in response to the Mizrahi Affidavit, and in support of the Receiver’s Breach of Fiduciary Duty Motion.

SWORN BEFORE ME by videoconference on December 22, 2025 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent and I were located in the City of Toronto in the Province of Ontario.



Jeremy Bornstein
LSO#: 65425C



ROBERT HISCOX

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

This is Exhibit “**A**” referred to in the Affidavit of Robert Hiscox sworn December 22, 2025. The affiant and I were located in the City of Toronto in the Province of Ontario. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to read "Bornstein", is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Commissioner Name: Jeremy Bornstein
Law Society of Ontario Number: 65425C



October 30, 2020

Clark Construction Management Inc.
387124 20th Sideroad
Mono, Ontario
L9W 6V5

Attention: Mike Clark

TERMINATION NOTICE RE 128 HAZELTON

Mizrahi Inc. hereby provides Notice of Termination of CCDC 5A regarding the 128 Hazelton project between Mizrahi Inc. and Clark Construction Management Inc., dated July 2017, as supplemented by the Supplementary Conditions (the “**Contract**”), effective today.

This Notice of Termination is delivered pursuant to section 6.1.10 of the Contract. Pursuant to that section, Mizrahi Inc. requires CCM to:

1. Cooperate with Mizrahi Inc. to achieve an orderly transition of the site;
2. Minimize costs to demobilize the site; and
3. Provide all project-related information, documentation, electronic equipment, and other assets to Mizrahi Inc.

Mizrahi Inc.’s transition team will meet with CCM’s team today to discuss these items.

Sincerely,

Sam Mizrahi
Mizrahi Inc.
President

This is Exhibit “**B**” referred to in the Affidavit of Robert Hiscox sworn December 22, 2025. The affiant and I were located in the City of Toronto in the Province of Ontario. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to read 'J. Bornstein', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Commissioner Name: Jeremy Bornstein
Law Society of Ontario Number: 65425C

Hoy, Alec

From: Mark Kilfoyle <mark@mizrahidevelopments.ca>
Sent: Wednesday, August 26, 2020 10:36 AM
To: ROBERT HISCOX
Cc: Chris Donlan
Subject: Fwd: 128 GE Cost Update
Attachments: GE BREAKDOWNAUGUST122020.xlsx

Good morning Robert,

I have walked Chris through the updated budget for GE showing the details of the GE-GC Budgets and Alternatives for 128. I think it would be better if the three of us had a conversation prior to the meeting on Friday, so that if you understand the numbers we can use Friday's meeting to discuss strategy rather than the numbers.

Let me know if you agree and I am free this afternoon after 1pm and all day tomorrow. Below is the preamble that I sent to Chris prior to us walking through these budgets.

PREAMBLE AND ALTERNATIVES

Please find attached the updated GE Budget workbook for 128 Hazelton, this currently shows three tabs with the following:

- The May Projection had GE budget of approximately \$8.6 million in total (see May GE Budget Tab)
- CCM's Current Projection shows a GE budget of approximately \$9.5 million an increase of almost \$0.85 million from the May projection (see Current GE Budget by CCM)
- Mizrahi Alternate Projection shows a GE budget of approximately \$8.4 million a decrease of \$0.2 million from the May and favourable to CCM by approximately \$1.1 million (Current Mizrahi Projection)

I also need to direct your attention to that issue that if potential delays continue, and the project stretches out past February having CCM team on site will increase the project by \$100K per month over using the Mizrahi alternative. Therefore for the same delivery if the project is delayed a further two months then there will be \$200K of additional costs to the project in GE costs compared with the Mizrahi alternative.

Major assumptions are as follows:

- Mizrahi estimate has CCM until the end of October
- Mizrahi estimate is using union labour. If we use non-union we will save an additional \$7,500 per month for 5 months - \$37,500
- All projections assume close out of all units by February 2021 + Tarion one year + Tarion two year + Bulletin 19
- Number of people between Mizrahi and CCM estimate are generally the same in terms of quantity and experience
- The costs of the hoist have been removed from both the CCM and Mizrahi estimate and replaced with Crane costs

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

GE Costs by Month

17-Mar 17-Apr 17-May 17-Jun 17-Jul 17-Aug 17-Sep 17-Oct 17-Nov 17-Dec 18-Jan 18-Feb

01 - General Conditions

01000 - General Conditions - Mizrahi

01016 - Cust Svc Office & Supplies

01020 - Site Survey, Layout & Equipment

01030 - Site Labour

01040 - Project Disbursements

01041 - Project Photographs

01042 - Couriers

01241 - Drawing Printing

01509 - Power Line Protection

01510 - Temp. Hydro - Connection Fee

01511 - Temp. Hydro - Consumption

01512 - Temp. Hydro Setup

01514 - Telephones & Radios

01515 - Temporary Water

01516 - Temp. Sanitary Facilities

01519 - Temp. Roads & Site Access

01520 - Temporary Stairs

01521 - Constructions Hoists

01530 - Hoarding / Container Rental

01541 - Security Guard / Site Cameras

01560 - Garbage Disposal

01570 - Traffic Control

01571 - Pest Control

01580 - Project Signage

01590 - Site Office & Shed Supplies

01591 - Street Cleaning

01614 - Large Equipment Rental

01617 - Small Equipment Rental

01619 - Site Safety Equipment

01620 - Safety Fence Rental

01850 - General Construction Supplies

01870 - Site Travel (Car, Repair, Fuel)

01899 - Winter Heating-Piping Distrib

01903 - Winter Heating-Fuel Consumption

01904 - Snow Removal

01918 - Site Safety Inspection

01920 - Floor Protection

01930 - Pay Duty Officers & Permits

01950 - Contingency

-	-	-	-	73,625	73,000	73,625	73,625	73,625	73,625	73,625	73,625	73,625
-	-	-	-	-	-	-	919	-	-	-	3,600	-
-	-	-	-	-	-	-	-	405	-	-	-	500
-	-	-	-	-	-	-	15,064	14,335	28,397	30,172	29,708	-
-	-	-	-	-	538	-	516	-	193	-	-	384
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	200	484	695	921	848	226	230	200	-
-	-	-	-	-	33,864	-	-	-	-	33,864	-	-
61,704	-	-	-	-	30,000	-	-	-	17,860	-	-	-
-	-	-	-	-	-	-	46	922	1,320	1,929	-	-
-	-	-	-	-	-	-	-	-	5,860	-	-	300
-	-	-	-	-	215	2,663	-	-	-	320	400	-
-	-	-	-	-	-	471	-	139	-	-	-	-
-	-	-	-	-	-	893	436	928	436	436	484	-
-	-	-	-	-	-	-	-	-	-	-	659	-
-	-	-	-	-	-	-	-	-	-	-	5,888	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	7,841	-	-	-	-	-	-	-	13,134	5,187	5,600	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	395	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	51	383	1,358	1,319	1,058	1,640	-
-	-	-	-	-	-	-	-	480	570	475	-	-
-	-	-	-	-	-	-	-	1,900	3,137	1,874	-	-
-	-	-	-	-	2,060	2,047	2,257	5,141	7,686	(2,084)	1,442	-
-	-	-	-	-	-	116	1,318	1,929	2,285	-	-	-
-	-	-	-	-	-	-	248	153	232	232	159	-
-	-	186	-	-	-	-	3,149	9,093	2,266	5,393	2,890	-
-	-	-	-	-	2,000	-	4,000	2,000	3,465	2,975	2,750	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	1,211	2,125	1,105	1,360	1,233	1,658
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-

Total

61,704	7,841	186	-	73,825	142,161	81,772	105,008	114,361	163,766	160,519	128,286
61,704	69,544.91	69,730.91	69,730.91	143,555.91	285,716.75	367,489.13	472,496.77	586,858.24	750,624.19	911,143.38	1,039,429.31

18-Mar 18-Apr 18-May 18-Jun 18-Jul 18-Aug 18-Sep 18-Oct 18-Nov 18-Dec 19-Jan 19-Feb 19-Mar 19-Apr

73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
45,739	43,891	34,532	46,600	47,609	51,626	57,410	43,178	61,456	57,218	35,697	67,066	33,335	47,653
82	376	-	-	-	3,450	3,361	(1,774)	-	356	-	5,274	724	3,503
-	-	-	-	275	-	-	-	1,400	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	387	-
200	200	200	340	212	214	215	352	265	211	364	403	325	418
-	-	-	-	-	-	28,479	-	-	-	-	-	28,479	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
397	925	1,062	463	394	594	201	830	908	2,375	3,119	2,526	3,142	2,533
300	990	2,000	4,190	10,385	1,500	3,440	-	-	-	-	-	-	-
400	400	400	400	400	400	400	400	500	500	500	500	500	500
478	3,550	-	-	163	-	-	-	27	-	-	22	-	-
-	367	367	170	254	1,085	1,546	1,430	-	2,175	5,256	1,710	3,027	2,395
5,965	2,875	100	-	-	-	1,961	-	-	654	-	-	-	4,415
7,408	-	-	-	-	-	-	1,759	1,993	13,550	5,306	3,860	3,860	14,260
-	-	-	-	-	-	-	-	-	9,028	50	-	16,500	-
5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600
-	-	-	-	-	-	-	-	1,839	9,781	11,223	10,513	10,910	3,825
986	-	-	-	-	1,155	2,480	318	3,231	7,835	3,775	4,333	6,369	7,183
-	-	-	-	-	2,000	-	-	-	108,339	12,101	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	395
-	-	-	-	-	-	-	-	-	-	-	-	-	-
6,128	3,500	3,702	2,776	1,235	1,177	2,315	1,869	9,804	2,099	10,088	3,917	2,894	2,418
-	-	-	-	-	-	-	-	435	-	-	-	-	-
-	937	-	8,302	-	5,484	-	-	-	-	-	-	606	444
2,358	-	2,248	2,248	9,234	4,181	24,831	5,241	6,043	14,499	7,637	3,705	6,024	13,142
1,285	460	-	2,577	1,438	-	-	-	-	-	-	-	-	-
2,199	300	687	949	339	1,644	529	529	529	-	1,311	2,111	3,460	4,972
7,906	3,800	-	1,033	11,517	3,345	2,124	1,027	5,092	-	2,994	3,341	2,523	1,696
2,750	2,750	2,750	2,750	2,750	2,750	2,750	2,750	2,750	2,750	2,875	3,284	2,875	3,154
-	-	-	-	-	-	3,662	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	2,400	-	-	-	(1,200)	-
2,347	4,566	2,508	1,876	2,848	2,550	2,386	5,483	4,226	5,058	10,163	-	4,867	5,363
-	-	-	-	-	-	-	-	-	-	-	-	-	-
980	-	-	-	2,368	408	-	-	-	-	-	-	-	1,143
-	-	-	-	-	-	-	-	-	-	-	-	-	-

167,133	149,110	129,780	153,898	170,644	162,789	217,315	142,617	182,123	315,653	191,684	191,790	208,832	198,635
1,206,562.23	1,355,672.68	1,485,452.45	1,639,350.89	1,809,995.20	1,972,784.64	2,190,099.14	2,332,716.06	2,514,839.41	2,830,491.93	3,022,175.82	3,213,965.66	3,422,797.97	3,621,433.35

										ACT	EST		
19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov	19-Dec	20-Jan	20-Feb	20-Mar	20-Apr	20-May	
73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	
-	-	-	-	-	-	-	-	-	-	-	-	-	
-	-	-	-	-	-	-	-	-	-	-	-	-	
48,130	51,482	39,150	65,173	51,783	53,897	61,119	40,687	46,824	81,472	131,611	70,946	70,946	
14,057	1,701	242	865	2,209	2,399	3,806	-	1,446	8,631	728	500	500	
-	-	-	-	-	-	-	-	-	-	-	-	-	
-	-	-	-	-	-	-	-	-	-	-	-	-	
200	200	200	200	233	316	200	200	311	200	200	200	-	
-	-	-	-	-	-	27,961	-	-	-	-	-	-	
-	16,155	-	-	-	-	-	-	-	3,095	-	-	-	
1,927	3,181	1,723	1,830	866	1,072	-	-	1,028	776	2,560	2,005	2,000	
-	-	-	-	-	-	-	-	-	-	-	-	-	
400	500	500	500	500	400	400	400	390	400	450	500	400	
-	-	80	-	-	105	-	-	-	(85)	(49)	-	-	
2,703	2,500	2,457	2,067	1,059	3,650	7,789	3,650	4,022	3,650	4,338	4,000	4,000	
-	-	8,586	1,762	-	-	-	2,228	-	-	-	-	-	
6,660	6,117	6,860	3,260	3,260	4,135	2,960	2,500	3,420	7,020	2,670	900	900	
-	45,150	12,790	4,390	4,390	4,390	4,390	4,390	4,390	4,390	4,592	4,483	750	
5,600	5,600	5,600	5,600	800	2,798	3,200	2,400	2,400	2,400	2,400	2,400	2,400	
2,250	2,250	2,250	4,500	2,250	2,250	2,250	14,430	16,845	16,642	17,940	14,385	-	
19,493	4,527	4,890	2,980	3,121	2,714	7,291	(8,318)	5,166	2,447	2,142	3,029	2,100	
125,144	11,701	-	-	-	-	-	-	-	-	-	-	-	
490	-	-	-	-	-	-	-	-	-	-	-	-	
-	-	243	-	-	-	-	-	-	-	-	-	-	
5,533	3,728	3,087	4,598	4,084	1,591	1,745	2,338	2,300	1,195	1,702	1,425	1,200	
-	-	-	-	-	-	-	-	-	-	-	-	-	
-	-	240	-	-	-	-	-	-	-	-	-	-	
9,144	9,665	8,694	15,421	8,128	10,633	25,324	21,569	11,884	15,086	8,925	5,565	2,000	
-	-	2,930	2,940	-	-	-	2,240	-	-	-	-	-	
7,414	5,023	10,154	5,086	2,246	30,744	3,152	3,262	2,613	2,262	2,262	1,952	2,000	
6,901	4,026	5,128	4,821	1,986	5,070	1,852	508	2,038	2,728	3,753	725	750	
3,164	3,164	3,163	3,164	3,164	3,164	3,164	3,164	3,164	3,164	3,323	3,307	2,500	
-	-	-	-	-	-	-	-	-	-	-	-	-	
28,649	-	(1,538)	(663)	-	(1,012)	(449)	4,632	8,775	7,417	5,735	6,821	-	
-	-	-	-	991	-	991	991	991	991	991	-	-	
6,600	5,440	5,568	5,015	4,633	4,973	5,633	4,939	4,655	7,992	5,434	5,440	2,500	
-	-	-	-	-	-	-	-	-	-	-	-	-	
5,716	2,531	7,472	-	1,259	-	-	2,183	-	-	-	-	-	
-	-	-	8,731	-	-	-	-	-	-	-	-	-	

373,801	258,266	204,092	215,864	170,587	206,911	236,402	182,018	196,286	245,496	275,332	202,208	168,571
3,995,234.42	4,253,500.69	4,457,593.01	4,673,456.68	4,844,043.43	5,050,954.71	5,287,356.70	5,469,374.26	5,665,659.97	5,911,156.14	6,186,487.89	6,388,695.95	6,557,266.95

20-Jun	20-Jul	20-Aug	20-Sep	20-Oct	20-Nov	20-Dec	21-Jan	21-Feb	21-Mar	21-Apr	21-May	21-Jun
		UNIT CLOSINGS						B19 and 1 YEAR TARIION				
73,626	73,625	54,488	54,488	54,488	54,488	54,488	54,488	36,325	36,325	36,325	36,325	14,530
-	-											
-	-											
70,946	70,946	70,946	70,946	70,946	70,685	70,685	70,685	70,685	48,694	48,694	48,694	48,694
500	500	500	500									
-	-											
-	-											
-	-											
-	-											
2,000	2,000	2,000	2,000	195	195	195	195	195	69	69	69	
-	-											
400	400	400	400	250	250	250	250	250	150	150	150	150
-	273											
4,000	4,000	1,390	1,390	1,390	1,390	1,390	1,390	1,390	450	450	450	450
-	-											
-	-											
750	750	750	750	750	750	750	750	750				
2,400												
-	-											
2,100	2,100	2,100	2,100	500	500	500	500	500	500	500	500	500
-	-											
-	-											
-	-											
1,000	1,000	750	500	250	250	250	250	250	250	250	250	250
-	-											
-	-											
2,000	2,000	1,000	1,000	250	250	250	250	250	250	250	250	250
-	-											
2,000	2,000	1,000	500									
750		750	750									
2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	1,000	1,000	1,000	1,000
-	-											
-	-											
-	-											
2,500	2,500	1,000	1,000									
-	-											
-	-											
-	-											
-	-				5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
167,472	165,344	139,574	138,824	131,519	136,259	136,259	136,259	118,096	92,689	92,689	92,689	70,825
6,724,738.67	6,890,082.38	7,029,656.59	7,168,480.79	7,300,000.00	7,436,258.56	7,572,517.13	7,708,775.69	7,826,871.52	7,919,560.35	8,012,249.18	8,104,938.01	8,175,762.56

21-Jul	21-Aug	21-Sep	21-Oct	21-Nov	21-Dec	22-Jan 2 YEAR TARION	22-Feb	22-Mar	22-Apr	22-May	22-Jun	22-Jul
14,530	14,530	7,265	7,265	6,668	6,668	6,668						
34,557	34,557	34,557	34,557	34,557	34,557	34,557	34,557	11,040	10,210	10,210	10,210	10,210
150	150	75	75	75	75	75	75	25	25	25	25	25
450	450	224	224	100	100	100	100	50	50	50	50	50
200	200	200	200	200	200	100	100					
100	100	100	100	100	50	50	50					
250	250	100	100	100	100	100	100	100	100	100	100	40
1,000	1,000	1,000	750	750	750	450	450	450	450	200	200	200
5,000	5,000	4,000										
56,237	56,237	47,521	43,271	42,550	42,500	42,100	35,432	11,665	10,835	10,585	10,585	10,525
8,232,000.04	8,288,237.51	8,335,758.89	8,379,030.28	8,421,580.66	8,464,081.04	8,506,181.42	8,541,613.71	8,553,278.82	8,564,113.92	8,574,699.03	8,585,284.14	8,595,809.25

22-Aug	22-Sep	22-Oct	22-Nov	22-Dec	TOTAL 20-Jul
					3,273,857
					4,519
					905
10,210	10,210	10,210	10,210	10,210	2,815,545
					56,069
					1,675
					387
					10,383
					152,647
					128,814
					51,835
					28,965
25	25	25	25	25	19,988
					5,173
50	50	50	50	50	91,056
					29,204
					108,545
					130,823
					156,160
					146,333
					103,941
					259,286
					885
					243
					100,405
					1,960
					22,923
40	40	40	40	40	281,968
					19,517
					104,253
					112,661
200	50	50	50	50	132,193
					3,662
					58,367
					7,145
					138,751
					-
					24,059
					62,731
10,525	10,375	10,375	10,375	10,375	8,647,835
8,606,334.35	8,616,709.46	8,627,084.57	8,637,459.68	8,647,834.79	(0)

GE Costs by Month

17-Mar 17-Apr 17-May 17-Jun 17-Jul 17-Aug 17-Sep 17-Oct 17-Nov 17-Dec 18-Jan

01 - General Conditions

01000 - General Conditions - Mizrahi

01016 - Cust Svc Office & Supplies

01020 - Site Survey, Layout & Equipment

01030 - Site Labour

01040 - Project Disbursements

01041 - Project Photographs

01042 - Couriers

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01509 - Power Line Protection

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01514 - Telephones & Radios

01515 - Temporary Water

01516 - Temp. Sanitary Facilities

01519 - Temp. Roads & Site Access

01520 - Temporary Stairs

01521 - Constructions Hoists

01530 - Hoarding / Container Rental

01541 - Security Guard / Site Cameras

01560 - Garbage Disposal

01570 - Traffic Control

01571 - Pest Control

01580 - Project Signage

01590 - Site Office & Shed Supplies

01591 - Street Cleaning

01614 - Large Equipment Rental

01617 - Small Equipment Rental

01619 - Site Safety Equipment

01620 - Safety Fence Rental

01850 - General Construction Supplies

01870 - Site Travel (Car,Repair,Fuel)

01899 - Winter Heating-Piping Distrib

01903 - Winter Heating-Fuel Consumption

01904 - Snow Removal

01918 - Site Safety Inspection

01920 - Floor Protection

01930 - Pay Duty Officers & Permits

01950 - Cash Allowances

-	-	-	-	73,625	73,000	73,625	73,625	73,625	73,625	73,625
-	-	-	-	-	-	-	919	-	-	3,600
-	-	-	-	-	-	-	-	405	-	-
-	-	-	-	-	-	-	15,064	14,335	28,397	30,172
-	-	-	-	-	538	-	516	-	193	-
-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	200	484	695	921	848	226	230
-	-	-	-	-	33,864	-	-	-	-	33,864
61,704	-	-	-	-	30,000	-	-	-	17,860	-
-	-	-	-	-	-	-	46	922	1,320	1,929
-	-	-	-	-	-	-	-	-	5,860	-
-	-	-	-	-	215	2,663	-	-	-	320
-	-	-	-	-	-	471	-	139	-	-
-	-	-	-	-	-	893	436	928	436	436
-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-
-	7,841	-	-	-	-	-	-	-	13,134	5,187
-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	395	-
-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	51	383	1,358	1,319	1,058
-	-	-	-	-	-	-	-	480	570	475
-	-	-	-	-	-	-	-	1,900	3,137	1,874
-	-	-	-	-	2,060	2,047	2,257	5,141	7,686	(2,084)
-	-	-	-	-	-	116	1,318	1,929	2,285	-
-	-	-	-	-	-	-	248	153	232	232
-	-	186	-	-	-	-	3,149	9,093	2,266	5,393
-	-	-	-	-	2,000	-	4,000	2,000	3,465	2,975
-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	1,211	2,125	1,105	1,360	1,233
-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-

Total

61,704	7,841	186	-	73,825	142,161	81,772	105,008	114,361	163,766	160,519
61,704	69,544.91	69,730.91	69,730.91	143,555.91	285,716.75	367,489.13	472,496.77	586,858.24	750,624.19	911,143.38

18-Feb 18-Mar 18-Apr 18-May 18-Jun 18-Jul 18-Aug 18-Sep 18-Oct 18-Nov 18-Dec 19-Jan 19-Feb

73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625
-	-	-	-	-	-	-	-	-	-	-	-	-
500	-	-	-	-	-	-	-	-	-	-	-	-
29,708	45,739	43,891	34,532	46,600	47,609	51,626	57,410	43,178	61,456	57,218	35,697	67,066
384	82	376	-	-	-	3,450	3,361	(1,774)	-	356	-	5,274
-	-	-	-	-	275	-	-	-	1,400	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
200	200	200	200	340	212	214	215	352	265	211	364	403
-	-	-	-	-	-	-	28,479	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	397	925	1,062	463	394	594	201	830	908	2,375	3,119	2,526
300	300	990	2,000	4,190	10,385	1,500	3,440	-	-	-	-	-
400	400	400	400	400	400	400	400	400	500	500	500	500
-	478	3,550	-	-	163	-	-	-	27	-	-	22
484	-	367	367	170	254	1,085	1,546	1,430	-	2,175	5,256	1,710
659	5,965	2,875	100	-	-	-	1,961	-	-	654	-	-
5,888	7,408	-	-	-	-	-	-	1,759	1,993	13,550	5,306	3,860
-	-	-	-	-	-	-	-	-	-	9,028	50	-
5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600
-	-	-	-	-	-	-	-	-	1,839	9,781	11,223	10,513
-	986	-	-	-	-	1,155	2,480	318	3,231	7,835	3,775	4,333
-	-	-	-	-	-	2,000	-	-	-	108,339	12,101	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
1,640	6,128	3,500	3,702	2,776	1,235	1,177	2,315	1,869	9,804	2,099	10,088	3,917
-	-	-	-	-	-	-	-	-	435	-	-	-
-	-	937	-	8,302	-	5,484	-	-	-	-	-	-
1,442	2,358	-	2,248	2,248	9,234	4,181	24,831	5,241	6,043	14,499	7,637	3,705
-	1,285	460	-	2,577	1,438	-	-	-	-	-	-	-
159	2,199	300	687	949	339	1,644	529	529	529	-	1,311	2,111
2,890	7,906	3,800	-	1,033	11,517	3,345	2,124	1,027	5,092	-	2,994	3,341
2,750	2,750	2,750	2,750	2,750	2,750	2,750	2,750	2,750	2,750	2,750	2,875	3,284
-	-	-	-	-	-	-	3,662	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	2,400	-	-	-
1,658	2,347	4,566	2,508	1,876	2,848	2,550	2,386	5,483	4,226	5,058	10,163	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	980	-	-	-	2,368	408	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-

128,286	167,133	149,110	129,780	153,898	170,644	162,789	217,315	142,617	182,123	315,653	191,684	191,790
1,039,429.31	1,206,562.23	1,355,672.68	1,485,452.45	1,639,350.89	1,809,995.20	1,972,784.64	2,190,099.14	2,332,716.06	2,514,839.41	2,830,491.93	3,022,175.82	3,213,965.66

19-Mar 19-Apr 19-May 19-Jun 19-Jul 19-Aug 19-Sep 19-Oct 19-Nov 19-Dec 20-Jan 20-Feb 20-Mar

73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
33,335	47,653	48,130	51,482	39,150	65,173	51,783	53,897	61,119	40,687	46,824	81,472	131,611
724	3,503	14,057	1,701	242	865	2,209	2,399	3,806	-	1,446	8,631	728
-	-	-	-	-	-	-	-	-	-	-	-	-
387	-	-	-	-	-	-	-	-	-	-	-	-
325	418	200	200	200	200	233	316	200	200	311	200	200
28,479	-	-	-	-	-	-	-	27,961	-	-	-	-
-	-	-	16,155	-	-	-	-	-	-	-	3,095	-
3,142	2,533	1,927	3,181	1,723	1,830	866	1,072	-	-	1,028	776	2,560
-	-	-	-	-	-	-	-	-	-	-	-	-
500	500	400	500	500	500	500	400	400	400	390	400	450
-	-	-	-	80	-	-	105	-	-	-	(85)	(49)
3,027	2,395	2,703	2,500	2,457	2,067	1,059	3,650	7,789	3,650	4,022	3,650	4,338
-	4,415	-	-	8,586	1,762	-	-	-	2,228	-	-	-
3,860	14,260	6,660	6,117	6,860	3,260	3,260	4,135	2,960	2,500	3,420	7,020	2,670
16,500	-	-	45,150	12,790	4,390	4,390	4,390	4,390	4,390	4,390	4,390	4,592
5,600	5,600	5,600	5,600	5,600	5,600	800	2,798	3,200	2,400	2,400	2,400	2,400
10,910	3,825	2,250	2,250	2,250	4,500	2,250	2,250	2,250	14,430	16,845	16,642	17,940
6,369	7,183	19,493	4,527	4,890	2,980	3,121	2,714	7,291	(8,318)	5,166	2,447	2,142
-	-	125,144	11,701	-	-	-	-	-	-	-	-	-
-	395	490	-	-	-	-	-	-	-	-	-	-
-	-	-	-	243	-	-	-	-	-	-	-	-
2,894	2,418	5,533	3,728	3,087	4,598	4,084	1,591	1,745	2,338	2,300	1,195	1,702
-	-	-	-	-	-	-	-	-	-	-	-	-
606	444	-	-	240	-	-	-	-	-	-	-	-
6,024	13,142	9,144	9,665	8,694	15,421	8,128	10,633	25,324	21,569	11,884	15,086	8,925
-	-	-	-	2,930	2,940	-	-	-	2,240	-	-	-
3,460	4,972	7,414	5,023	10,154	5,086	2,246	30,744	3,152	3,262	2,613	2,262	2,262
2,523	1,696	6,901	4,026	5,128	4,821	1,986	5,070	1,852	508	2,038	2,728	3,753
2,875	3,154	3,164	3,164	3,163	3,164	3,164	3,164	3,164	3,164	3,164	3,164	3,323
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	28,649	-	(1,538)	(663)	-	(1,012)	(449)	4,632	8,775	7,417	5,735
(1,200)	-	-	-	-	-	991	-	991	991	991	991	991
4,867	5,363	6,600	5,440	5,568	5,015	4,633	4,973	5,633	4,939	4,655	7,992	5,434
-	-	-	-	-	-	-	-	-	-	-	-	-
-	1,143	5,716	2,531	7,472	-	1,259	-	-	2,183	-	-	-
-	-	-	-	-	8,731	-	-	-	-	-	-	-

208,832	198,635	373,801	258,266	204,092	215,864	170,587	206,911	236,402	182,018	196,286	245,496	275,332
3,422,797.97	3,621,433.35	3,995,234.42	4,253,500.69	4,457,593.01	4,673,456.68	4,844,043.43	5,050,954.71	5,287,356.70	5,469,374.26	5,665,659.97	5,911,156.14	6,186,487.89

20-Apr	20-May	20-Jun	20-Jul	20-Aug UNIT CLOSINGS	20-Sep	20-Oct	20-Nov	20-Dec	21-Jan B19 and 1 YEAR TARIFF	21-Feb	21-Mar
73,625	73,625	73,626	73,625	73,675	73,675	73,675	73,675	73,675	73,675	73,675	22,784
-	-	-	-								
-	-	-	-								
70,946	131,341	99,363	85,417	110,619	110,619	114,345	114,345	114,345	70,038	68,417	44,759
5,564	357	21,881	850	1,000	1,000	1,000	1,000	1,000	1,000	1,000	
-	-	-	-								
-	-	-	-								
200	200	200	200	200	200	200	200	200			
-	-	-	-								
-	-	-	-								
2,005	2,278	1,664	1,319	1,500	1,500	1,500	1,000	500			
-	-	-	-								
500	500	500	500	500	500	500	500	500	500	500	150
-	-	-	273								
9,055	6,891	6,966	6,716	6,716	6,716	6,716	5,037	3,358	1,679	1,679	
-	-	-	-								
900	900	900	900	900	900						
4,483	4,390	4,864	73	5,000	10,000	10,000	2,500	2,500			
2,400	2,400	2,400	2,400	2,400	2,400						
14,385	23,565	10,335	5,505	5,000	5,000	5,000	5,000	5,000			
3,029	2,362	8,305	1,438	2,000	2,000	2,000	500	500			
-	-	-	-								
-	490	-	-								
-	-	-	-								
1,425	2,121	1,824	1,918	1,800	1,800	1,800	250	250	250	250	250
-	-	-	-								
-	-	-	-								
5,565	5,558	5,543	7,399	6,000	6,000	6,000	250	250	250	250	250
-	-	-	-								
1,952	1,947	1,931	3,051	2,000	2,000	2,000					
725	2,987	2,528	5,235	2,000	2,000	2,000					
3,307	3,307	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	
-	-	-	-								
6,269	-	123	-								
-	-	-	-								
5,440	8,202	6,836	6,078	6,000	6,000	6,000	2,500	2,500			
-	-	3,971	3,449	3,500	3,500	2,500	500	500			
-	-	-	-	3,500	3,500						
-	-	-	-								

211,774	273,421	255,760	208,345	236,310	241,310	237,236	209,257	207,078	149,392	147,771	68,193
6,398,262.21	6,671,682.99	6,927,443.42	7,135,788.47	7,372,098.30	7,613,408.13	7,850,644.14	8,059,901.24	8,266,979.44	8,416,371.24	8,564,142.63	8,632,336.00

21-Apr	21-May	21-Jun	21-Jul	21-Aug	21-Sep	21-Oct	21-Nov	21-Dec	22-Jan 2 YEAR TARIION	22-Feb	22-Mar	22-Apr
22,784	22,784	22,784	22,784	22,784	22,784	22,784	22,784	22,784				
44,759	44,759	44,759	44,759	44,759	44,759	44,759	44,759	44,759	21,101	21,101	21,101	21,101
150	150	150	150	150	75	75	75	75	75	75	25	25
250	250	250	100	100	100	100	100	50	50	50		
250	250	250	250	250	100	100	100	100	100	100	100	100
68,193	68,193	68,193	68,043	68,043	67,818	67,818	67,818	67,768	21,326	21,326	21,226	21,226
8,700,529.37	8,768,722.74	8,836,916.11	8,904,959.48	8,973,002.85	9,040,821.22	9,108,639.59	9,176,457.96	9,244,226.33	9,265,551.88	9,286,877.43	9,308,102.98	9,329,328.53

22-May	22-Jun	22-Jul	22-Aug	22-Sep	22-Oct	22-Nov	22-Dec	TOTAL 20-Jul
								3,467,069
								4,519
								905
21,101	21,101	21,101	21,101	21,101	21,101	21,101	21,101	3,252,609
								88,721
								1,675
								387
								11,983
								152,647
								128,814
								51,914
								28,965
25	25	25	25	25	25	25	25	21,738
								5,173
								122,805
								29,204
								112,145
								162,650
								163,360
								210,738
								106,645
								259,286
								1,375
								243
								106,969
								1,960
								22,923
100	100	40	40	40	40	40	40	310,218
								19,517
								109,683
								125,660
								116,451
								3,662
								57,937
								7,145
								173,367
								17,921
								31,059
								8,731
21,226	21,226	21,166	21,166	21,166	21,166	21,166	21,166	9,498,773
9,350,554.08	9,371,779.63	9,392,945.18	9,414,110.73	9,435,276.28	9,456,441.83	9,477,607.38	9,498,772.93	(850,938) Differene to May GE Budget

GE Costs by Month

17-Mar 17-Apr 17-May 17-Jun 17-Jul 17-Aug 17-Sep 17-Oct 17-Nov 17-Dec 18-Jan 18-Feb

01 - General Conditions

01000 - General Conditions - Mizrahi

01016 - Cust Svc Office & Supplies

01020 - Site Survey, Layout & Equipment

01030 - Site Labour

01040 - Project Disbursements

01041 - Project Photographs

01042 - Couriers

01241 - Drawing Printing

01509 - Power Line Protection

01510 - Temp. Hydro - Connection Fee

01511 - Temp. Hydro - Consumption

01512 - Temp. Hydro Setup

01514 - Telephones & Radios

01515 - Temporary Water

01516 - Temp. Sanitary Facilities

01519 - Temp. Roads & Site Access

01520 - Temporary Stairs

01521 - Constructions Hoists

01530 - Hoarding / Container Rental

01541 - Security Guard / Site Cameras

01560 - Garbage Disposal

01570 - Traffic Control

01571 - Pest Control

01580 - Project Signage

01590 - Site Office & Shed Supplies

01591 - Street Cleaning

01614 - Large Equipment Rental

01617 - Small Equipment Rental

01619 - Site Safety Equipment

01620 - Safety Fence Rental

01850 - General Construction Supplies

01870 - Site Travel (Car,Repair,Fuel)

01899 - Winter Heating-Piping Distrib

01903 - Winter Heating-Fuel Consumption

01904 - Snow Removal

01918 - Site Safety Inspection

01920 - Floor Protection

01930 - Pay Duty Officers & Permits

01950 - Cash Allowances

-	-	-	-	73,625	73,000	73,625	73,625	73,625	73,625	73,625	73,625	73,625
-	-	-	-	-	-	-	919	-	-	-	3,600	-
-	-	-	-	-	-	-	-	405	-	-	-	500
-	-	-	-	-	-	-	15,064	14,335	28,397	30,172	29,708	-
-	-	-	-	-	538	-	516	-	193	-	-	384
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	200	484	695	921	848	226	230	200	-
-	-	-	-	-	33,864	-	-	-	-	33,864	-	-
61,704	-	-	-	-	30,000	-	-	-	17,860	-	-	-
-	-	-	-	-	-	-	46	922	1,320	1,929	-	-
-	-	-	-	-	-	-	-	-	5,860	-	-	300
-	-	-	-	-	215	2,663	-	-	-	320	400	-
-	-	-	-	-	-	471	-	139	-	-	-	-
-	-	-	-	-	-	893	436	928	436	436	484	-
-	-	-	-	-	-	-	-	-	-	-	659	-
-	-	-	-	-	-	-	-	-	-	-	5,888	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	7,841	-	-	-	-	-	-	-	13,134	5,187	5,600	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	395	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	51	383	1,358	1,319	1,058	1,640	-
-	-	-	-	-	-	-	-	480	570	475	-	-
-	-	-	-	-	-	-	-	1,900	3,137	1,874	-	-
-	-	-	-	-	2,060	2,047	2,257	5,141	7,686	(2,084)	1,442	-
-	-	-	-	-	-	116	1,318	1,929	2,285	-	-	-
-	-	-	-	-	-	-	248	153	232	232	159	-
-	-	186	-	-	-	-	3,149	9,093	2,266	5,393	2,890	-
-	-	-	-	-	2,000	-	4,000	2,000	3,465	2,975	2,750	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	1,211	2,125	1,105	1,360	1,233	1,658	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-

Total

61,704	7,841	186	-	73,825	142,161	81,772	105,008	114,361	163,766	160,519	128,286	
61,704	69,544.91	69,730.91	69,730.91	143,555.91	285,716.75	367,489.13	472,496.77	586,858.24	750,624.19	911,143.38	1,039,429.31	

18-Mar 18-Apr 18-May 18-Jun 18-Jul 18-Aug 18-Sep 18-Oct 18-Nov 18-Dec 19-Jan 19-Feb 19-Mar 19-Apr

73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
45,739	43,891	34,532	46,600	47,609	51,626	57,410	43,178	61,456	57,218	35,697	67,066	33,335	47,653
82	376	-	-	-	3,450	3,361	(1,774)	-	356	-	5,274	724	3,503
-	-	-	-	275	-	-	-	1,400	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	387	-
200	200	200	340	212	214	215	352	265	211	364	403	325	418
-	-	-	-	-	-	28,479	-	-	-	-	-	28,479	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
397	925	1,062	463	394	594	201	830	908	2,375	3,119	2,526	3,142	2,533
300	990	2,000	4,190	10,385	1,500	3,440	-	-	-	-	-	-	-
400	400	400	400	400	400	400	400	500	500	500	500	500	500
478	3,550	-	-	163	-	-	-	27	-	-	22	-	-
-	367	367	170	254	1,085	1,546	1,430	-	2,175	5,256	1,710	3,027	2,395
5,965	2,875	100	-	-	-	1,961	-	-	654	-	-	-	4,415
7,408	-	-	-	-	-	-	1,759	1,993	13,550	5,306	3,860	3,860	14,260
-	-	-	-	-	-	-	-	-	9,028	50	-	16,500	-
5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600
-	-	-	-	-	-	-	-	1,839	9,781	11,223	10,513	10,910	3,825
986	-	-	-	-	1,155	2,480	318	3,231	7,835	3,775	4,333	6,369	7,183
-	-	-	-	-	2,000	-	-	-	108,339	12,101	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	395
-	-	-	-	-	-	-	-	-	-	-	-	-	-
6,128	3,500	3,702	2,776	1,235	1,177	2,315	1,869	9,804	2,099	10,088	3,917	2,894	2,418
-	-	-	-	-	-	-	-	435	-	-	-	-	-
-	937	-	8,302	-	5,484	-	-	-	-	-	-	606	444
2,358	-	2,248	2,248	9,234	4,181	24,831	5,241	6,043	14,499	7,637	3,705	6,024	13,142
1,285	460	-	2,577	1,438	-	-	-	-	-	-	-	-	-
2,199	300	687	949	339	1,644	529	529	529	-	1,311	2,111	3,460	4,972
7,906	3,800	-	1,033	11,517	3,345	2,124	1,027	5,092	-	2,994	3,341	2,523	1,696
2,750	2,750	2,750	2,750	2,750	2,750	2,750	2,750	2,750	2,750	2,875	3,284	2,875	3,154
-	-	-	-	-	-	3,662	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	2,400	-	-	-	(1,200)	-
2,347	4,566	2,508	1,876	2,848	2,550	2,386	5,483	4,226	5,058	10,163	-	4,867	5,363
-	-	-	-	-	-	-	-	-	-	-	-	-	-
980	-	-	-	2,368	408	-	-	-	-	-	-	-	1,143
-	-	-	-	-	-	-	-	-	-	-	-	-	-

167,133	149,110	129,780	153,898	170,644	162,789	217,315	142,617	182,123	315,653	191,684	191,790	208,832	198,635
1,206,562.23	1,355,672.68	1,485,452.45	1,639,350.89	1,809,995.20	1,972,784.64	2,190,099.14	2,332,716.06	2,514,839.41	2,830,491.93	3,022,175.82	3,213,965.66	3,422,797.97	3,621,433.35

19-May 19-Jun 19-Jul 19-Aug 19-Sep 19-Oct 19-Nov 19-Dec 20-Jan 20-Feb 20-Mar 20-Apr 20-May 20-Jun

73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,625	73,626
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
48,130	51,482	39,150	65,173	51,783	53,897	61,119	40,687	46,824	81,472	131,611	70,946	131,341	99,363
14,057	1,701	242	865	2,209	2,399	3,806	-	1,446	8,631	728	5,564	357	21,881
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
200	200	200	200	233	316	200	200	311	200	200	200	200	200
-	-	-	-	-	-	27,961	-	-	-	-	-	-	-
-	16,155	-	-	-	-	-	-	-	3,095	-	-	-	-
1,927	3,181	1,723	1,830	866	1,072	-	-	1,028	776	2,560	2,005	2,278	1,664
-	-	-	-	-	-	-	-	-	-	-	-	-	-
400	500	500	500	500	400	400	400	390	400	450	500	500	500
-	-	80	-	-	105	-	-	-	(85)	(49)	-	-	-
2,703	2,500	2,457	2,067	1,059	3,650	7,789	3,650	4,022	3,650	4,338	9,055	6,891	6,966
-	-	8,586	1,762	-	-	-	2,228	-	-	-	-	-	-
6,660	6,117	6,860	3,260	3,260	4,135	2,960	2,500	3,420	7,020	2,670	900	900	900
-	45,150	12,790	4,390	4,390	4,390	4,390	4,390	4,390	4,390	4,592	4,483	4,390	4,864
5,600	5,600	5,600	5,600	800	2,798	3,200	2,400	2,400	2,400	2,400	2,400	2,400	2,400
2,250	2,250	2,250	4,500	2,250	2,250	2,250	14,430	16,845	16,642	17,940	14,385	23,565	10,335
19,493	4,527	4,890	2,980	3,121	2,714	7,291	(8,318)	5,166	2,447	2,142	3,029	2,362	8,305
125,144	11,701	-	-	-	-	-	-	-	-	-	-	-	-
490	-	-	-	-	-	-	-	-	-	-	-	490	-
-	-	243	-	-	-	-	-	-	-	-	-	-	-
5,533	3,728	3,087	4,598	4,084	1,591	1,745	2,338	2,300	1,195	1,702	1,425	2,121	1,824
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	240	-	-	-	-	-	-	-	-	-	-	-
9,144	9,665	8,694	15,421	8,128	10,633	25,324	21,569	11,884	15,086	8,925	5,565	5,558	5,543
-	-	2,930	2,940	-	-	-	2,240	-	-	-	-	-	-
7,414	5,023	10,154	5,086	2,246	30,744	3,152	3,262	2,613	2,262	2,262	1,952	1,947	1,931
6,901	4,026	5,128	4,821	1,986	5,070	1,852	508	2,038	2,728	3,753	725	2,987	2,528
3,164	3,164	3,163	3,164	3,164	3,164	3,164	3,164	3,164	3,164	3,323	3,307	3,307	2,000
-	-	-	-	-	-	-	-	-	-	-	-	-	-
28,649	-	(1,538)	(663)	-	(1,012)	(449)	4,632	8,775	7,417	5,735	6,269	-	123
-	-	-	-	991	-	991	991	991	991	991	-	-	-
6,600	5,440	5,568	5,015	4,633	4,973	5,633	4,939	4,655	7,992	5,434	5,440	8,202	6,836
-	-	-	-	-	-	-	-	-	-	-	-	-	3,971
5,716	2,531	7,472	-	1,259	-	-	2,183	-	-	-	-	-	-
-	-	-	8,731	-	-	-	-	-	-	-	-	-	-

373,801	258,266	204,092	215,864	170,587	206,911	236,402	182,018	196,286	245,496	275,332	211,774	273,421	255,760
3,995,234.42	4,253,500.69	4,457,593.01	4,673,456.68	4,844,043.43	5,050,954.71	5,287,356.70	5,469,374.26	5,665,659.97	5,911,156.14	6,186,487.89	6,398,262.21	6,671,682.99	6,927,443.42

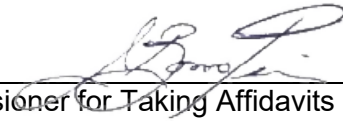
20-Jul	20-Aug UNIT CLOSINGS	20-Sep	20-Oct	20-Nov	20-Dec	21-Jan B19 and 1 YEAR TARIION	21-Feb	21-Mar	21-Apr	21-May	21-Jun	21-Jul
73,625	73,675	73,675	60,000	60,000	45,000	30,000	30,000	7,500	7,500	7,500	7,500	7,500
-												
-												
85,417	110,619	110,619	40,100	40,100	40,100	40,100	40,100	15,700	15,700	15,700	15,700	15,700
850	1,000	1,000	1,000	1,000	1,000	1,000	1,000					
-												
-												
200	200	200	200	200	200							
-												
-												
1,319	1,500	1,500	1,500	1,000	500							
-												
500	500	500	500									
273												
6,716	6,716	6,716	6,716	5,037	3,358	1,679	1,679					
-												
900	900	900										
73	5,000	10,000	10,000	2,500	2,500							
2,400	2,400	2,400										
5,505	5,000	5,000	5,000	5,000	5,000							
1,438	2,000	2,000	2,000	500	500							
-												
-												
-												
1,918	1,800	1,800	1,800									
-												
-												
7,399	6,000	6,000	6,000	250	250							
-												
3,051	2,000	2,000	1,000	1,000	500							
5,235	2,000	2,000	1,000	1,000	500							
2,000	2,000	2,000										
-												
-												
-												
6,078	6,000	6,000	6,000	2,500	2,500							
3,449	3,500	3,500	2,500	500	500							
-	3,500	3,500										
-												
208,345	236,310	241,310	145,316	120,587	102,408	72,779	72,779	23,200	23,200	23,200	23,200	23,200
7,135,788.47	7,372,098.30	7,613,408.13	7,758,723.76	7,879,310.48	7,981,718.30	8,054,497.21	8,127,276.11	8,150,476.11	8,173,676.11	8,196,876.11	8,220,076.11	8,243,276.11

21-Aug	21-Sep	21-Oct	21-Nov	21-Dec	22-Jan 2 YEAR TARION	22-Feb	22-Mar	22-Apr	22-May	22-Jun	22-Jul	22-Aug	22-Sep
7,500	7,500	7,500	7,500	7,500									
15,700	15,700	15,700	15,700	15,700	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000

23,200	23,200	23,200	23,200	23,200	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
8,266,476.11	8,289,676.11	8,312,876.11	8,336,076.11	8,359,276.11	8,366,276.11	8,373,276.11	8,380,276.11	8,387,276.11	8,394,276.11	8,401,276.11	8,408,276.11	8,415,276.11	8,422,276.11

22-Oct	22-Nov	22-Dec	TOTAL 20-Jul
			3,170,851
			4,519
			905
7,000	7,000	7,000	2,511,820
			88,721
			1,675
			387
			11,983
			152,647
			128,814
			51,914
			28,965
			18,138
			5,173
			122,805
			29,204
			112,145
			162,650
			163,360
			210,738
			106,645
			259,286
			1,375
			243
			104,319
			1,960
			22,923
			306,978
			19,517
			110,183
			126,160
			106,451
			3,662
			57,937
			7,145
			173,367
			17,921
			31,059
			8,731
7,000	7,000	7,000	8,443,276
8,429,276.11	8,436,276.11	8,443,276.11	(1,055,497) Difference to Curretn GE Budget by CCM
			204,559 Difference to May GE Budget

This is Exhibit “C” referred to in the Affidavit of Robert Hiscox sworn December 22, 2025. The affiant and I were located in the City of Toronto in the Province of Ontario. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to read 'J. Bornstein', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Commissioner Name: Jeremy Bornstein
Law Society of Ontario Number: 65425C

August GE Budget Side-by-Side

General Expense Category	"Current GE Budget by CCM" Worksheet Column BY	"Current Mizrahi Projection" Worksheet Column BY	Mizrahi Projection Savings
01 · General Conditions			
01000 · General Conditions - Mizrahi	3,467,069	3,170,851	296,218
01016 · Cust Svc Office & Supplies	4,519	4,519	-
01020 · Site Survey, Layout & Equipment	905	905	-
01030 · Site Labour	3,252,609	2,511,820	740,789
01040 · Project Disbursements	88,721	88,721	-
01041 · Project Photographs	1,675	1,675	-
01042 · Couriers	387	387	-
01241 · Drawing Printing	11,983	11,983	-
01509 · Power Line Protection	152,647	152,647	-
01510 · Temp. Hydro - Connection Fee	128,814	128,814	-
01511 · Temp. Hydro - Consumption	51,914	51,914	-
01512 · Temp. Hydro Setup	28,965	28,965	-
01514 · Telephones & Radios	21,738	18,138	3,600
01515 · Temporary Water	5,173	5,173	-
01516 · Temp. Sanitary Facilities	122,805	122,805	-
01519 · Temp. Roads & Site Access	29,204	29,204	-
01520 · Temporary Stairs	112,145	112,145	-
01521 · Constructions Hoists	162,650	162,650	-
01530 · Hoarding / Container Rental	163,360	163,360	-
01541 · Security Guard / Site Cameras	210,738	210,738	-
01560 · Garbage Disposal	106,645	106,645	-
01570 · Traffic Control	259,286	259,286	-
01571 · Pest Control	1,375	1,375	-
01580 · Project Signage	243	243	-
01590 · Site Office & Shed Supplies	106,969	104,319	2,650
01591 · Street Cleaning	1,960	1,960	-
01614 · Large Equipment Rental	22,923	22,923	-
01617 · Small Equipment Rental	310,218	306,978	3,240
01619 · Site Safety Equipment	19,517	19,517	-
01620 · Safety Fence Rental	109,683	110,183	(500)
01850 · General Construction Supplies	125,660	126,160	(500)
01870 · Site Travel (Car,Repair,Fuel)	116,451	106,451	10,000
01899 · Winter Heating-Piping Distrib	3,662	3,662	-

General Expense Category	“Current GE Budget by CCM” Worksheet Column BY	“Current Mizrahi Projection” Worksheet Column BY	Mizrahi Projection Savings
01903 · Winter Heating-Fuel Consumption	57,937	57,937	-
01904 · Snow Removal	7,145	7,145	-
01918 · Site Safety Inspection	173,367	173,367	-
01920 · Floor Protection	17,921	17,921	-
01930 · Pay Duty Officers & Permits	31,059	31,059	-
01950 · Cash Allowances	8,731	8,731	-
Total	9,498,773	8,443,276	1,055,497

This is Exhibit “**D**” referred to in the Affidavit of Robert Hiscox sworn December 22, 2025. The affiant and I were located in the City of Toronto in the Province of Ontario. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to read 'J. Bornstein', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Commissioner Name: Jeremy Bornstein
Law Society of Ontario Number: 65425C

Hoy, Alec

From: David Ho <david.ho@constantineinc.com>
Sent: Friday, December 18, 2020 9:22 AM
To: Sam Mizrahi; Mark Kilfoyle; Josh Lax; Esteban Yanquelevec; Robert Hiscox; Chris Donlan
Subject: RE: 128 Hazelton - Mizrahi Weekly Progress Meeting
Importance: High

Hi All,

Below are the working session points **in red** that were updated and reviewed between CEI and Mizrahi Developments (MIZ) at the **Friday December 11thth 2020, 128 Hazelton Ave. Progress Update meeting** at 10:30 AM.

1. LOAN to Sam RE: MIZ office:

The Loan LOI was fully executed on Oct 26th at 8PM. In good faith, last week CEI sent a further \$1.2 million into the Project to pay trades including CCM.

On Tuesday Nov. 10th the loan agreements were fully executed and closed. On Thursday 12th CEI wired a further 1 million to the Project.

20 Nov 2020

In this meeting Mark and Josh agreed to provide Chris with a list of required Nov payables by trade.

- Cheques will be available today (20 Nov) for signatures for distribution to trades
- Funds will be max out within 2 weeks
- Mark to provide forecast for beyond 2 weeks for anticipated funds to cover trades
- Chris suggested approaching DUCA for options to stretch loan for another half million

27 Nov 2020

- Options for additional cash are sale of Barry unit + unit 601
- Mark to provide schedule for current payments needed to Chris
- Mizrahi reports that all trades have been paid to current

- RH stressed need to get traction on indemnity agreement for 128 H + related projects
- Sam to speak with Avril and circle back to RH
- Sam to place call to DUCA for \$4 million loan
- Next week, Sam and Robert agreed to work together to finalize the outstanding MIZ indemnification agreement for 50% of the project losses at 128 Hazelton.
- No new update as of 4 Dec 2020
- No new update for 11 Dec 2020

2. Clark Construction Management Transition Plan:

The week of Oct 26th MIZ provided a transition Plan. CEI agreed to MIZ recommendation to remove CCM from the Project.

However, the Transition Plan due to CEI on Oct 27th was incomplete and on Oct 30th MIZ agreed to provide CEI with a complete plan which will include the outstanding items that were due on OCT 27th on Tuesday Nov 3rd.

On Friday Oct 30th Mark /Josh and Esteban to provide a transition plan for CCM replacement on by Tuesday NOV 3rd with details on showing:

- over 1 million in cost savings by MIZ taking over the Clark's work and a clear schedule acceleration for turning over the units to the Buyers
- Josh and Esteban to provide justification and rationale for CCM's removal at 128 Hazelton Site only Not provided yet ... Josh to provide outstanding information
- MIZ to advise Robert when he can see MIZ's legal support documentation for CCM's removal at Mizrahi offices. MIZ says that this can only be viewed in person due to confidentiality as recommended by Mizrahi solicitor

As of the meeting on NOV 6th the above is still outstanding and MIZ is now saying that CEI will receive this information on Nov. 10th

- This information was not received.

13 Nov 2020

- In the weekly meeting a meeting was set up for Nov 19th at 3:30PM to review this information at Miz offices.

- Transition to Mizrahi forces completed
- Co-operation & communications between CCM & Mizrahi is not occurring
- CCM not providing information in a timely manner after transition
- Miz has identified information gaps in CCM documentation and will need more time to review to understand impact on schedule and cost savings.
- Esteban -still working on this -next week...
- Miz to schedule meetings with sub trades to understand impact
- Responsibility matrix missing - due now for next meeting

20 Nov 2020

- Miz to review hard drive from CCM for information gaps to determine a clear path for manpower as required to advance the schedule.
- Miz to compile a list of justifications for termination of CCM at 128 H
- Miz to pay CCM outstanding invoices to avoid liens by CCM.
- CCM contract was sent to Robert & Chris
- Sam gave Robert a high level overview of contract
- Registration process for condo has been initiated by Mizrahi
- CEI requested Mizrahi to compile a list of CCM impact items for 128 H
- Rationale is to determine an order of magnitude for liquid damages against CCM
- Miz to prepare a plan to determine magnitude and review with Robert and Chris for next meeting
- Overall strategy is to have a meeting with CCM on impact and cost to avoid litigation, liens and paying CCM outstanding invoices.

27 Nov 2020

- No current communications between Mizrahi and CCM todate
- No payments to CCM todate.
- Mirahi reports that they have uncovered more impact items to cost and schedule after review of CCM files such as;
 1. - CCM did not report approximately \$30K of additional work claims in magnitude with drywall trade

2. - CCM did not include door thresholds in suites resulting in potential additional costs with Vision
3. - Vision did not include cost of finishes work for suite 202, 502, CEI office and Mizrahi office.

- Esteban to compile list of cost and schedule impacts caused by CCM that are currently known to date for 4 Dec 2020

- Mark to provide schedule of payment dates for CCM to Chris

- Strategy is to review cost and schedule impacts caused by CCM before payment date to determine course of action to mitigate or minimize payments

- Esteban noted that CCM did not issue the correct drawings for 3 suites to trades which will have cost and schedule impact

4 Dec 2020

- Esteban to complete exposure compilation of CCM cost and schedule impacts and forward to CEI for review

- RH would like to understand magnitude of exposure before meeting with CCM to negotiate settlement of CCM outstanding payments owed and magnitude of cost impact to project

- Sam advises he is ok if we do not pay CCM and bond off and liens placed by CCM

- High level magnitude of exposure is currently estimated at \$1.135 M hardcost, but need to include softcost for delay claims, loan + interest

- When combined, the total magnitude of exposure is now estimated at \$2.16 M

- Esteban + Mark to finalize the magnitude of exposure this weekend Dec 5 & 6 and forward to RH + CD on Monday Dec 7

- RH would like to have this number before meeting with CCM to negotiate a settlement

- Sam advises that Clark is threatening to lien on 7 Dec if outstanding payments are not received prior.

- RH will call Clark on 4 Dec and ask him to hold off lien procedure as we are waiting on information on a payment and cannot finalize yet

- Strategy is that if CCM says no, then it strengthens our side of the legal case.

No new update on 11 Dec 2020

3.CEI and MIZ OFFICE pricing:

- The information below was Due Tuesday October 27th from (Mark and Esteban) and was not received. MIZ then said that CEI will receive this information by Tuesday Nov 3rd. On Nov 3rd this was not received and now as of the meeting today (Nov 6th). At today's meeting, MIZ has now agreed to provide this information by Tuesday Nov 10th.
- Received as of 17 Nov
- Due to the fact that Clark removed costs for the build out of the offices from the budget the project does not have the adequate funding to complete the offices.
- MIZ to provide detailed breakdowns of the base cost and the upgrade pricing for 201/205 and 101 (CEI office and MIZ office) this was not received by CEI and
- Esteban states that he will provide this information on Nov 9
- Esteban to provide cost breakdown for suites 101, 201 & 205
- Mark to provide Budget Schedule update for 27 Oct - now anticipated for Nov 10th
- Provide details as to why office build out was not included in CCM budget
- Provide strategy and schedule for Mizrahi self-perform work per change directive to use cost plus delivery to complete offices.
- The above is due from Mark and Esteban -- NOT provided - Esteban and Mark still working on this - Esteban to provide by next Monday
- Pricing breakdown was received from Esteban and Mark and will be reviewed by CEI
- Option to be considered are value engineering to reduce CEI office costs
- Esteban to review cost of stair to CEI office with Audax to reduce cost and to meet code and occupancy requirements.
- No new update as of 4 Dec 2020
- No new update for 11 Dec 2020

4. Josh's cost and time savings strategy of the overall building - through using a change directive with some of the trades.

The suggested plan is to move some trades (CEC and others) via a change

directive to a cost plus model for their work. MIZ will provide a detailed cost and time savings to CEI for review and approval.

- no new information provided on schedule and cost savings as of 27 Oct

- Due Tuesday October 27th - not received - now DUE Tuesday NOV 3rd from Josh and Esteban –not received - Now Josh is saying CEI to receive Nov 10th

- Appears that this now will not be done by MIZ.

- Josh commented that the overall strategy for summary of cost savings will be evaluated on a per item basis to determine if a change directive will be implemented.

- Miz is still receiving new information from trades on unresolved items for solutions.

- Change Directive strategy is an on-going case by case to determine appropriateness for cost savings and schedule acceleration.

- Miz is continuing to discover new information gaps from CCM files, trades and hard drive that will need further review to determine if CD approach is appropriate.

4 Dec 2020

- There is some push back from CEC on CD project delivery method ... MIZ suggests it might be to the risk of loss profit on CEC's side.

11 Dec 2020

No new update

5. 128 HAZ budget and schedule update

- Mark to provide an accurate and detailed Project budget with rolling forecast and completion Schedule this was due Nov 4th , it was not received

- Mark now says CEI will receive Nov 12th.

- Mark to provide an updated project financial report by Wednesday Nov 4th not received now says Nov 12th. Details to include monthly cash flow showing sources/uses of cash and timing/amounts of disbursements to CEI for principal and interest owing. Major assumptions like office construction costs and Berry unit re-sale to be documented for review/agreement by project ownership.

- Mark provided the project forecast update on Oct. 28th. Project loss has increased by \$5.7M and schedule has had new delays of approx... 2 months. Chris to review the file details and coordinate a meeting with Mark to review assumptions before a review with both management teams. Mark explained that the increase would have been larger if we would have kept CCM on the project. Chris and Mark to review Mark's work on this before our next meeting on Nov 13th.

The benefit of Berry selling his unit has been removed and we need to have regular updates on progress of re-sale opportunity. No update on the resale of the 9th floor Berry unit provided in this week's meeting

Nov 13th Chris and Mark - met this week. The forecast has gotten worse by \$5.7M since the September version and the schedule has seen further delays.

Robert and Chris to review these numbers in advance of the executive team review on Nov 17th.

- Miz to review information content from CCM harddrive and meetings with trades to determine scheduling impact.

4 Dec 2020

- Josh / Mark to provide from a procedural perspective an anticipate schedule for NOAC, Landscape, Streetscape and conveyances to be complete

- Mechanical equipment below driveway may have impact to streetscape work completion

- MIZ advises that union trades will not work between Christmas and New Year

- Estaban advises that the paint contractor is back on site but is looking for additional payment on outstanding work per CCM

- Mark to provide a schedule of estimated date of cash from closing units to C. Donlan

- MIZ anticipates registration date to be late Feb 2021 if everything goes as planned
- Railings and MPH metal panels may also have impact
- Deadline for panel installation for MPH & part of 9 is 15 Dec 2020
- Sam to speak with metal fabricator for urgency in this matter for completion.
- Sam to micro manage if trades do not respond to Esteban
- RH requesting MIZ to provide a schedule for occupancy dates + registration
- MIZ to forward notice to buyers within 30 days
- Mark confirms no change to budget at this time.

11 Dec 2020

- Esteban advises that CEC is not meeting their request for additional manpower on site as needed to complete work
- CEC currently has minimum manpower on site
- RH requesting schedule of completion dates for all suites
- Miz to provide schedule to track and monitor dates
- CD requested information on buyer close out deposit schedule
- Miz to provide plan for 30 day notice to buyers for PDI to determine timing of close out deposits

6. Summary of Build Progress at 128 Hazelton

Esteban emailed an updated weekly progress schedule by unit yesterday for this meeting.

201 - CEI office base building work on-going

- Due to site conditions, guest washroom to be reversed for vanity + WC
- No new update as of this meeting

202 - PDI to start 1st week in Jan 2021

- hardwood floors anticipated to be 100 % by 5 Dec 2020
- millwork 100%
- carpentry at 100%
- pantry installation at 15%
- glass enclosures on-going
- counter tops outstanding

203 - finished painting 95%

- suite door outstanding (all other suites as well)

301 - on going work

- change directive issued for outstanding work as authorized by CEI
- drywall started in suite

302 - drywall sanding + prime paint next week

- show + bath areas not completed, balance of tiles may take 3 to 4 months
- Esteban to review alternative to meet occupancy requirements
- tiles 95%, owner supplied tiles, balance of overage to be supplied by owner
- hardwood floors 100%
- carpentry started
- painting 50%

303 - tiles 90%

- kitchen installation 80%
- kitchen floors at 85%
- countertops by owner
- Millwork at 95%
- carpentry 90% except for baseboards

304 - flooring on going

- electrical and mechanical finishes started

- finish painting 95%

401 - ongoing work ... now anticipate pricing from Esteban by 14 Nov.

- No pricing received as of 17 Nov

- change directive sent to CEC and waiting response

- Miz advises that CD methodology was not accepted by CEC (MIZ concludes that the reason is loss of profit for CEC for CD in lieu of lump sum)

- RH to speak with D. Beswick on this item.

- work on 401 is holding up work on 301

402 - Owner has approved fireplace ventilation equipment and order has been placed.

- Light fixtures on going

- deposit for fireplace received from owner

- Esteban to request CEC to provide item breakdown for mechanical work

- start base building finishes where possible

- Owner upgrades estimated at \$100,000.

- impact to schedule anticipated if owner approval is not timely

403 - Finish painting ongoing

- Esteban to resolve status of painting contractor on site

- countertops 80%, balance to hoisted by crane for installation

- Esteban advises 10 days after site measurement for cabinets to be installed

- Toilets not to be installed until the suite can be secured against trade use

- painting 100%

- island counter is outstanding

- anticipated completion date is 1st week in February 2021

404 - Kitchen Millwork - expected 12 November on site

- Counter tops expected to be on site by 16 Nov

- Millwork on site
- work to proceed in all other areas
- kitchen to start 21, 22 Nov
- cabinets to be installed following kitchen
- tiles completed
- toilets inside suite, but not installed
- countertops are on site
- painting started

501 - drywall started, floors 100%, details ongoing

- counter tops expected on site for 25 Nov
- cabinets installed
- kitchen installed
- doors to be on site for Jan 2021
- countertops not installed ... behind schedule 1 week
- cutting of tops problematic
- countertops delayed and now anticipated for 10 Dec

502 - Fireplace installed

- hardwood floors 100%
- tiles at 98%

- owner custom faucets discontinued and will need to be re-selected for timely delivery and installation

- carpentry 100%
- taping 60%

601 - Kitchen counters now expected for 15 Jan

- work to proceed in all other areas

- Owner has not made any changes and Audax should not make any changes unless it is to accommodate a site condition at no cost.
- shop drawing co-ordination to accommodate for site conditions on going for millwork
- Miz advises that sub trades were using outdated IFC drawings for suite and has now been corrected with the current IFC set and walk through with Audax
- Miz advises additional costs to the owner as a result of trades using outdated IFC sets.
- CCM did not provide updated drawings and did not co-ordinate or review with trades prior to starting
- taping at 100%
- tiles ongoing
- hardwood floors to start
- hardwood flooring installer requesting an extra, Esteban to resolve.

602 - Prime + finished painted to start

- carpentry at 60%
- kitchen expected to be on site 19 Feb
- Taping at 70%
- Lower portion of 8th to start to close ceiling
- tiles at 80%
- hardwood 60%

7th Floor

- CEC working on lower portion of floor
- Anticipate resolution with cost by 4 Dec for discussion on 7 Dec with Beswick
- scope of work on hold until direction for 8th floor is confirmed
- Josh and Esteban have reviewed the Beswick unit as per the APS version versus current version.
- The current plan has more than what was purchased per APS (ie 16x more electrical, extra his and hers ensuites, higher end millwork)

4 Dec 2020

- MIZ to prepare a detailed breakdown of cost from original APS to current and net it out to what is now for a discussion with Beswick early next week
- MIZ to provide clarity on developer responsibilities and owner responsibilities to understand agreement on balance
- MIZ states that they need to review and understand details on finishes to get complete picture of pricing on the high end finishes as his unit is a complex design
- MIZ suggests that if owner chooses standard finishes then schedule for completion is easier to achieve
- RH suggests that MIZ forward advance info to owner now and request missing information
- MIZ advises this unit will have impact to registration of building if not completed to align with base building schedule
- RH recommends hard deadlines be set for owner
- Miz to forward copy of breakdown to RH

11 Dec 2020

- Suite 701 on hold until owner provides drawings for pricing
- Anticipate owner drawings by next week
- Owner will be able to select fixtures.
- Miz to meet with owner on Dec 16 or 17 to resolve APS scope versus owner upgrades
- Miz anticipates that this process may take until late January before they can price net difference

8th Floor

- Josh to confirm responsibilities of Project and the unit Owner. Josh to provide CEI the costs and the formal agreement prior to execution by the Project or the owner/Beswick.
- APS to confirm scope and cost that the Project and owner will each be responsible for. Beswick is stating that this agreement has been outstanding from MIZ since July this year.
- No progress from Josh this week. - Josh, to set a meeting with David and Esteban to finalize terms the week of Nov 16th
- Miz to issue instructions to trades accordingly to proceed with work.
- No more hold ups is anticipated going forward

- Mizrahi estimator conducting a detailed breakdown of finishes for current versus original scope to develop comprehensive cost upgrades for discussion with the owner.

- Site instruction issued to CEC for mechanical work

11 Dec 2020

- required work on 8th floor is holding up work on 7th floor

9th Floor PH

- Sam said that the PH unit is going on the market as of the week of Nov 16th at \$2,750/ft

- the unit is being sold as a clean shell.

- Sam expressed confidence that the unit would be sold as a clean shell at \$2,750/ft.

- No work contemplated on 9th floor until formally finalized by owner

- Miz advises that new information on sale of Barry unit ... owner now wants to finish unit

- CEI wants Miz to determine obligations of Barry Unit APS and impact to cost and schedule for next meeting

- Sam confirms that the owner did not sell his residence.

- Miz to follow up with realtor if unit is on the market and confirm owner APS obligations

- Miz to confirm budget obligations per APS

- Recommendation is for owner to complete the unit in base shell finish for sale

- Miz to put the owner on notice by 14 Dec to provide IFC finishes or Mizrahi will install standard finishes for shell condition.

- In the Oct 30th meeting, Mizrahi Developments provided an updated schedule and cost update with a strategy to implement a change directive on current work on hold for 8th & 9th floors, suite 401 & 402 to advance work, schedule and mitigate cost.

- This is still outstanding - information for this strategy not completed and not available as of this meeting

4 Dec 2020

- balance of scope of work for additional space to be complete by MIZ forces

- Esteban to review & resolve impact of owner finishes trade versus MIZ forces due to risk of incompatibility of final aesthetics

- Heat pumps installation on-going
- new layout anticipated from purchasers by 15 Dec

11 Dec 2020

- sprinklers on floor started to meet occupancy requirement
- If owner drawings are not received by 15 Dec 2020 Miz will install default standard finishes
- exposure is with Owner schedule B finishes for 801
- Schedule B extras (estimated at \$1 million) to be netted out with owner over APS extras
- owner increased area by 1,900 SF
- Miz to review APS language to see if there is out clause
- Miz to send CEI memo on this strategy

P2 Garage Door

- Audax to co-ordinate with S+A for M&E requirements on door.
- Esteban reported at this meeting that no work has progressed and an update will be provided
- Miz to provide a completion date and get it done.

11 Dec 2020

- Esteban to confirm if order for door had been placed and advise RH

Landscape

- Miz to speak with landscape company for manpower on site to complete landscape before winter weather impact
- Miz reports that locates were not done and a damaged cable was found, Miz to contact the utility to correct.
- Granite and interlocks not started at front of building

- Miz to confirm completion date before next meeting

4 Dec 2020

- Hazelton Avenue side excavated and is anticipated to be complete by 18 Dec 2020.
- Work to be completed for the balance of landscape anticipated for late Jan or early Feb 2021.

11 Dec 2020

- Miz to work with Aldershot to complete Hazelton side and backyard before 25 Dec 2020 or work through week between Christmas and New Year
- Davenport side to start in January 2021 pending weather
- Landscape has impact to registration
- Balance of landscape work will require minimum 30 good weather days

C of A Status

4 Dec 2020

- Josh forwarded email confirmation that variance was approved on 4 Dec 2020.

11 Dec 2020

- process is now in appeal period
- planner and surveyor have been advised of status
- complete conveyance along Davenport for NOAC
- draft plan of condo completed for submission next week

Thank you

Best,
David



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This is Exhibit “**E**” referred to in the Affidavit of Robert Hiscox sworn December 22, 2025. The affiant and I were located in the City of Toronto in the Province of Ontario. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to read 'J. Bornstein', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Commissioner Name: Jeremy Bornstein
Law Society of Ontario Number: 65425C

January 27, 2017

Mizrahi (128 Hazelton) Inc.
126 Hazelton Avenue
Toronto, Ontario
M5R 2E5

C/o Murray & Company Limited
40 University Avenue — Suite 502
Toronto, ON MSJ 1S3
Attn: Jeff Cox

Attn: Mr. Sam Mizrahi

We are pleased to advise you that DUCA Financial Services Credit Union Ltd. (the “**Lender**”) has approved certain credit facilities in favour of Mizrahi (128 Hazelton) Inc. (the “**Borrower**”) for the 9 storey, 20 unit condominium development (it being understood that some units may be combined) with approximately 2,003 square feet of ground floor and approximately 2000 square feet of second floor commercial/retail space (the “**Retail Space**”) and 3 levels of underground parking (the “**Project**”) to be constructed at 126-128 Hazelton Avenue, Toronto, Ontario (the “**Property**”) upon the terms and conditions described in this commitment letter (the “**Commitment**”). Upon execution by the Lender, the Borrower, Constantine Enterprises Inc. and Mizrahi Developments Inc. (collectively, the “**Corporate Guarantors**”) and Sam Mizrahi (the “**Personal Guarantor**” and together with the Corporate Guarantors hereinafter collectively referred to as the “**Guarantors**”), the Commitment will constitute an agreement which shall bind the Borrower, the Guarantors and the Lender.

CREDIT FACILITIES

The Lender establishes the following credit facilities in favour of the Borrower:

- (1) \$33,460,000 (the “**Construction Facility Commitment**”) demand non-revolving facility (the “**Construction Facility**”);
- (2) \$500,000 demand revolving swingline facility that is a sub-facility of the Construction Facility (the “**Swingline Facility**”); and
- (3) \$500,000 (the “**LC Facility Amount**”) demand non-revolving letter of credit facility (the “**LC Facility**”).

Notwithstanding compliance with the covenants and all the terms and conditions of this Commitment, the Credit Facilities are repayable **ON DEMAND**.

PURPOSE

Loans made and Letters of Credit issued under the Credit Facilities will only be used for the following respective purposes:

- (1) Construction Facility - to finance the Construction including payment of development charges, soft costs and contingencies as per the Sources and Uses of Funds set out herein. For greater certainty, the parties acknowledge that a portion of the first Advance shall be used to return equity invested to date in the Project in excess of the Minimum Required Equity to the Borrower as determined by the Project Monitor;
- (2) Swingline Facility - to temporarily finance the Construction in between Advances under the Construction Facility; and
- (3) LC Facility - to provide Letters of Credit to Governmental Authorities or for other obligations of the Borrower relating to the Construction as provided for in the Project Budget.

SOURCES AND USES OF FUNDS

SOURCES of FUNDS	\$	%	USES of FUNDS	\$	%
Equity	12,785,000	21.7%	Land	15,653,717	26.6%
Construction Loan	33,460,000	56.9%	Hard Costs	27,152,881	46.2%
Purchaser Deposits	11,230,000	19.1%	Soft Costs	14,250,039	24.2%
Deferred Costs	1,325,000	2.3%	Hard Cost Contingency	1,157,837	2.0%
Rounding			Soft Cost Contingency	585,526	1.0%
TOTAL SOURCES	58,800,000	100%	TOTAL USES	58,800,000	100%

CLOSING DATE

The date of the first Advance which shall be no later than April 30, 2017 (the “Closing Date”).

MATURITY DATE

The Credit Facilities shall mature and any outstanding balance shall become due and payable in full on the earlier of (1) December 31, 2019, subject to an extension for a period of 6 months which may be offered by the Lender in its sole and unfettered discretion which offer shall be conditional upon, among other things at the sole and unfettered discretion of the Lender, there being no Default, the Lender having received evidence that the maturity date of the Constantine Charge is extended by 6 months (such that it is at least two weeks beyond the extended maturity date of the Credit Facilities) and upon payment by the Borrower of the Extension Fee; and (2) the date on which the Lender demands repayment of the Credit Facilities.

BORROWING OPTIONS

Prime Rate Loans and Letters of Credit.

INTEREST RATE AND PAYMENTS

Construction Facility and Swingline Facility

Interest on each Prime Rate Loan shall be at a rate per annum equal to the Prime Rate plus 2% per annum, calculated monthly in arrears, and due and payable on the 1st day of each month, both before and after maturity, default, demand and judgment. Such interest will be calculated monthly and will accrue daily on the basis of the actual number of days elapsed and a year of 365 days. Interest will accrue from the date of disbursement of Advance monies to the Lender's solicitors. Interest shall be computed daily on overdue interest at the Interest Rate applicable to Prime Rate Loans, both before and after maturity, default, demand and judgment until paid and shall be due and payable by the Borrower to the Lender on demand. If such overdue interest and compound interest are not paid within one month from the time of default, a rest will be made and compound interest at the Interest Rate applicable to Prime Rate Loans will be payable on the aggregate amount then due, both before and after maturity, default, demand and judgment, and so on from time to time until paid. All compound interest shall be added to the Loan and secured by the Security.

LC Facility

The Borrower shall pay a fee of 2% (provided that such fee shall in no event be less than \$500) of each Letter of Credit issued and subsequently upon each anniversary of the issuance thereof. The Letter of Credit rates are subject to change based on the Lender's pricing schedule in effect from time to time. If the Borrower wishes to request a Letter of Credit, the following provisions shall apply thereto:

- (1) The Borrower will execute and deliver to the Lender such usual documentation relating to the issuance and administration of Letters of Credit as may be required by the Lender including, without limitation, an indemnity agreement. In the event of any inconsistency between the terms of such documentation and this Commitment, the terms of this Commitment will prevail.
- (2) Each Letter of Credit issued by the Lender will be in a form and on such terms as determined by the Lender in its sole and unfettered discretion.
- (3) Unless otherwise agreed by the Lender, no Letter of Credit may be issued for a period in excess of one year and, provided the Borrower is not in Default, will automatically renew for a further one year period on the maturity date thereof.
- (4) If, at any time, a demand for payment (the amount so demanded being herein referred to as a "**relevant amount**") is made under any Letter of Credit:
 - (a) the Lender will promptly notify the Borrower of such demand;
 - (b) at or before 11:00 a.m. (Toronto time) on the date the relevant amount becomes payable, the Borrower shall pay to the Lender an amount in same day funds equal to the amount to be paid, together with all charges and expenses incurred by the Lender in connection with payment under the Letter of Credit; and
 - (c) the Lender will pay the relevant amount to the Person entitled thereto on the date

upon which the relevant amount becomes payable under the Letter of Credit or as soon as possible thereafter.

- (5) If the Borrower fails to make payment pursuant to Subsection (4)(b), the Borrower will pay interest to the Lender on such amount commencing on such date until paid at the Interest Rate applicable to Prime Rate Loans.
- (6) The Borrower hereby undertakes to indemnify and hold harmless the Lender from time to time on demand by the Lender from and against all liabilities and costs (including any costs incurred in funding any amount that falls due from the Lender under any Letter of Credit hereunder) to the extent that such liabilities or costs are not satisfied or compensated by the payment of interest on sums due pursuant to this Commitment in connection with any Letter of Credit.
- (7) The Lender will at all times be entitled, and is irrevocably authorized by the Borrower, to make any payment under a Letter of Credit for which a request or demand has been made in the required form without any further reference to the Borrower and any investigation or enquiry, need not concern itself with the propriety or validity of any claim made or purported to be made under the terms of such Letter of Credit (except as to compliance with the payment conditions of such Letter of Credit) and will be entitled to assume that any Person expressed in such Letter of Credit as being entitled to make demand or receive payments thereunder is so entitled. Accordingly, so long as a request or demand has been made as aforementioned, it will not be a defence to any demand made of the Borrower hereunder, nor will the obligations of the Borrower hereunder be impaired by the fact (if it be the case) that the Lender was or might have been justified in refusing payment, in whole or in part, of the amounts so claimed.
- (8) A certificate of the Lender as to the amounts paid by it pursuant hereto or the amount paid under any Letter of Credit will, in the absence of manifest error, be *prima facie* evidence of the existence and amount of such payment in any legal action or proceeding arising out of or in connection herewith.
- (9) If any Letter of Credit is outstanding on the maturity date of the Credit Facilities, the Borrower will forthwith pay to the Lender an amount (the “**deposit amount**”) equal to the undrawn face amount of the outstanding Letter of Credit, which deposit amount will be held by the Lender in an interest bearing deposit instrument for application against the indebtedness owing by the Borrower to the Lender in respect of any draw on the outstanding Letter of Credit. In the event that the Lender is not called upon to make full payment on the outstanding Letter of Credit prior to its expiry date, the deposit amount (together with interest thereon, if any), or any part thereof that has not been paid out, will, so long as no Default then exists, be returned to the Borrower on the expiry date of the Letter of Credit.
- (10) The obligations of the Borrower with respect to Letters of Credit will be unconditional and irrevocable, and must be paid or performed strictly in accordance with the terms of this Commitment under any and all circumstances whatsoever.

At the option of the Lender, either the *Uniform Customs and Practice* for documentary credits or *International Standby Practices*, each published by the International Chamber of Commerce, current on the issue of each Letter of Credit will be binding on the Borrower and the Lender with

respect to each such Letter of Credit. The Borrower assumes all risks of the acts or omissions of the beneficiary of each Letter of Credit with respect thereto. The determination as to whether the required documents are presented prior to the expiration of a Letter of Credit and whether such other documents are in proper and sufficient form for compliance with a Letter of Credit will be made by the Lender in its sole discretion, which determination will be conclusive and binding upon the Borrower absent manifest error. It is agreed that the Lender may honour, as complying with the terms of a Letter of Credit and this Commitment, any documents otherwise in order and signed or issued by the beneficiary thereof. Any action, inaction or omission on the part of the Lender under or in connection with any Letter of Credit or any related instrument or document, if in good faith and in conformity with such laws, regulations or commercial or banking customs as the Lender may reasonably deem to be applicable, will be binding upon the Borrower, and will not affect, impair or prevent the vesting of any of the Lender's rights or powers hereunder or the Borrower's obligation to make full reimbursement of amounts drawn under the Letter of Credit.

REPAYMENTS AND PARTIAL DISCHARGES

Mandatory Repayment

- (1) Provided that the Borrower is in full compliance with the terms of the Loan Documents, the Borrower shall be entitled to a partial discharge of the Security as it relates to the sale of applicable Units (and the corresponding parking, locker, communication units, sign units and common areas of the Project), upon payment to the Lender of the Net Sale Proceeds where a Unit is sold pursuant to the terms of a Sales Agreement, for application in accordance with Subsection (3) below.
- (2) Any payments received by the Lender pursuant to Subsection (1) above shall be applied towards repayment of the Loans outstanding under the Credit Facilities (with such repayments to be allocated first to the Swingline Facility, then to the Construction Facility and then to the LC Facility as cash collateral) and any such repayments shall result in a corresponding permanent reduction in the Construction Facility Commitment.
- (3) The Lender shall execute such releases or postponements of the Security in respect of any Unit or other component for which a partial discharge or postponement is sought pursuant to Subsections (1) or (2) above in form and substance as the Borrower may reasonably require and shall deliver the same to the Borrower's solicitors in escrow for delivery or release upon delivery to the Lender of the amount described in Subsections (1) or (2) above, as applicable.
- (4) Notwithstanding the foregoing, in the event the Borrower obtains take out mortgage financing on the Retail Space, partial discharges will be provided subject to receipt of the lesser of: (a) 100% of the take out mortgage proceeds; and (b) 65% of the proforma value of the Retail Space being \$2,003,000, to be applied on account of the Credit Facilities as set out in (1) above.

Voluntary Prepayments and Reductions

The Borrower may from time to time prepay Loans outstanding under the Construction Facility in whole or in part, without penalty. Upon such prepayment, the Construction Facility Commitment shall be correspondingly permanently reduced by the amount of such prepayment.

Letters of Credit

If the Borrower, by reason of any repayment hereunder, whether mandatory or voluntary, wishes to discharge its obligation to the Lender in respect of outstanding Letters of Credit, the Borrower will deposit cash with the Lender equal to the face amount of such Letters of Credit, and the Borrower shall have entered into such documentation as the Lender may reasonably require in respect thereof (which documentation shall constitute Loan Documents).

AVAILABILITY

The Construction Facility is available by way of a Prime Rate Loan with requests for Advances to be no more frequently than monthly and for amounts greater than \$300,000. The Construction Facility is made available at the sole discretion of the Lender for the purpose of the Construction of the Units and for no other purpose without the prior written consent of the Lender. The Lender may cancel or restrict the availability of any unutilized portion of the Construction Facility at any time and from time to time. The Swingline Facility is available by way of overdrafts on the Borrower's account with the Lender as a Prime Rate Loan. Total direct usage under the Construction Facility and the Swingline Facility shall not exceed the Construction Facility Commitment. The LC Facility is available for the issuance of Letters of Credit.

The Lender will engage a Project Monitor to review the Plans and Specifications, approvals, permits, environmental reports, geotechnical reports, survey, contracts, the agreements of purchase and sale and all other material agreements pertinent to the development of the Project. The Project Monitor will provide a detailed Project Budget to be approved by the Lender not exceeding \$58,800,000 which shall contain Deferred Costs not exceeding \$1,325,000 and otherwise in accordance with the Sources and Uses of Funds hereinbefore set out unless otherwise approved by the Lender. The cost of the Project Monitor shall be borne by the Borrower.

The Construction Facility will be funded by Advances to pay Project Costs. Advances will be made as recommended by the Project Monitor and approved by the Lender, on the basis of the Project Monitor verifying Costs-in-Place less Minimum Required Equity, accounts payable that will not be paid from the requested Advance, Interim Revenue received and utilized to fund Project Costs, Purchaser Deposits released to the Borrower and utilized to fund Project Costs, Cost Overruns and Holdbacks in accordance with the Construction Lien Act (the "**Costs-in-Place Margin**") subject to the unadvanced amount of the Construction Facility, Undistributed Purchaser Deposits, Deferred Costs and remaining Offsetting Income less Holdbacks and unpaid payables being equal to the Cost-to-Complete.

Holdbacks will be retained by the Lender in accordance with the Construction Lien Act. Release of Holdbacks will be made in accordance with the Construction Lien Act and the final release shall be approved by Lender's legal counsel. All Cost Overruns must be funded by the Borrower from its own cash resources derived from outside the Project. Any construction liens must be fully discharged by the Borrower from its own cash resources derived from outside the Project prior to any further Advances. All Advances will be subject to an acceptable subsearch performed by the Lender's legal counsel.

SECURITY

As general and continuing security for the payment and performance of the Obligations, the following security will be granted to the Lender in form and with content satisfactory to the Lender

and its solicitors:

- (1) the Charge in the principal amount of \$35,000,000;
- (2) a general security agreement given by the Borrower to the Lender providing a first priority security interest over all the present and future assets, property and undertaking of the Borrower (other than Purchaser Deposits, in which case the security interest created by the general security agreement shall form a second priority interest thereon, subject only to any security interest in favour of DBC) including purchase and sale agreements, plans, contracts, drawings, agreements, permits, approvals, equipment, receivables, inventory and intellectual property;
- (3) an assignment of the Borrower's insurance policies;
- (4) a general assignment of the Leases and rents, revenues and profits payable thereunder made by the Borrower in favour of the Lender;
- (5) a general assignment of accounts made by the Borrower in favour of the Lender;
- (6) an assignment of the Material Project Agreements by the Borrower in favour of the Lender acknowledged by the counterparties as required by the Lender;
- (7) a specific assignment of the Construction Management Agreement made by the Borrower in favour of the Lender with a form of Construction Manager acknowledgement and consent attached;
- (8) an assignment in favour of the Lender made by the Borrower of its rights under the Sales Agreements, as may be amended, modified or restated from time to time, together with the Purchaser Deposits (subject, in the case of the Purchaser Deposits only, to any prior security interest of DBC);
- (9) a cash collateral agreement executed by the Borrower pledging term deposits and /or guaranteed investment certificates if and when required by this Commitment to cash collateralize Letters of Credit;
- (10) an indemnification agreement from the Borrower in favour of the Lender in respect of any Letters of Credit issued;
- (11) a joint and several debt service, cost overrun and completion undertaking and guarantee made by the Borrower and Guarantors in favour of the Lender;
- (12) an irrevocable direction by the Borrower to its solicitors (acknowledged by such solicitors) to forward: (a) all Purchaser Deposits released by DBC; and (b) all Net Closing Proceeds to the Lender for, in the case of (a) for deposit to the Borrower's account with the Lender for use in payment of Project Costs, and (b) repayment of the Loans as hereinbefore set out it being understood that such solicitors shall have no obligation to ensure the payment of Project Costs;
- (13) as may be required by the Lender, an assignment of the Construction Contracts given by the Borrower to the Lender with a form of Contractor acknowledgement and consent

attached as required by the Lender which acknowledgement and consent may only be required by the Lender for contracts exceeding \$500,000 in value;

- (14) the unconditional joint and several guarantee and postponement of claim by the Guarantors of all Obligations owing by the Borrower to the Lender; this guarantee and postponement of claim is in addition to the Guarantors' obligations under the environmental indemnity and debt service, cost overrun and completion undertaking and guarantee;
- (15) a joint and several environmental indemnity to be provided by the Borrower and Guarantors in favour of the Lender;
- (16) a negative covenant from the Borrower, Guarantors and shareholders confirming that they will not withdraw equity from the Project until the Loan is repaid in full;
- (17) standstills, subordinations, postponements and assignments of claim from any shareholder or stakeholder of the Borrower who is not a Guarantor and any other Person the Lender may designate, acting reasonably;
- (18) a standstill, subordination, postponement and assignment agreement from Constantine Enterprises Inc. in connection with its charge secured by the Project on terms and conditions satisfactory to the Lender including there being no payments of principal or interest during the term of the Credit Facilities (for greater certainty, such amounts shall not be funded from the Credit Facilities);
- (19) the DBC Priority Agreement;
- (20) a beneficial ownership agreement, if applicable;
- (21) a specific estoppel, assignment and subordination of any leases, if applicable; and
- (22) such other security as the Lender or its solicitors require, which is contemplated by this Commitment or which security more fully gives effect to the security contemplated by this Commitment.

Condominium Documents

Provided that the Borrower is fully in compliance with the terms of the Loan Documents, the Lender agrees, from time to time upon the request and at the expense of the Borrower, to execute and deliver a consent to the Borrower registering the Declaration pursuant to the Condominium Act, provided that all Condominium Documents are provided to and found in all respects satisfactory to the Lender and its solicitors and provided further that, upon the request of the Lender (which the Lender shall only make if it, in its sole discretion but in good faith, believes that the occurrence of a Material Adverse Change is imminent or reasonably likely to occur) the Borrower shall deliver to the Lender a further charge of the Project (in substantially the same form as the Charge) with respect to all Units and the pro-rata share of common elements (the "**Replacement Charge**"), which charge shall be registered after the date of registration of the Declaration on title to the Property.

Trustee/Beneficial Owner

If the Borrower holds the Property as nominee and bare trustee for the sole use, benefit and advantage of another person (the “**Beneficial Owner**”), the Borrower and Beneficial Owner shall grant to the Lender a trustee and beneficial owner agreement (in form and content satisfactory to the Lender and its solicitors) prior to the initial Advance, and all the covenants, agreements, rights, obligations, representations, warranties and other provisions set out in this Commitment relating to the Borrower shall apply, *mutatis mutandis*, to the Beneficial Owner.

CONDITIONS PRECEDENT TO FIRST ADVANCE

The obligation of the Lender to make the first Advance hereunder is subject to and conditional upon the prior satisfaction of the following conditions precedent:

- (1) The Lender will have received a request for the Advance at least five Business Days prior to the proposed Advance date; Advance requests shall be no more frequently than monthly and for amounts greater than \$300,000;
- (2) The Borrower shall be fully in compliance with all the terms and conditions of the Loan Documents;
- (3) A Material Adverse Change will not have occurred and be existing or, in the reasonable opinion of the Lender, be threatened or pending;
- (4) The Lender will have received a policy of title insurance satisfactory to the Lender;
- (5) All corporate documentation requested by the Lender and its solicitors will have been received;
- (6) The Project Monitor shall have been engaged to act on behalf of the Lender throughout the duration of the Credit Facilities at the Borrower’s expense;
- (7) The Lender will have completed its due diligence with respect to the Borrower, Guarantors and Project, and will have received all financial, corporate and other information requested by the Lender including receipt and satisfactory review of:
 - (a) the personal net worth statement of the Personal Guarantor together with supporting documents;
 - (b) review engagement financial statements of the Borrower and the Corporate Guarantors prepared by acceptable independent chartered accountants for the last two years;
 - (c) corporate tax returns of the Borrower and the Corporate Guarantors and personal tax returns for the Personal Guarantor for the last two years together with notices of assessment confirming all Taxes are paid up-to-date;
 - (d) all Material Project Agreements;
 - (e) the Construction Management Agreement;

- (f) the Partnership Agreement;
- (g) a legal opinion in respect of the action commenced by Khashayar Khavari and Mohammad Mahdi Tajbekhsh, as plaintiffs, against the Personal Guarantor, Michael Renee Mizrahi, Ziba Mizarhi et al., as defendants;
- (h) mortgage discharge statements from all prior lenders other than the Constantine Charge;
- (i) all Sales Agreements in digital format together with pre-approved mortgage commitments or evidence supporting purchaser's financial ability to close;
- (j) the agreements of purchase and sale for the Property together with any amendments and related documentation;
- (k) Sales Agreements, if any;
- (l) all Leases, if any;
- (m) current schedule of pre-sales, including purchaser name, current address, unit number of the Unit being acquired, square footage of the Unit, asking price, sale price, deposit status (including location of deposits, amount paid to date and amount and timing of deposits yet to be paid) closing date and any special conditions;
- (n) true copies of agreements of purchase and sale for the Property and access to originals at the Project office;
- (o) the most recent realty Taxes bill and evidence of payment thereof and that all realty Taxes levied against the Property are current;
- (p) an Appraisal with respect to the Property indicating an "as is" value of not less than \$13,050,000 in respect of the Project lands and an "as completed" value of not less than \$67,900,000 inclusive of the retail component of the Project confirming a fair market value on an "as completed" basis of \$2,003,000 which must be addressed to the Lender or accompanied by a transmittal/reliance letter from the Appraiser;
- (q) environmental and soil test reports on the Property addressed to and satisfactory to the Lender in its sole discretion;
- (r) a satisfactory report from the Project Monitor containing:
 - (A) confirmation that it has reviewed and is satisfied with the Project Budget being no greater than \$58,800,000 excluding HST costs (including confirmation of Deferred Costs of \$1,325,000), Plans and Specifications and Construction Schedule and that the Project can be completed in accordance with the same;
 - (B) confirmation that the mortgage in favour of Constantine Enterprises Inc. is

in place on terms satisfactory to the Lender;

- (C) a projected cash flow estimate for the Construction;
- (D) verification of the reputation, qualification and capabilities of all major trades and containing its recommendation with respect to the requirement for any Performance and Payment Bonds for major trades and suppliers (and where same have been required by the Lender, confirming the same are in form and content acceptable to the Project Monitor);
- (E) confirmation that all necessary zoning and development approvals, including all necessary Permits, have been obtained or will be issued as required pertaining to each stage of Construction (being first, up to excavation level; second, up to foundation stage; and third, superstructure);
- (F) the site plan control agreement for the Project;
- (G) confirmation of the Project Budget of not more than \$58,800,000 (including the Land Value of \$13,050,000);
- (H) confirmation that a minimum of 50% of the total estimated hard costs have been contractually committed with confirmation to follow within (i) 60 days of the first Advance that a minimum of 60% and (ii) 120 days of the first Advance that a minimum of 75% of the total estimated hard costs have been contractually committed. Provided that notwithstanding the foregoing, major contracts such as concrete forming, HVAC, plumbing, electrical and windows are to have contracts in place (with the exception of drywall contract(s)) prior to the first Advance;
- (I) confirmation of the amount of Costs-in-Place including Land Value, Hard Costs and Soft Costs incurred on the Project to date on a line by line basis and identifying whether such costs have been incurred in accordance with the Project Budget or are Cost Overruns;
- (J) confirmation of Cost-to-Complete and Holdbacks;
- (K) confirmation that the Project Equity is no less than the Minimum Required Equity;
- (L) confirmation that any Cost Overruns that have been incurred on the Project have been funded in their entirety by the Borrower and/or Guarantors from their own cash resources derived from outside the Project;
- (M) confirmation that the Borrower has made all required Holdbacks with respect to the Construction completed to date in compliance with the Construction Lien Act; and
- (N) recommendation of the requested Advance amount based on the Project Monitor's verification of the Costs-in-Place Margin subject to the unadvanced amount of the Construction Facility, Undistributed Purchaser

Deposits, Deferred Costs, Offsetting Income less Holdbacks and unpaid payables being equal to the Cost-to-Complete;

- (O) a certificate from a senior officer of the Borrower:
 - (i) certifying the amount of Costs-in-Place incurred on the Project to date, the Cost-to-Complete and Holdbacks on a line by line basis;
 - (ii) certifying the payments that have been made or will be made from the proceeds of the first Advance and, where required by the Project Monitor, attaching copies of all invoices in excess of \$100,000 that will be paid from the proceeds of the first Advance;
 - (iii) certifying that any Cost Overruns that have been incurred on the Project have been funded by the Borrower and/or Guarantors from their cash resources derived from outside the Project;
 - (iv) certifying that the Borrower has made all required Holdbacks with respect to the work completed to date in accordance with the Construction Lien Act;
 - (v) certifying the amount of Project Equity, which must be no less than the Minimum Required Equity; and
 - (vi) certifying as to such other information and accompanied by such back-up material, as the Lender or Project Monitor may reasonably request from time to time;
- (P) certificates signed by the relevant Consultant certifying:
 - (i) that all Construction to date has been completed in all material respects in accordance with the Plans and Specifications; and
 - (ii) such other matters as may be reasonably required by the Project Monitor (and in respect of which the Consultant is qualified to certify);
- (Q) except where the Lender will be an addressee of the relevant reports, an acknowledgement from the Consultant which will be providing certificates of substantial performance in respect of any portion of Construction for the purposes of the Construction Lien Act, that the Lender and Project Monitor will be relying on the reports and certificates provided by the Consultant and that they are entitled to do so;
- (R) Performance and Payment Bonds, if any, required by the Lender with the recommendation of the Project Monitor;
- (S) a draft plan prepared by the Borrower's architect, engineer or surveyor setting forth the boundaries, area and dimensions of the Property, the location of any encroachments, easements or rights of way and the proposed

location of any improvements to the Property;

- (T) evidence satisfactory to the Lender that the Borrower's insurance is satisfactory and complies with this Commitment and in respect of which an independent insurance consultant retained by the Lender shall have provided a written report to the Lender confirming the same;
- (U) all existing or draft Condominium Documents, which shall include the Disclosure Statement;
- (V) the Standard Form Sales Agreement;
- (W) verification of the schedule of pre-sales, including purchaser name, current address, unit number of the Unit being acquired, square footage of the Unit, asking price, sale price, deposit status (including location of deposits, amount paid to date and amount and timing of deposits yet to be paid), closing date and any special conditions;
- (X) all existing Sales Agreements in digital form;
- (Y) confirmation that the Borrower has entered into Eligible Pre-Sales and up to a maximum of five pre-sales to non-Arm's Length purchasers:
 - (i) providing for aggregate Gross Sale Proceeds of not less than \$49,780,000;
 - (ii) where a minimum of 25% of each Unit price in Purchaser Deposits has been contracted for with 10% on hand, a further 10% to be received prior to occupancy and 5% on occupancy for an aggregate of not less than \$11,230,000 to be utilized in the Project;
 - (iii) all Eligible Pre-Sales must provide evidence of mortgage pre-approval or demonstrate financial ability to close;
 - (iv) where no lease-backs or cash flow guarantees are permitted;
 - (v) where minimum total deposits received shall be \$6,200,000; and
 - (vi) any foreign purchases or non-arm's length transactions are to have a minimum 35% contractual deposit with 10% received prior to the first Advance, 20% received prior to occupancy and a further 5% received on occupancy;

provided that any shortfall in these pre-sales requirements may be met by the Borrower injecting additional cash equity on a 1:1 basis which will be released when the pre-sales requirements are met.

- (Z) copies of current Plans and Specifications including, without limitation, floor plans and any current market survey materials relating to the Project;

- (AA) the deposit trust agreement with DBC relating to all Purchaser Deposits together with (i) a schedule indicating Purchaser Deposits held to date (ii) a copy of the escrow account holding such deposits and (iii) DBC's written confirmation that the Purchaser Deposits will be released on terms and conditions satisfactory to the Lender with the total insured Purchaser Deposits released to be not less than \$11,230,000 in the aggregate to be held at an account with the Lender;
- (BB) the DBC Agreements and DBC Mortgage;
- (CC) the Tarion bond with respect to Purchaser Deposits and evidence that the Project is registered with Tarion and is in good standing;
- (DD) the Construction Management Agreement for the Project;
- (EE) all subdivision, servicing, development, site plan and similar agreements with Governmental Authorities that are required in order to ensure the completion or delivery of possession of the Project;
- (FF) any other documents related to the Project that the Lender or Project Monitor deems necessary, including pro forma offer to purchase documentation, purchaser directed upgrades, Permits and development, regulatory and zoning approvals; and
- (GG) evidence that the Material Project Agreements relating to the Construction of the Project and the grant of necessary rights (including crane swing and shoring) by adjacent property owners, to the extent necessary, have been executed by all counterparties thereto;

and the results of such due diligence will be satisfactory to the Lender in its sole discretion;

- (8) the Lender will have received certified copies of all shareholder approvals and true copies of all regulatory governmental and other approvals, if any, required in order for the Borrower to enter into this Commitment and to perform its obligations hereunder;
- (9) the discharge of any existing mortgages and all other releases, discharges and postponements that are required in the discretion of the Lender (in registrable form where necessary) with respect to all Encumbrances affecting the collateral Encumbered by the Security that are not Permitted Encumbrances, if any, will have been delivered to the Lender;
- (10) the Lender will have received the payment of all fees and expenses (including the fees and disbursements of the Lender's solicitors) payable to the Lender that are due and payable at such time;
- (11) duly executed copies of the Loan Documents and deliveries in connection therewith (including the DBC Priority Agreement) will have been delivered to the Lender and all such Loan Documents will have been duly registered, filed and recorded in all relevant jurisdictions where required by Applicable Law or where the Lender considers it necessary, in its sole discretion, to do so;

- (12) a currently dated letter of opinion of the Borrower's and the Guarantors' solicitors as to such matters and in such form as the Lender's solicitors may reasonably require, including with respect to usual corporate matters and enforceability and the enforceability of the Sales Agreements, addressed to the Lender and its solicitors will have been delivered to the Lender;
- (13) the Lender shall have received a title opinion from its solicitors dated the date of the first Advance and confirming that based on title insurance (a) the Borrower has good and marketable title to the Project, subject only to Permitted Encumbrances, and (b) the Charge constitutes a good and valid first charge on the Property, subject only to Permitted Encumbrances;
- (14) the Borrower shall have opened an account with the Lender and deposited the sum of \$1.00 into a membership share account and a one-time commercial account opening fee of \$30.00 shall have been paid, into which all Advances and Project revenues (including, without limitation, all DBC releases) will be deposited and from which all Project Costs will be paid;
- (15) the Lender shall be satisfied that all Purchaser Deposits and Retail Deposits have been deposited in a designated trust account maintained at the Lender's head office located at 5290 Yonge Street, Toronto, Ontario M2N 5P9;
- (16) the Lender will have received identity certificates with respect to the Borrower and Guarantors in the form required by the Lender;
- (17) the Lender will have received all required identification and other due diligence materials required with respect to the Borrower to allow the Lender to comply with its obligations under all applicable anti-money laundering and anti-terrorism laws and regulations to which the Lender may be subject, including AMLA;
- (18) the Lender shall have received all other reports and deliveries required hereunder for the period prior to the date of the first Advance;
- (19) such first Advance must have occurred no later than April 30, 2017;
- (20) the Lender shall have received evidence that the maturity date of the Constantine Charge is at least two weeks later than the maturity date of the Credit Facilities;
- (21) the Lender shall have successfully syndicated the Construction Facility. In the event that the Lender has not satisfied or waived this condition on or before 5:00pm on March 1, 2017, the Borrower shall have the option to terminate this commitment until 5:00pm on March 7, 2017. In the case of such termination, the Borrower and the Lender shall have no further obligation to one another.

and further provided that all documents delivered pursuant to the foregoing provisions hereof must be in full force and effect, and in form and substance satisfactory to the Lender and its solicitors.

CONDITIONS PRECEDENT TO ALL ADVANCES

The obligation of the Lender to make any Advance hereunder by way of a Loan or issuance of a Letter of Credit is subject to and conditional upon the prior satisfaction of the following additional conditions precedent:

- (1) the Lender shall have received a request for Advance at least five Business Days prior to the proposed Advance date;
- (2) the representations and warranties set out in the Loan Documents will continue to be true and correct as if made on and as of the Advance date;
- (3) the Borrower shall be fully in compliance with all the terms and conditions of the Loan Documents;
- (4) a Material Adverse Change will not have occurred and be existing;
- (5) the Lender shall not have received notice of the existence of any claim for lien made under the Construction Lien Act and shall have been provided evidence satisfactory to the Lender that there are no such claims. To the extent there are any claims for lien, such liens must be discharged in their entirety by the Borrower and/or Guarantors from their cash resources derived from outside the Project;
- (6) the Borrower must have delivered to the Lender all reporting required hereunder;
- (7) the Lender shall have received confirmation from its solicitors based on a subsearch of title conducted on the Advance date confirming that no Encumbrances have been registered on title to the Property since the date of the prior Advance other than Permitted Encumbrances;
- (8) the Lender shall have received evidence that all Permits necessary for Construction which relate to (a) Construction in respect of which the Advance is being made, and (b) all prior Construction, are in place at the time of the Advance;
- (9) if any new Material Project Agreements have been entered into since the previous Advance, notice of such agreements shall have been given to the Lender and, if required by the Lender, specific assignments of such agreement shall be delivered to it;
- (10) the Lender shall have received copies of all new Sales Agreements and Leases entered into since the previous Advance and an updated schedule of pre-sales, including purchaser name, current address, Unit number being acquired, square footage of the Unit, asking price, sale price, deposit status (including location of deposits, amounts paid to date and amounts and timing of deposits yet to be paid, portion of deposits relating to purchaser upgrades), closing date and any special conditions;
- (11) the Lender shall have received a satisfactory report from the Project Monitor:
 - (a) confirming that the Project can be completed in accordance with the Project Budget, Plans and Specifications and Construction Schedule;

- (b) containing the updated schedule of pre-sales per paragraph (10) above with copies of any new Sales Agreement since the prior Advance report;
- (c) containing an updated projected cash flow estimate for the Construction where any event has caused the previously delivered estimate to have been revised in any material manner;
- (d) confirming that all necessary zoning and development approvals, including all necessary Permits, have been obtained or will be issued as required pertaining to each stage of Construction;
- (e) verifying the reputation of any new major trades and containing its recommendation with respect to the requirement for any Performance and Payment Bonds to be required by the Lender in consultation with the Project Monitor for major trades and suppliers (and where the same have been required by the Lender, confirming the same are in form and content acceptable to the Project Monitor);
- (f) verifying that all previous Advances have been applied towards the payment of Project Costs;
- (g) recommending the requested Advance amount based on the Project Monitor's verification of the Costs-in-Place Margin subject to the unadvanced amount of the Construction Facility, Undistributed Purchaser Deposits, Deferred Costs and Offsetting Income less Holdback and unpaid payables being equal to the Cost-to-Complete;
- (h) confirming that any Cost Overruns that have been incurred on the Project have been funded in their entirety by the Borrower and/or Guarantors from their cash resources derived from outside the Project;
- (i) confirming that the Borrower has made all required Holdbacks with respect to the Construction completed to date in accordance with the Construction Lien Act;
- (j) where the underlying conditions have been satisfied, the Certificate of Total Completion;
- (k) containing a certificate from a senior officer of the Borrower:
 - (A) certifying the amount of Costs-in-Place incurred on the Project to date, the Cost-to-Complete and Holdbacks on a line by line basis;
 - (B) certifying the payments that have been made or will be made from the proceeds of the Advance and, where required by Project Monitor, attaching copies of all invoices in excess of \$100,000 that will be paid from the proceeds of the Advance;
 - (C) certifying that all accounts payable that were to have been paid from prior Advances have been paid;
 - (D) certifying that any Cost Overruns that have been incurred on the Project

have been funded in their entirety by the Borrower and/or Guarantors from their own cash resources derived from outside the Project;

- (E) certifying compliance with (i) the Construction Lien Act, including that the Borrower has made all required Holdbacks with respect to the work completed to date; and (ii) applicable legislation relating to Taxes;
 - (F) certifying the amount of Project Equity, which must be no less than (i) the Minimum Required Equity plus (ii) the amount of Interim Revenue received since the prior Advance; and (iii) Cost Overruns funded by the Borrower and/or Guarantors;
 - (G) confirming compliance with the pre-sales requirements set forth herein;
 - (H) certifying the amount of Purchaser Deposits held by DBC and any amount to be released by DBC in conjunction with the Advance;
 - (I) certifying as to such other information and accompanied by such back-up material, as the Lender or Project Monitor may reasonably request from time to time;
 - (J) certifying that the Cost-to-Complete shall not exceed the aggregate of the unadvanced amount of the Construction Facility, Deferred Costs, Undistributed Purchaser Deposits, Offsetting Income, Holdbacks and unpaid payables;
 - (K) certifying that the aggregate principal amount of all Loans under the Construction Facility shall not exceed the lesser of (i) the Construction Facility Commitment; and (ii) the Costs-In-Place Margin;
 - (L) containing the certificates signed by the relevant Consultant (where the architect is unable to provide such certification) certifying that all Construction to date has been completed in all material respects in accordance with the Plans and Specifications, and
 - (M) such other matters as may be reasonably required and in respect of which the Consultant is qualified to certify.
- (l) Performance and Payment Bonds, if any, required by the Lender with the recommendation of the Project Monitor;
- (m) the Lender will have received payment of all fees payable to the Lender that are due and payable at such time;
- (n) the Lender shall be satisfied that after giving effect to the Advance:
- (A) the Cost-to-Complete does not exceed the aggregate of the unadvanced amount of the Construction Facility, Deferred Costs, Undistributed Purchaser Deposits, Offsetting Income, Holdbacks and unpaid payables;

- (B) the aggregate principal amount of all Loans under the Construction Facility shall not exceed the lesser of (i) the Construction Facility Commitment and (ii) the Costs-In-Place Margin;
- (C) the aggregate face amount of all Letters of Credit issued under the LC Facility shall not exceed the LC Facility Amount; and
- (D) the aggregate principal amount of all Loans under the Construction Facility (including outstandings under the Swingline Facility and any remaining unutilized portion thereof) shall not exceed the lesser of (i) the Construction Facility Commitment and (ii) the Costs-In-Place Margin and the aggregate face amount of all Letters of Credit outstanding under the LC Facility shall not exceed the LC Facility Amount;
- (o) within 1 year of the date of the first Advance, the Lender shall be provided with evidence that a satisfactory Record of Site Condition has been filed with the Ministry of the Environment; and
- (p) all other terms and conditions of the Commitment that have not been waived will have been fulfilled;

and provided further that all documents delivered pursuant to the foregoing provisions must be in full force and effect, and in form and substance satisfactory to the Lender and its solicitors.

The conditions precedent to the first Advance and to all Advances hereinbefore described are inserted for the sole benefit of the Lender and may be waived by the Lender, in whole or in part (with or without terms or conditions), in respect of any Advance without prejudicing the right of the Lender at any time to assert such conditions in respect of any subsequent Advance.

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lender as follows, and acknowledges and confirms that the Lender is relying upon such representations and warranties:

- (1) Existence and Qualification The Borrower (a) has been duly incorporated, amalgamated or continued, as the case may be, and is validly subsisting as a corporation under the laws of its jurisdiction of incorporation, amalgamation, or continuance, as the case may be; and (b) is duly qualified to carry on business in all jurisdictions in which it carries on its business.
- (2) Power and Authority The Borrower has the power, authority and right (a) to enter into and deliver, and to exercise its rights and perform its obligations under the Loan Documents to which it is a party and all other instruments and agreements delivered by it pursuant to any of the Loan Documents; and (b) to own its property and carry on its business as currently conducted and as currently proposed to be conducted by it. Without limiting the foregoing, the Borrower has all necessary power and authority to own its interest in the Property and to develop and complete the Project and is duly licensed, registered and qualified to carry out such activities.
- (3) Execution, Delivery, Performance and Enforceability of Documents The execution, delivery and performance of each of the Loan Documents to which the Borrower is a party,

and every other instrument or agreement delivered by it pursuant to any Loan Document, has been duly authorized by all actions, if any, required on its part and by its directors, and each of such documents has been duly executed and delivered and constitutes a valid and legally binding obligation of the Borrower enforceable against it in accordance with its terms subject to bankruptcy, insolvency, reorganization, arrangement, winding-up, moratorium and other similar laws of general application limiting the enforcement of creditors' rights generally and to general equitable principles.

- (4) Loan Documents Comply with Applicable Laws and Contractual Obligations Neither the entering into nor the delivery of, and neither the consummation of the transactions contemplated in nor compliance with the terms, conditions and provisions of the Loan Documents by the Borrower conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under or contravention of any Applicable Laws, or results or will result in the creation or imposition of any Encumbrance other than Permitted Encumbrances except in favour of the Lender upon or against the Project.
- (5) Consents Respecting Loan Documents The Borrower has obtained, made or taken all consents, approvals, authorizations, declarations, registrations, filings, notices and other actions whatsoever required in connection with the execution and delivery by it of each of the Loan Documents to which it is a party and the consummation of the transactions contemplated in the Loan Documents.
- (6) Taxes The Borrower has paid or made adequate provision for the payment of all Taxes levied on it or on the Property or income that are due and payable, including interest and penalties, or has accrued such amounts in its financial statements for the payment of such Taxes, and there is no material action, suit, proceeding, investigation, audit or claim now pending, or to its knowledge threatened, by any Governmental Authority regarding any Taxes that is reasonably likely to cause a Material Adverse Change nor has it agreed to waive or extend any statute of limitations with respect to the payment or collection of Taxes.
- (7) Judgments The Borrower is not subject to any judgment, order, writ, injunction, decree or award, or to any restriction, rule or regulation that has not been stayed or of which enforcement has not been suspended and that individually or in the aggregate constitutes, or is reasonably likely to cause a Material Adverse Change.
- (8) Absence of Litigation There are no actions, suits or proceedings pending or, to the best of the Borrower's knowledge and belief, threatened against or affecting the Borrower that are reasonably likely to cause, either separately or in the aggregate, a Material Adverse Change. The Borrower is not in default with respect to any Applicable Law in a manner or to an extent that could reasonably be expected to cause a Material Adverse Change.
- (9) Title to Property The Borrower is the registered and beneficial owner of the Property with good and marketable title thereto, and any other real and personal property of any nature which is part of the Project, in each case free and clear of all Encumbrances except Permitted Encumbrances, and no Person has any agreement or right to acquire an interest in the Project.
- (10) Compliance with Laws To the best of the knowledge of the Borrower, it is not in default under any Applicable Law where such default could reasonably be expected to cause a

Material Adverse Change. To the best of the knowledge of the Borrower, the Property is in compliance in all material respects with all Applicable Laws. Further, there are no facts known or which ought reasonably to be known, which could give rise to a notice of non-compliance to such extent with any Applicable Law.

(11) **No Default** The Borrower is not in default under any agreement, guarantee, indenture or instrument to which it is a party or by which it is bound, the breach of which could reasonably be expected to cause a Material Adverse Change.

(12) **Environmental Matters**

- (a) The Property is in full compliance in all material respects with all Environmental Law; the Borrower is not aware of, nor has it received notice of any past, present or future condition, event, activity, practice or incident that may interfere with or prevent the compliance or continued compliance of the Project or the Borrower in all respects with all Environmental Law; and the Borrower has obtained all licences, Permits and approvals in connection with the Project that are currently required under all Environmental Law and is in full compliance with the provisions of such licences, Permits and approvals.
- (b) Other than as disclosed in the environmental reports delivered by the Borrower to the Lender pursuant hereto, the Borrower is not aware that any Hazardous Substances exist on, about or within or have been used, generated, stored, transported, disposed of on, or Released from the Property other than in accordance and compliance with all Environmental Law.
- (c) The use that the Borrower has made and intends to make of the Property will not result in the use, generation, storage, transportation, accumulation, disposal, or Release of any Hazardous Substances on, in or from the Property except in accordance and compliance with all Environmental Law.
- (d) There is no action, suit or proceeding or, to its knowledge, any investigation or inquiry, before any Governmental Authority pending or, to its knowledge, threatened against the Borrower relating in any way to any Environmental Law that would or could reasonably be expected to cause a Material Adverse Change.
- (e) The Borrower has not (A) with respect to the Property, incurred any current and outstanding liability for any clean-up or remedial action under any Environmental Law with respect to current or past operations, events, activities, practices or incidents relating thereto; (B) received any outstanding written request for information by any Person under any Environmental Law with respect to the condition, use or operation of the Property; (C) received any outstanding written notice or claim under any Environmental Law with respect to any material violation of or liability under any Environmental Law or relating to the presence of Hazardous Substances on or originating from the Property, that, would or could reasonably be expected to cause a Material Adverse Change; or (D) ever been convicted of an offence or subjected to any judgment, injunction or other proceeding for non-compliance with any Environmental Law with respect to the Property or been fined or otherwise sentenced or settled such prosecution or other proceeding short of conviction for non-compliance with any Environmental Law

with respect to the Property.

- (f) Copies of all material analysis and monitoring data for soil, ground water, surface water and the like and reports pertaining to any environmental assessments/audits, including any inspections, investigations and tests, relating to the Property that were obtained, are in the possession or control of, or were carried out on behalf of the Borrower have been delivered to the Lender.
 - (g) Since acquiring its interest in the Property, the Borrower has maintained all environmental and operating documents and records relating to the Property substantially in the manner and for the time periods required by Environmental Law.
 - (h) The Borrower has not defaulted in reporting to any applicable Governmental Authority in relation to the Property on the happening of an occurrence which it is or was required by any Environmental Law to report.
- (13) Zoning, Uses and Expropriation
- (a) Except as disclosed in writing to the Lender, the Project is zoned to permit the Construction and operation of the Project.
 - (b) The existing and proposed uses of the Project comply in all material respects with all Applicable Law.
 - (c) It has not received notice of any proposed rezoning of all or any part of the Project that would be reasonably likely to cause a Material Adverse Change in respect of the Construction of the Project or otherwise.
 - (d) It has not received notice of any expropriation of all or any part of the Property.
- (14) Insolvency The Borrower (a) has not committed any act of bankruptcy; (b) is not insolvent, or has not proposed or given notice of its intention to propose a compromise or arrangement to its creditors generally; (c) has not made any petition for a receiving order in bankruptcy, made a voluntary assignment in bankruptcy, taken any proceeding with respect to any compromise or arrangement, taken any proceeding to have itself declared bankrupt or wound-up, taken any proceeding to have a receiver appointed of any part of its assets, or had any Encumbrancer take possession of its property; or (d) has not had an execution or distress become enforceable or become levied on any portion of its assets and property.
- (15) Setbacks To the best of the knowledge of the Borrower, the location of any buildings in the Project are or will be, to the extent they have been constructed or will be constructed in accordance with the Plans and Specifications, within the boundary lines of the Project as a whole and are in compliance with all applicable setback requirements.
- (16) Full Disclosure All information provided or to be provided to the Lender in connection with the Credit Facilities is true and correct in all material respects and none of the documentation furnished to the Lender by the Borrower, omits or will omit as of such time, a material fact necessary to make the statements contained therein not misleading in any material way, and all expressions of expectation, intention, belief and opinion contained

therein were honestly made on reasonable grounds after due and careful inquiry by the Borrower and any other Person who furnished such material on its behalf.

- (17) Residency The Borrower is not a non-resident for the purposes of Section 116 of the *Income Tax Act* (Canada).

The representations and warranties set out above survive the execution and delivery of the Loan Documents and will be deemed to be repeated by the Borrower as of each Advance date.

POSITIVE COVENANTS

So long as this Commitment is in force and except as otherwise permitted by the prior written consent of the Lender, the Borrower will:

- (1) Timely Payment Make due and timely payment of the Obligations required to be paid by it hereunder.
- (2) Conduct of Business, Maintenance of Existence, Compliance with Laws Engage in business of the same general type as now conducted by it; carry on and conduct its business and operations in a proper, efficient and businesslike manner in accordance with good business practice; preserve, renew and keep in full force and effect its existence; and take all reasonable action to maintain all rights, privileges and franchises necessary in the normal conduct of its business and to comply in all material respects with all Material Project Agreements, Material Licences and Applicable Law, including the Condominium Act and including the establishment and maintenance of a replacement reserve, where the same is required under the Condominium Act.
- (3) Access to Information Promptly provide the Lender and Project Monitor with all information reasonably requested by any of them from time to time at reasonable intervals in connection with this Commitment concerning its financial condition and the Project (including the Plans and Specifications, the Project Budget, the status of Construction, Material Project Agreements and Material Licences), and during normal business hours and from time to time at reasonable intervals upon reasonable notice, permit representatives of the Lender to inspect the Project and to examine and take extracts from its financial records, including records stored in computer data banks and computer software systems regarding the Project, and to discuss its financial condition with its senior officers and its auditors, the reasonable expense of all of which will be paid by the Borrower.
- (4) Obligations and Taxes Pay or discharge, or cause to be paid or discharged, before the same will become delinquent (a) all Taxes imposed upon it or upon its income or profits or in respect of its business or the Project and file all tax returns in respect thereof; (b) all lawful claims for labour, materials and supplies; (c) all required payments under any of its debt; and (d) all other obligations.
- (5) Use of Credit Facilities Use the proceeds of the Credit Facilities only for the purposes specified herein and not for the benefit of or on behalf of any Person other than the Borrower.
- (6) Construction Insurance From the date hereof until Total Completion of the Project, the Borrower shall maintain or cause to be maintained with insurance companies acceptable to

the Lender on the advice of its insurance consultant:

- (a) all risks builder's risk (including coverage against the perils of earthquake, flood, testing and commissioning Hard and Soft Costs) coverage for the full replacement cost of the Project, excluding land costs. Such insurance shall:
 - (A) include a soft cost endorsement in an amount of not less than 100% of total recurring Soft Costs;
 - (B) name the Borrower as first named insured thereunder and as additional insureds all those required to be named as additional insureds under any of the Material Project Agreements;
 - (C) name the Lender as first mortgagee and first loss payee and have attached the standard Insurance Bureau of Canada mortgage clause;
 - (D) provide that no cancellation or termination thereof, for any reason whatsoever (with the exception of cancellation due to non-payment of premium for which 15 days' statutory notice of cancellation may apply), shall take effect unless the insurer concerned has given the Lender not less than 30 days' prior written notice of such proposed action;
 - (E) contain a waiver by the insurer or insurers of all rights of subrogation or indemnity or any other claim to which such insurer or insurers might otherwise be entitled against the Lender; and
 - (F) otherwise be in such form as the Lender shall reasonably require or as required under any of the Material Project Agreements;
- (b) wrap-up liability insurance with a minimum combined single limit of liability of not less than \$15,000,000 per occurrence. Such insurance shall:
 - (A) name the Borrower as first named insured and the Lender as an additional insured and name all others required to be named under any of the Material Project Agreements including architects, engineers, consultants, contractors, sub-contractors and trades of every tier as additional insureds;
 - (B) provide that no cancellation or termination thereof, for any reason whatsoever (with the exception of cancellation due to non-payment of premium for which 15 days' statutory notice of cancellation may apply), shall take effect unless the insurer concerned has given the Lender no less than 30 days' prior written notice of such proposed action;
 - (C) contain a waiver by the insurer of all rights of subrogation or indemnity or any other claim to which the insurer might otherwise be entitled against the Lender and others to whom the Borrower has granted such waivers under any of the Material Project Agreements;
 - (D) contain a cross-liability clause and a severability of interest clause; and

- (E) otherwise be in such form as the Lender shall reasonably require or as required under any of the Material Project Agreements.

The Borrower will provide detailed certificates of insurance for all policies required hereunder to be purchased and maintained by the Borrower in form acceptable to the Lender on the advice of its insurance consultant.

- (7) Operating Insurance After Total Completion of the Project has been achieved, so long as the Borrower has an ownership interest in same and so long as any amounts are due hereunder, maintain or cause to be maintained all risks insurance (on a replacement cost, stated amount, no co-insurance basis), general liability insurance and such other insurance in form and in such amounts and with such deductibles as are customary in the case of owners of projects similar to the Project and in any event as are acceptable to the Lender. The Lender shall be named as first mortgagee and first loss payee or additional insured, as applicable, under such policies. The foregoing shall not apply with respect to the lands and buildings in respect of which a condominium corporation has been created by registration of a Declaration under the Condominium Act and which has obtained the insurance coverages required by the Condominium Act and the Condominium Documents.
- (8) Notice of Litigation Promptly notify the Lender on becoming aware of the occurrence of any actual or potential litigation, dispute, arbitration or other proceeding the result of which if determined adversely would be a judgment or award against the Borrower that would result in a Material Adverse Change to it, and from time to time provide the Lender with all reasonable information requested by it concerning the status of any such proceeding.
- (9) Environmental Compliance
- (a) Operate the Property in a manner such that no material obligation, including a clean-up or remedial obligation, will arise under any Environmental Law; provided, however, that if any such claim is made or any such obligation arises, it will immediately satisfy or contest such claim or obligation at its own cost and expense, and promptly notify the Lender upon learning of (A) the existence of Hazardous Substances located on, above or below the surface of the Property or contained in the soil or water constituting such land (except those being stored, used, contained or otherwise handled in substantial compliance with Environmental Law); or (B) the occurrence of any reportable Release of Hazardous Substances into the air, land, surface water or ground water that has occurred on or from such land; or (C) any other event or occurrence relating to the Project which, in the opinion of the Borrower, is likely to give rise to a notice of non-compliance in any material respect with any Environmental Law.
 - (b) Comply, and cause any other party that is acting under its authority to comply, in all material respects with all Environmental Law (including obtaining any Material Licences or similar authorizations) relating to the Project.
 - (c) Use its reasonable commercial efforts not to cause or permit a Release of any Hazardous Substance at, on, under, or near the Project except in compliance with Environmental Law.
 - (d) Provide the Lender with an environmental site assessment/audit report of the

Project, or an update of such assessment/audit report (A) upon the written request of the Lender if, in its reasonable opinion, there is a concern about the Borrower's compliance as it relates to the Project or the Project's compliance with Environmental Law, all in scope, form and content satisfactory to the Lender; (B) if such assessment/audit report has been prepared at the request of or on behalf of any Governmental Authority; or (C) if an event of non-compliance relating to an environmental matter has occurred, and the Lender has made a written request to the Borrower for such an assessment/audit report or update, within 30 Business Days after such request, and all such assessments/audits reports or updates thereof shall be at the Borrower's expense and risk; an environmental site assessment/audit may include, for purposes hereof, any inspection, investigation, test, sampling, analysis, monitoring pertaining to air, land and water relating to the Project reasonably required under the circumstances giving rise to the request for the assessment/audit report.

- (e) Not use the Project, or permit it to be used, to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Hazardous Substances except in compliance with all Environmental Law.
 - (f) Maintain in all material respects all environmental and operating documents and records, including, without limitation, Material Licences and orders, relating to the Project in the manner and for the time periods required by Environmental Law.
- (10) Adequate Books Maintain adequate books, accounts and records in accordance with GAAP consistently applied.
- (11) Material Project Agreements and Permitted Encumbrances
- (a) At all times be and remain in full compliance in all material respects with all of its covenants, agreements and obligations in and diligently enforce all its material rights under all Material Project Agreements and Permitted Encumbrances if non-compliance could lead to a Material Adverse Change. The Borrower shall not alter, amend or waive, in any material respect, any of its rights under or permit any termination or surrender of any Material Project Agreement or Permitted Encumbrance, without the prior written consent of the Lender, unless such alterations, amendments, waivers, terminations or surrenders, as applicable, reflect, in all material respects, good business practice, are in the ordinary course of business, and such material terms as a prudent owner of a similar property would accept having regard to all relevant factors at the time.
 - (b) Advise the Lender in writing of all new Material Project Agreements and Permitted Encumbrances (or any material amendments of existing Material Agreements or Permitted Encumbrances) entered into forthwith following the entering into thereof and shall deliver forthwith copies thereof to the Lender. The Borrower shall provide written notice to the Lender of any assignment made by a contracting party to a Material Project Agreement.
- (12) Access Permit the Lender (through its agents, officers or employees), for the purpose of monitoring compliance with the covenants and obligations of the Borrower hereunder, at its risk, to visit and inspect the Property to conduct tests, measurements and surveys in

relation to the Project, provided that such tests, measurements and surveys are conducted in accordance with prudent industry practice and Applicable Law and/or are required as a result of the reasonable concerns of the Lender as to non-compliance with such covenant and obligation, and to be advised as to the same by the officers, engineers and advisers of the Borrower (or such other Persons as may be appropriate), all at such reasonable times and intervals as the Lender may desire upon reasonable prior notice and in the presence of the Borrower if it so desires. Such visits, inspections, measurements, reviews and tests shall be at the cost of the Borrower, provided such expenses are reasonably incurred. Any such visit, inspection, examination, discussion or tests shall not be deemed to be supervision, charge, management, control or occupation by the Lender for purposes of any environmental or other liabilities.

- (13) Consultants Permit the Lender, and it shall have the right, to appoint the Project Monitor and an independent insurance consultant to assist the Lender with (a) reviewing and approving the insurance policies maintained by the Borrower for the Project, the Project Budget, the Construction Schedule, the Plans and Specifications and the Material Project Agreements; (b) projecting the Cost-to-Complete and determining the Costs-in-Place Margin; (c) advising the Lender as to whether the Project has been constructed in accordance with prudent industry practice, Applicable Law, the Project Budget, the Plans and Specifications, the Material Project Agreements and the Material Licences; and (d) performing such additional functions as the Lender shall reasonably request. The Borrower shall pay all reasonable fees, costs and expenses of the Project Monitor and insurance consultant.
- (14) Management and Control of Project Diligently and continuously proceed with and manage the Construction of, and operate the Project in all material respects in accordance with (a) prudent industry practice; (b) the Material Project Agreements and Material Licences; (c) the Project Budget; (d) all warranties; (e) the Plans and Specifications; (f) the Construction Schedule; and (g) all insurance policies issued in respect of the Project. Subject to Force Majeure, it shall not abandon (for a single period of 20 days or more), and shall ensure that there is no abandonment of the Project. The Borrower shall not make any amendments to the Plans and Specifications, Material Project Agreements, Contracts or any other agreements in respect of the Project which would (i) result in a single change of \$500,000 (ii) cumulatively result in a change of \$1,000,000 and/or (ii) prejudicially affect the Security without the prior written consent of the Lender.
- (15) Construction Lien Act Comply with the provisions of the Construction Lien Act, including retaining the Holdbacks required thereby. In the event that any lien is registered under the Construction Lien Act against the Property (or notice of such lien is provided to the Lender), the Borrower shall cause such lien to be vacated or discharged within 10 days of the earlier of (a) the date of registration thereof or the date the Borrower has received written notice thereof; and (b) the date that the Borrower has been provided written notice thereof by the Lender, with any payment thereof being made from financial resources other than the Credit Facilities. The Borrower will not release the Holdbacks until (a) 45 days have elapsed following the publication of a certificate of substantial completion pursuant to the Construction Lien Act; and (b) the Lender shall be satisfied that no construction liens have been registered on title to the Property as of the expiry date of such period.
- (16) HST Refunds File on a monthly basis all returns and other documents necessary to obtain the refund of HST in respect of the Project and apply the amount of any such refund to

payment of Project Costs.

- (17) "As Built" Survey – (Survey of Foundations) As soon as practicable, and in any event not later than completion of the foundations for any buildings on the Property, provide the Lender with a survey of the foundations of the buildings on the Property prepared and certified by a land surveyor qualified to practise in Ontario confirming the boundaries, area and dimensions of the Property, the location of the improvements to the Project and the location of any encroachments, easements or rights of way.
- (18) "As Built" Survey – (Survey of Permanent Structures) Within 120 days after Total Completion of the Project, deliver to the Lender an "As-Built" survey of the Project, prepared and certified by a land surveyor qualified to practise in Ontario which will identify, *inter alia*, the location of all encroachments, easements and rights of way affecting the Project.
- (19) Project Equity, Margin Deficiencies and Cost Overruns Maintain Project Equity in an amount of no less than the Minimum Required Equity and fund any margin deficiencies and/or Cost Overruns on a line by line basis (after allocation of contingencies and demonstrable savings) by an additional contribution of Project Equity from resources outside the Project. Without limiting the foregoing, if at any time a Letter of Credit issued under the LC Facility is drawn upon and such amount, or any portion thereof, does not from part of the Project Budget at the time of such draw, then the Borrower shall contribute additional Project Equity in an amount equal to such drawn amount or portion, as the case may be.
- (20) Location of Operation Accounts Maintain the Project Account in an account with the Lender during the term of this Commitment.
- (21) Non-Disturbance Agreement In respect of any Lease where the Lender requests, obtain from the tenant under such Lease an attornment and non-disturbance agreement in a form acceptable to the Lender.
- (22) Acknowledgement and Assignment of Consultant Contracts and Construction Contracts Use its commercially reasonable efforts to cause each counterparty to the Consultant Contracts and each Construction Contract (in the case of a Construction Contract, only where the contracted aggregate payments thereunder are in excess of \$1,000,000) to cause such counterparty to execute and deliver an acknowledgment (in the form provided by the Lender or such other form as may be acceptable to the Lender) of the assignment thereof in favour of the Lender.
- (23) Maintenance of Eligible Pre-Sales/Amendment of Sales Agreements Maintain at all times a sufficient number of Sales Agreements (including those Sales Agreements that relate to parking units and storage lockers) that constitute Eligible Pre-Sales such that the aggregate of projected Gross Sale Proceeds thereunder totals not less than \$49,780,000. The Borrower may amend and/or terminate any Sales Agreement so long as it does so in a commercially reasonable manner in accordance with prudent industry standards and so long as no such amendment or termination will cause (or result in) the projected Gross Sale Proceeds to fall below \$49,780,000. Any shortfall as a result of the foregoing test may be met by the injection of additional Project Equity on a 1:1 basis which will be released by the Lender as and when the test is met.

- (24) Condominium Registration /Voting Rights Diligently pursue registration of the Project under the Condominium Act for registration as a condominium thereunder to ensure that the Units may be delivered in a timely basis in accordance with the planned schedule of closings of the Units. Following the Project being registered as a plan of condominium, upon receipt of a request from the Lender, to name the Lender as the Borrower's proxy, to attend and to vote at meetings of unit owners, or in the alternative, at the option of the Lender, to act as the proxy of the Lender at such meetings and to vote its interest as the Borrower and the Lender may agree upon, and for this purpose the Borrower assigns its voting rights to the Lender. Any notice of such assignment, required by Applicable Law, shall be given by the Borrower in accordance with the requirements of such Applicable Law.
- (25) Performance and Payment Bonds Obtain and maintain all Performance and Payment Bonds required hereunder.
- (26) Building Permits Obtain all necessary Permits to facilitate Construction in accordance with the Construction Schedule having regard to the staged Construction of the Project (it being acknowledged that Permits will be required to be delivered in respect of Construction relating to the excavation phase, in respect of the foundation phase and in respect of the above-ground phase of Construction of the Project).

NEGATIVE COVENANTS

So long as this Commitment is in force and except as otherwise permitted by the prior written consent of the Lender, the Borrower will not:

- (1) No Sale of Project Other than (a) sales made pursuant to the terms of Sales Agreements; or (b) the Disposition of other premises pursuant to Leases as permitted hereunder, Dispose of the Project or any part thereof or interest therein except as contemplated herein, unless approved by the Lender in writing.
- (2) No Transfer of Interest in Borrower Permit any Disposition of any interest in the Borrower without giving 30 days' prior written notice to the Lender and obtaining the Lender's prior written consent.
- (3) No Consolidation, Amalgamation Consolidate, amalgamate or merge with any other Person, enter into any corporate reorganization or other transaction intended to effect or otherwise permit a change in its existing corporate structure, liquidate, wind-up or dissolve itself, or permit any liquidation, winding-up or dissolution without the consent of the Lender in its sole and absolute discretion.
- (4) No Change of Name Change its name without providing the Lender with 30 days' prior written notice thereof.
- (5) No Distributions Make any Distribution until all Obligations under the Credit Facilities have been repaid in full (or, in the case of the LC Facility, any outstanding Letters of Credit have been fully cash collateralized on a dollar for dollar basis or are secured by the residual value in the Project such that the Net Sale Proceeds to be obtained from the unsold Units (based on the estimated market value thereof as determined by the Lender) secures the

aggregate face amount of such Letters of Credit granted in connection with such Project on a 2:1 basis) and the Lender has no further obligation to make Advances hereunder.

- (6) Amendments to Material Project Agreements Except as otherwise contemplated herein, amend, vary or alter in any material way, consent to any assignment or transfer of, or waive or surrender any of its material rights or material entitlements under any Material Project Agreement.
- (7) Amendment of Project Budget Without the prior written consent of the Lender not to be unreasonably withheld, and the concurrence of the Project Monitor, make cumulative positive or negative changes to the Project Budget including, for greater certainty, cumulative positive or negative changes to individual line items within such Project Budget (whether or not resulting in a change to the aggregate Budgeted Project Costs) and regardless of whether such changes are within the initial contingency budget, unless:
 - (a) such changes do not exceed the lesser of (A) \$500,000 in the aggregate; (B) 10% of the approved Hard Costs portion of the Project Budget; and (C) 50% of the approved Hard Costs contingency portion of the Project Budget;
 - (b) the Contingency Amount in such Project Budget continues to be reasonable and adequate to ensure Construction Completion of the Project as recommended by the Project Monitor; and
 - (c) there is no adverse effect on the overall quality or change in the scope of the applicable Project stage a result of the changes.

Upon any revision of a Project Budget, the Borrower will forthwith provide a copy to the Lender and its Project Monitor.

- (8) Amendment of Plans and Specifications Revise the Plans and Specifications in any material respect, except with the consent of the Lender and its Project Monitor, such consent not to be unreasonably withheld. Upon revision of the Plans and Specifications, the Borrower will forthwith provide a copy to the Lender.
- (9) Amendment of Construction Schedule Revise the Construction Schedule to permit completion of Construction later than that contemplated in the then current Construction Schedule, except with the consent of the Lender and its Project Monitor, acting reasonably, and provided, if required, the Borrower can demonstrate that it has contributed additional Project Equity sufficient to cover any increased Budgeted Project Costs arising in connection therewith. Upon revision of the Construction Schedule, the Borrower will forthwith provide a copy to the Lender and its Project Monitor.
- (10) Unit Vendor Take Back Mortgage/Non-Cash Payments The Borrower shall not, without having received the written consent of the Lender, enter into any Sales Agreement which contains a provision allowing for partial or full payment of the purchase price payable thereunder by way of a vendor take back mortgage or other debt instrument in favour of the Borrower, the intent being that all net proceeds of the sale of a Unit shall be in the form of cash.
- (11) Assignment of Sales Agreement The Borrower will not consent to any assignment by a

purchaser under a Sales Agreement unless (a) the Borrower retains the Purchaser Deposits paid thereunder or a replacement Purchaser Deposit in at least the same amount has been received; and (b) the original purchaser is not released from its obligations thereunder unless the Lender provides its prior written consent.

- (12) Letters of Credit Obtain letters of credit required for the Project other than Letters of Credit issued by the Lender under the LC Facility.
- (13) Leasing Enter into any Leases or renew, amend, terminate, forfeit or cancel any Leases unless such Leases, amendments, renewals, terminations, forfeitures or cancellations reflect in all material respects good business practice and such material terms as a prudent owner of a similar property would accept having regard to all relevant factors and the leasing practice in the market at the relevant time.
- (14) Concerning Leases Generally Accept or require payment of rent or other monies payable by a tenant under any Lease that would result in more than one month of such rent or other monies being prepaid under such Lease other than:
 - (a) prepaid rent or deposits on account of rent which represent the portion of the cost of construction of the relevant demised premises which exceeds the portion of such cost which was used as the basis for determining the basic rental otherwise payable under such Lease; or
 - (b) an amount representing a bona fide precalculation of any amount that is required to be paid under such Lease in addition to basic rental, including amounts payable with respect to Taxes and maintenance of the Project and overage and percentage rentals; or
 - (c) lease surrender payments and security deposits made by the tenant under such Lease.
- (15) No Further Encumbrances Other than the Constantine Charge, the Borrower shall not enter into any further financing of the Property or the Project and shall not further encumber the Property or the Project without the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion.
- (16) No Financial Assistance Guarantee or otherwise provide for, on a direct, indirect or contingent basis, the payment of any monies or performance of any obligations of any other Person, except as may be contemplated by the Loan Documents and other than in the ordinary course of business of the Borrower.

CONSTRUCTION MANAGEMENT

If the management of the Project becomes unsatisfactory, in the Lender's sole opinion, the Lender may, after giving the Borrower 30 days' written notice to correct any deficiency, appoint alternate management, with all costs in this regard being borne by the Borrower.

TAXES LEVIED AGAINST PROPERTY

With respect to Taxes levied against the Property (1) the Lender may deduct from any Advance an

amount sufficient to pay the Taxes which have become or will become due and payable on the date of such Advance or are unpaid at the date of such Advance; (2) the Borrower will pay all Taxes as they fall due and will provide the Lender with receipts confirming payment of same as it may require; (3) the Borrower shall, if directed by the Lender, pay to the Lender in monthly instalments on the dates on which monthly instalments on the Loans are payable hereunder, sums which in the sole opinion of the Lender will be sufficient to enable it to pay the whole amount of Taxes on or before the due date for payment thereof or, if such amount is payable in instalments, on or before the due date for payment of the first instalment thereof; (4) the Lender agrees to apply such deduction and payments to the Taxes levied against the Property so long as the Borrower is not in Default, but nothing herein contained shall obligate the Lender to apply such payments on account of Taxes more often than yearly; provided, however, that if before any sum so paid to the Lender shall have been so applied, there shall be default by the Borrower in respect of any monthly payments on the Loan, the Lender may apply such sum in or towards payment of the principal and/or interest in default; the Borrower shall transmit to the Lender the assessment notices, tax bills and other notices affecting the imposition of Taxes forthwith upon receipt; and (5) the Lender shall allow the Borrower interest on the average monthly balance standing in the account from time to time to the credit of the Borrower for payment of Taxes, at a rate per annum and at such times as the Lender may determine in its sole discretion, and the Borrower shall be charged interest at the interest rate applicable to Prime Rate Loans on the debit balance, if any, of Taxes in the account outstanding after payment of Taxes by the Lender until such debit balance is fully repaid.

APPRAISALS AND ASSESSMENTS

All appraisals, inspections, assessments and information with respect to the Property provided to the Lender are provided only for the purpose of assisting it in determining whether to approve the Credit Facilities, and no acceptance, use of or adoption of such appraisals, inspections, assessments or information by the Lender shall be construed as any agreement by it as to the value or condition of the Property or Project. The Borrower is responsible for all appraisal and assessment fees.

REPORTING REQUIREMENTS

For the purposes of the Lender's annual review of the Credit Facilities and Project, the Borrower and Guarantors shall provide the following statements and information (collectively the "Statements") to the Lender:

- (1) review engagement financial statements prepared by accountants acceptable to the Lender for the Borrower and the Corporate Guarantors within five months of each fiscal year end together with copies of all tax filings and notices of assessments to confirm all taxes are paid up-to-date;
- (2) updated net worth statement for the Personal Guarantor together with supporting information as requested by the Lender within five months of each fiscal year end of the Borrower together with copies of all tax filings and notices of assessment to confirm all taxes are paid up-to-date as requested by the Lender;
- (3) current realty Taxes bill with confirmation that all required Taxes have been paid;
- (4) current insurance policy indicating the Lender as first mortgagee and as additional insured with respect to public liability insurance;

- (5) updated status report of the Construction, costs, sales, Purchaser Deposits, occupancies, Interim Revenue and closings; and
- (6) such other information pertinent to the Property and Project as the Lender may request.

LATE REPORTING

In the event that any of the Statements are not provided to the Lender within the time limited therefor, the Lender will assess penalty charges against the Borrower or Guarantors. The Lender may request the Borrower or Corporate Guarantors to provide the Lender with updated Statements at any time during a fiscal year of the Borrower or the Corporate Guarantors.

ASSIGNMENT AND SYNDICATION

Neither the Borrower nor the Guarantors shall have the right to assign any of its respective rights or obligations under this Commitment or in respect of the Credit Facilities to any Person. The Borrower and Guarantors agree that the Lender may transfer and assign, without their consent and without notice to them, the Lender's rights and obligations under the Credit Facilities and Loan Documents to any Person. The Lender may, at any time before or after the first Advance, syndicate, securitize or grant participation interests in the Credit Facilities and Loan Documents without the consent of the Borrower and Guarantors or notice to them. All dealings with the Borrower will be by Lender only acting on behalf of all participants. The Borrower and Guarantors agree that the Lender may disclose confidential information relating to the Credit Facilities and Loan Documents, including any financial information provided by them at any time or otherwise relating to the Property and Project and any plans, drawings or other documentation or information regarding the Property and Project, to any Person in connection with any of the transactions contemplated in this paragraph provided that the person is either a Bank listed in Schedule 1, 2 or 3 of the *Bank Act* (Canada) or a regulated Canadian credit union and the Person has entered into a confidentiality agreement with the Lender.

CONSENT TO DISCLOSURE

The Borrower hereby consents (such consent to remain in force as long as the Credit Facilities are outstanding) to any Governmental Authority or other Person having information relating to HST or any other amount required to be paid by the Borrower, where the failure to pay such other amount could give rise to a claim ranking or capable of ranking in priority to the Security, releasing such information to the Lender at any time upon its request. The Borrower shall provide signed third party authorizations in support of the foregoing at any time upon the Lender's request.

LENDER'S EXPENSES AND ADMINISTRATION FEES

The Borrower shall pay all costs, charges and expenses incurred by the Lender in connection with the operation or enforcement of this Commitment or the Security, including costs of registration of financing statements or financing change statements and searches in connection therewith, periodic property inspections and Taxes verifications and other similar costs, and any fees or charges of agents or other persons retained by the Lender for the purpose of conducting such activities on its behalf. In addition the Borrower shall pay the administration fees in connection with the administration of the Credit Facilities by the Lender, including the provision of mortgage statements and discharges, processing late payments, and cheques or automatic debits which are dishonoured or not accepted, the amount of each such administration fee being a liquidated amount

to cover administrative costs and not a penalty. If the Borrower fails to pay any such costs, charges or expenses upon demand, they will be added to the outstanding Loans and shall be secured by the Security.

LENDER'S RECORDS

The Lender shall keep accounts showing the status of the Credit Facilities and records of the sums borrowed, principal and interest repayments and all other sums due under this Commitment. In the absence of manifest error, the Lender's records shall constitute conclusive evidence of the Borrower's indebtedness to the Lender hereunder.

PAYMENTS TO GOVERNMENT AUTHORITIES

As long as the Credit Facilities are outstanding, the Borrower shall pay, when due, all amounts owing to any Governmental Authority which, if unpaid, would give such authority recourse for such amounts ranking in priority to the Security.

COSTS AND FEES

Whether or not the transactions contemplated hereby are completed, the Borrower shall pay the legal fees and disbursements of the Lender's solicitors, and the costs incurred by the Lender or its consultants including, without limitation, in connection with the Loan Documents, including those related to fire and title insurance, appraisal and environmental reports, survey, inspection, monitoring and progress Advances and discharges. Such fees, disbursements and costs may be deducted from any Advance.

APPLICATION FEE

A fee of \$80,000 has been received. This fee is non-refundable and is earned by the Lender as compensation for costs incurred, including time expended in processing, approving and providing this Commitment, but excluding the Costs and Fees referred to above.

COMMITMENT FEE

A fee of \$255,000 is payable from the first Advance.

PROGRESS ADVANCE FEE

A fee of \$300 is payable on each Advance.

DISCHARGE FEE

A fee of \$150 is payable on the discharge of the Security of each Unit.

ANNUAL REVIEW FEE

The Lender shall conduct a review of the Credit Facilities and Project each year during continuation of the Credit Facilities. The first annual review will be performed in November 2017. A minimum annual review fee of \$2,500 will be charged by the Lender to the Borrower.

TIME

Time is of the essence hereof.

AMENDMENT

This Commitment shall only be amended by agreement in writing executed by all the parties hereto.

WAIVER

Any failure by the Lender to exercise any rights or remedies under the Loan Documents shall not constitute a waiver thereof.

GOVERNING LAW

This Commitment shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

SURVIVAL

The terms and conditions of this Commitment shall survive the execution and registration of the Security and there shall be no merger of these provisions or conditions in the Security; provided that in the event of any conflict between the provisions of this Commitment and the Security, the provisions of this Commitment shall prevail to the extent necessary to remove such conflict. Notwithstanding the foregoing, in the event that the Security contains remedies which are in addition to the remedies set forth in this Commitment, the existence of such additional remedies in the Security shall not constitute a conflict or inconsistency with the provisions of this Commitment.

NOTICES

Any notice or demand or other written communication hereunder shall be given by facsimile, letter or by electronic means of communication. A facsimile communication shall be deemed received on the Business Day following its transmission. A letter shall be deemed received when delivered to the receiving party at the address shown on page 1 hereof. An electronic communication shall be deemed received on the day of transmittal if a Business Day and before 5:00 p.m. or, if not, on the next Business Day. Each party shall be bound by any notice given as provided hereunder and entitled to act in accordance therewith.

INTERPRETATION

In this Commitment (1) words denoting the singular include the plural and vice versa and words denoting any gender include all genders; (2) the word "including" shall mean "including, without limitation,"; (3) the word "will" shall be construed to have the same meaning and effect as the word "shall"; (4) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto; (5) any reference to this Commitment, the Security or other concomitant agreement or instrument shall include all

amendments, addenda, modifications, extensions, renewals, restatements, supplements or replacements thereto from time to time; (6) any reference to the Lender, the Borrower, the Guarantors and any other person shall include their respective heirs, estate trustees, legal representatives, successors and assigns; and reference to a "corporation" shall include a company or other form of body corporate; (7) all dollar amounts are expressed in Canadian dollars; (8) the division of this Commitment into separate sections and the insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of this Commitment; (9) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights; and (10) if more than one person is named as, or otherwise becomes liable for or assumes the obligations and liabilities of the Borrower or the Guarantors, then the obligations and liabilities of all such persons shall be joint and several, unless otherwise provided herein. This Commitment is intended to supplement and not derogate from the Security or any other Loan Document.

ADDITIONAL LOAN TERMS

The definitions attached as Schedule "A" to this Commitment shall form a part hereof as if incorporated herein.

LENDER APPROVED SOLICITORS

Philip Taylor
Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario
416 218 1125
philip@chaitons.com

[the remainder of this page is intentionally blank, signature page follows]

ACCEPTANCE

The terms of this Commitment are open for acceptance by the Borrower and Guarantors by executing the original hereof where indicated below and delivering it to the Lender's head office at 5290 Yonge Street, Toronto, Ontario, M2N 5P9, on or before 5:00 p.m. on January 31, 2017, after which date and time this Commitment shall lapse and become null and void.

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: 

Name: Francis F. Sajed

Title: Chief Lending Officer

Per: 

Name: Greg Romano

Title: Senior Account Manager

ACCEPTED on: January 30, 2017

MIZRAHI (128 HAZELTON) INC.

Per: 

Name:

Title: Sam MIZRAHI - President

ACCEPTANCE

The terms of this Commitment are open for acceptance by the Borrower and Guarantors by executing the original hereof where indicated below and delivering it to the Lender's head office at 5290 Yonge Street, Toronto, Ontario, M2N 5P9, on or before 5:00 p.m. on January 31, 2017, after which date and time this Commitment shall lapse and become null and void.

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: _____
Name: Francis F. Sajed
Title: Chief Lending Officer

Per: _____
Name: Greg Romano
Title: Senior Account Manager

ACCEPTED on: January 30, 2017

MIZRAHI (128 HAZELTON) INC.

Per: 
Name: _____
Title: Sam MIZRAHI - President

The undersigned Guarantors have read, understand and accept the terms and conditions of this Commitment.

ACCEPTED on: January 31, 2017

CONSTANTINE ENTERPRISES INC.

Per: Chris Donlan
Name: CHRIS DONLAN
Title: CFO

MIZRAHI DEVELOPMENTS INC.

Per: 
Name: _____
Title: SAM MIZRAHI, PRESIDENT

Witness  Sam Mizrahi 

SCHEDULE "A"
ADDITIONAL LOAN TERMS

Attached to and forming part of a commitment letter dated January 27, 2017 between DUCA Financial Services Credit Union Ltd., as Lender, Mizrahi (128 Hazelton) Inc., as Borrower, Constantine Enterprises Inc. and Mizrahi Developments Inc., as Corporate Guarantors, and Sam Mizrahi as Personal Guarantor.

DEFINITIONS

For the purpose of this Commitment, the following terms and phrases shall have the following meanings:

"Advance" means any advance hereunder by way of a Loan or the issuance of a Letter of Credit.

"AMLA" means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada).

"Applicable Law" means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgment, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person, in each case whether or not having the force of law.

"Appraisal" means a report prepared by an Appraiser who will be engaged based on a mandate letter, and containing assumptions acceptable to the Lender.

"Appraiser" means an Accredited Appraiser Canadian Institute (AACI) designated real estate appraiser acceptable to the Lender.

"Arm's Length" has the meaning ascribed to such term as set out in section 251 of the *Income Tax Act* (Canada).

"Borrower" includes any beneficial owner of the Property.

"Budgeted Project Costs" means the costs associated with acquisition of the Property and all budgeted Hard Costs and Soft Costs described as a line item in the Project Budget, including any Contingency Amount of budgeted Hard Costs and Soft Costs reviewed by the Project Monitor and approved by the Lender.

"Business Day" means any day other than a Saturday, Sunday or any statutory or civic holiday observed in the Province of Ontario.

"Certificate of Total Completion" means a certificate to be issued by the Project Monitor, certifying that all required work under each Construction Contract in respect of the Project has been fully completed (pursuant to the Form 5 Declaration of Last Supply under subsection 31 (5) of the Construction Lien Act obtained by the Project Monitor from each Contractor or the publication of a certificate of substantial performance under the Construction Lien Act), and accompanied by a certificate or report issued by each of the major Consultants involved in the

Construction of the Project confirming that the construction of the Project that falls within the purview of its control, supervision or responsibility has been completed in accordance with the Ontario Building Code and the applicable zoning and building by-laws of the City of Toronto, in substantial conformity with the approved Plans and Specifications and related Material Project Agreements and, where applicable, the requirements of Tarion, and certificates of substantial performance pursuant to the Construction Lien Act have been published as required by such Act.

“Charge” means a collateral charge in the principal amount of \$35,000,000 to be granted by the Borrower in favour of the Lender constituting a first charge on the Property and granting a first priority security interest over all present and future personal property of the Borrower related to the Project (other than Purchaser Deposits, in which case the security interest created by the debenture shall from a second priority security interest thereon, subject only to any security interest in favour of DBC), including purchase and sale agreements, plans, contracts, drawings, agreements, permits, approvals, equipment, receivables, inventory, intellectual property and which shall contain an assignment of property insurance proceeds.

“Condominium Act” means the Condominium Act (Ontario).

“Condominium Documents” means the Declaration, condominium corporation by-laws (or agreements relating thereto), shared facility agreements, insurance trust agreement (if any) or other documents relating to the creation and operation of the Project.

“Constantine Charge” means the Charge / Mortgage of Land in the principal amount of ~~\$20,000,000~~ plus interest at 12.5% per annum fully subordinate to the Security and the DBC Agreements.

“Construction” means the design and construction of the Project in accordance with the Plans and Specifications.

“Construction Completion” means the date on which:

- (1) Construction has been completed to the standard required for delivery under the related Sales Agreements; and
- (2) the Borrower has received all relevant occupancy Permits and passed inspections required by Governmental Authorities (other than those inspections required to be made in respect of work undertaken by purchasers under Sales Agreements).

For greater certainty, Construction Completion can occur prior to the registration of the condominium on the Property.

“Construction Contracts” means all contracts, subcontracts and agreements entered into by or on behalf of the Borrower relating to the Construction, including contracts, subcontracts and agreements relating to the supply of materials or services to or for the Project.

“Construction Lien Act” means the *Construction Lien Act* (Ontario).

“Construction Management Agreement” means the construction management agreement made between the Construction Manager and Borrower, as the same may be modified, amended or restated as permitted by the Lender.

“Construction Manager” means the manager appointed by the Borrower under the Construction Management Agreement and approved by the Lender.

“Construction Schedule” means the construction schedule provided to and approved by the Lender and its Project Monitor, as it may be amended from time to time with the consent of the Lender.

“Consultant Contracts” means the contracts entered into by or on behalf of the Borrower and each of the Consultants.

“Consultants” means, as applicable, the architect, mechanical and electrical consultant, engineer, geotechnical and environmental engineer and other consultants retained by or on behalf of the Borrower in connection with the Construction, as approved by the Lender.

“Contingency Amount” means, with respect to the Project Budget, the amount, if any, of any contingency provided in respect of the calculation of Project Costs.

“Contractors” means the contractors, sub-contractors and suppliers retained by or on behalf of the Borrower in connection with the Construction of the Project.

“Cost Overruns” means the excess of the current Project Budget over the initial Project Budget.

“Costs-in-Place” means Land Value, Hard Costs and Soft Costs incurred at any time.

“Costs-in-Place Margin” has the meaning ascribed thereto in the section of the Commitment headed “Availability”.

“Cost-to-Compete” means, at any given date, that amount calculated by the Project Monitor after consulting with the Borrower and approved by the Lender, which is the amount of all Project Costs not then incurred.

“Credit Facilities” means the Construction Facility, the Swingline Facility and the LC Facility and **“Credit Facility”** means any one of them.

“DBC” means the deposit bonding and deposit insurance company, Aviva Insurance Company of Canada, or its successors or assigns or other deposit insurance or such other bonding company acceptable to the Lender, acting reasonably, as the surety for bonds and/or excess deposit insurance issued to Tarion and/or purchasers of Units pursuant to the terms of Sales Agreements for the deposits made by such purchasers thereunder.

“DBC Agreements” means the agreements entered into between DBC and the Borrower in respect of Purchaser Deposits, bonds issued in respect thereof and/or excess deposit insurance and deposit insurance.

“DBC Mortgage” means the subordinate mortgage in the principal amount of \$18,500,000 granted by the Borrower in favour of DBC as collateral security for the obligations of the Borrower to DBC pursuant to the DBC Agreements (such mortgage constituting a second priority Encumbrance subject to the first priority Encumbrance of the Security) on the Project

and a first priority Encumbrance on Purchaser Deposits (with the Security forming a second priority Encumbrance on Purchaser Deposits).

“DBC Priority Agreement” means the priority agreement to be made with respect to the DBC Mortgage between DBC and the Lender, in a form acceptable to the Lender, which will include the agreement of DBC to subordinate the DBC Mortgage and related security to the Charge and other Security (other than with respect to Purchaser Deposits only) and any Replacement Charge granted to the Lender.

“Declaration” means the declaration or declarations which, together with the description, shall be registered under the Condominium Act and will subject the Project or portions thereof to the provisions of the Condominium Act, and all amendments to such declaration or declarations.

“Default” means any non-compliance by the Borrower or Guarantors with the covenants, agreements, terms and conditions set out in the Loan Documents.

“Deferred Costs” means Budgeted Project Costs recommended by the Project Monitor and approved by the Lender which are to be incurred after all Obligations under the Loan and Loan Documents have been repaid in full (or, in the case of the LC Facility, any outstanding Letters of Credit have been fully cash collateralized on a dollar for dollar basis or are secured by the residual value in the Project such that the Net Sale Proceeds to be obtained from the unsold Units (based on the estimated market value thereof as determined by the Lender) secures the aggregate face amount of such Letters of Credit granted in connection with such Project phase on a 2:1 basis).

“Disclosure Statement” means the statement required pursuant to the Condominium Act.

“Disposition” means, with respect to a Person, any sale, assignment, transfer, conveyance, lease, license or other disposition of any nature or kind whatsoever of any property or of any right, title or interest in or to any property, and the verb **“Dispose”** has a corresponding meaning.

“Distribution” means:

- (1) any payment, declaration of dividend or other distribution, whether in cash or property to any holder of shares, limited partnership units or other equity interests of any class of such Person; or
- (2) any repurchase, redemption, retraction or other retirement or purchase for cancellation of shares of such Person, or of any options, warrants or other rights to acquire any of such shares,

and the verb **“Distribute”** has a corresponding meaning.

“Eligible Pre-Sale” means the sale of a Unit meeting the following criteria:

- (1) such sale must be pursuant to a binding and unconditional Sales Agreement, a copy of which has been provided to the Lender and which is in the form of the Standard Form Sales Agreement or a form satisfactory to the Lender;

- (2) the period in which any right of rescission or right to claim a return of a Purchaser Deposit by the purchaser under such Sales Agreement;
- (3) the purchaser under such Sales Agreement must:
 - (a) be a bona fide purchaser that is Arm's Length with the Borrower and Guarantors;
 - (b) each purchaser shall be obligated to make a Purchaser Deposit of not less than 25% of the Gross Sale Price with 10% received, an additional 10% to be received prior to occupancy and a further 5% to be received on occupancy;
 - (c) not be in default of its payment obligations (including payments on account of the relevant Purchaser Deposit) under the Sales Agreement or in respect of any mortgage commitment; and
 - (d) have provided evidence to the Lender of approval for mortgage financing or has otherwise demonstrated ability to close unless waived by the Lender;
- (4) if the purchaser either individually or in conjunction with a spouse or child (or, in the case of Persons that are not individuals, together with affiliates thereof within the meaning of the *Business Corporations Act* (Ontario)) is purchasing more than one Units, the sale of such Units will not be designated Eligible Pre-Sales unless approved in writing by the Lender; and
- (5) all Purchaser Deposits are held in trust by a lawyer, notary, real estate agent or other surety acceptable to the Lender in accordance with the Sales Agreement (except those Purchaser Deposits that have been released in accordance with the terms of the DBC Agreements for application towards Project Costs) at an account with the Lender.

"Encumbrance" means, with respect to any Person, any mortgage, debenture, pledge, hypothec, lien, charge, assignment by way of security, hypothecation or security interest granted or permitted by such Person or arising by operation of law, in respect of any of such Person's property, or any consignment by way of security or capital lease (or a lease that should be treated as such) of property by such Person as consignee or lessee, as the case may be, or any other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or other obligation, and **"Encumbrances"**, **"Encumbrancer"**, **"Encumber"** and **"Encumbered"** have corresponding meanings.

"Environmental Law" means any Applicable Law relating to the environment, including those pertaining to:

- (1) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or Release, or the threat of the same of Hazardous Substances; and
- (2) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handing and the like of Hazardous Substances, including those pertaining to occupational health and safety.

"Extension Fee" means the amount equal to 10 basis points on the then outstanding authorized amount of the Construction Facility.

“Force Majeure” means any of the following events which prevents or materially impairs the Construction or operation of the Project and is not caused by and is beyond the reasonable control of the Borrower: acts of God, floods, earthquakes, tidal waves, hurricanes, windstorms, severe weather conditions, lightning, fire, wars (whether declared or not), riots, insurrections, rebellions, civil commotions, sabotage, partial or entire failure of utilities, strikes, walkouts or other labour disruptions, delays in transportation, accidents, shortages of and inability to procure labour, materials and supplies (after all commercially reasonable efforts have been made by the Borrower to obtain replacement for such labour, materials and supplies) or orders, legislation, regulations and directives of any Governmental Authorities. For greater certainty, lack of funds, the state of the market or any wilful or negligent act or omission on the part of the Borrower does not constitute Force Majeure.

“GAAP” means those accounting principles that are from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute.

“Governmental Authority” means any federal, provincial, municipal or other form of government or any political subdivision or agency thereof, any body or authority exercising any functions of government, and any court;

“Gross Sale Price” or **“Gross Sale Proceeds”** means the gross sale price (inclusive of HST) set out in a Sales Agreement relating to the sale of a Unit (and any related parking and locker units), net of any pricing incentives.

“Hard Costs” means amounts expended or to be expended for work, services or materials done, performed, placed or furnished in connection with the Construction of the Project, all as more particularly set out in the Project Budget (for greater certainty, Hard Costs shall not include amounts payable pursuant to the terms of the Construction Contracts).

“Hazardous Substance” means any substance or material that is prohibited, controlled or regulated by any Governmental Authority pursuant to any Environmental Law, including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any Environmental Law.

“Holdback” means any amount required to be retained by or on behalf of the Borrower in respect of the value of work, services and materials actually done, performed, placed or furnished on or in the Project in accordance with the Construction Lien Act.

“HST” means the harmonized sales tax under the *Excise Tax Act* (Canada).

“Interim Revenue” means proceeds of sale, recovery of expenses or any other Project cash flow received or anticipated while any availability under the Credit Facilities exists or any Obligations remain outstanding under the Loan and Loan Documents recommended by the Project Monitor and approved by the Lender.

“Land Value” means the deemed value of the Property, being \$13,050,000.

“Lease” means any lease, sublease, agreement to lease, offer to lease, licence or right of occupation granted from time to time by or on behalf of the Borrower entitling the lessee, sublessee or grantee thereunder to use or occupy all or any part of the Project.

“Letter of Credit” means a standby letter of credit, commercial or letter of guarantee, as applicable, issued by the Lender under the LC Facility at the request and for the account of the Borrower under this Commitment.

“Loan” means any extension of credit by the Lender under this Commitment, except for any Letter of Credit.

“Loan Documents” means (1) this Commitment; (2) the Security; and (3) all present and future agreements, documents, certificates and instruments delivered by the Borrower or Guarantors to the Lender pursuant to or in respect of this Commitment or the Security, in each case as the same may from time to time be amended, and **“Loan Document”** means any one of the Loan Documents.

“Material Adverse Change” means any event or occurrence which, when considered individually or together with other events or occurrences, has a material adverse effect on (1) the business, assets, liabilities, operations, results of operations, condition (financial or other) or prospects of the Borrower, taken as a whole; (2) the Construction and/or operation of the Project; or (3) the ability of the Borrower to perform its Obligations under the Loan Documents in all material respects.

“Material Licences” means all licences, Permits or approvals issued by any Governmental Authority, or any applicable stock exchange or securities commission, to the Borrower, and which are at any time on or after the date of this Commitment,

- (1) necessary or material to the business and operations of the Project (including the Construction of the Project), the breach or default of which would result in a Material Adverse Change, other than those not required or able to be obtained until a later stage of Construction or until Total Completion, provided those not obtained may be reasonably expected to be received in the ordinary course of business prior to the date when required to complete the transactions provided for in the Material Project Agreements and to construct and operate the Project; or
- (2) designated by the Lender as a Material Licence with respect to the Project provided that the Lender has notified the Borrower of such designation.

“Material Project Agreements” means:

- (1) the Construction Management Agreement;
- (2) the Consultant Contracts;
- (3) the Construction Contracts;
- (4) each other operating contract with respect to the Construction of the Project having a term more than one year and which contemplates payments in excess of \$500,000 per annum;

- (5) any insurance trust agreement;
- (6) any shared facilities and/or reciprocal easement agreements; and
- (7) the Plans and Specifications and all planning approvals, permits, licences, site plan agreements, development agreements, and other material contracts with respect to the Project designated as Material Project Agreements by the Lender from time to time, provided that the Lender has notified the Borrower of such designation.

“Minimum Required Equity” means an amount of Project Equity equal to the sum of:

- (1) \$12,785,000; and
- (2) Cost Overruns funded by the Borrower and/or Guarantors.

“Net Sale Proceeds” means the Gross Sale Proceeds relating to the sale of a Unit (and the corresponding parking, locker, communication units, sign units and common areas of the Project) less deposits, net HST, sales commissions, reasonable legal costs, deferred costs and other typical closing adjustments plus recoveries as approved by the Lender.

“Obligations” means all obligations of the Borrower to the Lender under or in connection with the Loan Documents, including all 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 in any currency or remaining unpaid by the Borrower to the Lender under or in connection with this Commitment or the other Loan Documents whether arising from dealings between the Lender and the Borrower, or from any other dealings or proceedings by which the Lender may be or become in any manner whatsoever a creditor or obligee of the Borrower or any of them pursuant to this Commitment or the Loan Documents, and wherever incurred, and whether incurred by the Borrower alone or with another or others and whether as principal or surety, and all interest, fees, legal and other costs, charges and expenses relating thereto.

“Performance and Payment Bonds” means labour and material or performance bonds as may be required by the Lender in consultation with the Project Monitor (in each case, up to 50% of the amount of the relevant Construction Contract) issued by a surety acceptable to the Lender relating to all or a portion of the Construction, such bonds to be in customary form typically utilized within the construction industry and otherwise acceptable to the Lender (which bonds shall contain dual obligee riders in favour of the Lender) and in such amount as may be required hereunder.

“Permits” means all permits, consents, orders, waivers, applications, authorizations, licences, certificates, approvals, registrations, franchises, rights, privileges and exemptions or the like issued or granted by any Governmental Authority or by any third party with respect to the Project (including any Permits relating to Environmental Laws).

“Permitted Encumbrances” means, with respect to the Property, the following:

- (1) liens for Taxes, rates, assessments or other governmental charges or levies not yet due, or for which instalments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good

faith by appropriate proceedings by that Person, provided that, if the aggregate amount being contested is in excess of \$100,000, the Borrower shall have deposited with the Lender collateral satisfactory to the Lender to secure the payment of such Taxes and assessments.

- (2) undetermined or inchoate liens, rights of distress and charges incidental to construction, maintenance or current operations that have not at such time been filed or exercised and of which the Lender has not been given notice, or that relate to obligations not due or payable, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person;
- (3) reservations, limitations, provisos and conditions expressed in any original grant from the Crown or other grants of real or immovable property, or interests therein, that do not materially affect the use of the affected land for the purpose for which it is used by that Person;
- (4) permits, reservations, covenants, servitudes, right of access or user licences, easements, rights of way and rights in the nature of easements (including licences, easements, rights of way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas and oil pipelines, steam and water mains or electric light and power, or telephone, telecommunication, television and telegraph conduits, poles, wires and cables) that do not materially impair the use of the affected land for the purpose for which it is used by that Person, or in respect of which satisfactory arrangements have been made for relocation so that such use will not in the aggregate, be materially and adversely impaired, or which that Person is bound to enter into pursuant to any agreement with a Governmental Authority or a counterparty to a Material Project Agreement entered into in connection with the development of the Project;
- (5) title defects, irregularities or other matters relating to title that are of a minor nature and that in the aggregate do not materially impair the use of the affected property for the purpose for which it is used by that Person;
- (6) the right reserved to or vested in any Governmental Authority by the terms of any lease, licence, franchise, grant or permit acquired by that Person or by any statutory provision to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (7) the Encumbrance resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure workers' compensation, employment insurance, surety or appeal bonds, costs of litigation when required by law, liens and claims incidental to current construction, mechanics', warehousemen's, carriers' and other similar liens, and public, statutory and other like obligations incurred in the ordinary course of business;
- (8) security given to a public utility or any Governmental Authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of its business;
- (9) the Encumbrance created by a judgment of a court of competent jurisdiction, or claim (excluding claims pursuant to the Construction Lien Act) filed, against the Borrower as

long as the judgment is being contested diligently and in good faith by appropriate proceedings by that Person, provided that if such judgment or claim is in the aggregate greater than \$250,000, the Borrower or Guarantors shall have either (A) in the case of any such judgment or claim, if acceptable to the Lender, deposited with the Lender collateral satisfactory to the Lender to secure the payment of such judgment or claim; or (B) posted a payment bond, or made payment into court of such amount as is necessary to remove such Encumbrance;

- (10) the Security;
- (11) encroachments by the Project or structures thereon over neighbouring lands (including public streets) and minor encroachments by neighbouring lands or structures thereon over the Property, so long as, in the former case, there are written agreements permitting such encroachments;
- (12) subdivision, development, servicing and site plan agreements, undertakings and agreements made pursuant to applicable planning and development legislation, entered into with or made in favour of any Governmental Authority, or public or private utility relating to the Property;
- (13) Leases relating to the Property that have been approved by the Lender or entered into in accordance with this Commitment and notices of them;
- (14) all municipal by-laws and regulations and other municipal land use instruments, including official plans, zoning and building by-laws, restrictive covenants and other land use limitations, public or private, and other restrictions as to the use of the Property;
- (15) the DBC Mortgage, provided that the DBC Priority Agreement satisfactory to the Lender has been executed and delivered to the Lender;
- (16) the Constantine Charge; and
- (17) such other Encumbrances as are agreed to in writing by the Lender.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plans and Specifications” means the plans and specifications (including all structural, architectural, mechanical, electrical, landscape and interior design and specifications) pertaining to the development and Construction of the Project prepared by or at the direction of the Borrower and as approved by the Lender in consultation with the Project Monitor, as amended from time to time with the consent of the Lender.

“Prime Rate” means the annual rate of interest announced from time to time by the Lender as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada and designated by the Lender as its prime rate.

“Prime Rate Loan” means a Loan in Canadian dollars made by the Lender to the Borrower with respect to which interest is to be calculated by reference to the Prime Rate.

“Project Account” means the account maintained by the Borrower with the Lender in respect of which all revenues and expenses relating to the Project (and only the Project) will be paid into and from, as applicable.

“Project Budget” means the budget of all Project Costs which has specified a line by line itemization of Project Costs, including Contingency Amounts, as prepared by the Borrower, reviewed by the Project Monitor and approved by the Lender, as amended from time to time with the consent of the Lender.

“Project Costs” means the aggregate of all Hard Costs and all Soft Costs expended or to be expended to achieve Construction Completion in accordance with the Plans and Specifications and Construction Schedule.

“Project Monitor” means Altus Group as engaged by the Lender to advise and assist the Lender with respect to the Project or any part thereof.

“Project Equity” means, at any time and from time to time, the equity of the Borrower in the Project.

“Purchaser Deposits” means deposits paid by purchasers of Units under the Sales Agreements.

“Release” means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal, and the word **“Released”** has a corresponding meaning.

“Sales Agreements” means purchase and sale agreements in respect of the Units.

“Security” means the documents creating an Encumbrance in favour of the Lender, or any collateral held from time to time by the Lender in each case securing or intended to secure repayment of the Obligations, including all security described herein.

“Soft Costs” means all amounts expended or to be expended in respect of the Project for consultants, architects, taxes, surveys, construction insurance, bonding costs, legal fees, promotions of the Project, financing, leasing, pre-operating costs and all other costs related to the Project except Hard Costs and the cost of acquiring the Property (for greater certainty, Soft Costs includes fees, excluding reimbursements for Hard Costs, payable pursuant to the terms of Consultant Contracts).

“Standard Form Sales Agreement” means the standard form agreement of purchase and sale to be utilized in respect of the sale of the Units, approved as to form by the Lender.

“Tarion” means Tarion Warranty Corporation, its successors and assigns.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Total Completion” means the date on which the Project Monitor is able to deliver the Certificate of Total Completion.

“Undistributed Purchaser Deposits” means, on any given date, the amount, if any, by which \$11,230,000 exceeds the amount of Purchaser Deposits released on or before such date for application to Project Costs (with a negative result being deemed to be zero) and further provided that if at any time DBC pursuant to the terms of the DBC Agreements ceases to release Purchaser Deposits, then until such time as DBC again releases Purchaser Deposits, the Undistributed Purchaser Deposits amount shall be deemed to be zero.

“Unit” means a “unit” (as defined in the Condominium Act) comprising part of the Project for use as a residence, retail space, parking and/or storage together with the common and exclusive use interests appurtenant thereto.



Head Office
5290 Yonge Street
Toronto, ON M2N 5P9
T 416.223.8502
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E duca.info@duca.com
www.duca.com

May 4, 2017

Mizrahi (128 Hazelton) Inc.
126 Hazelton Avenue
Toronto, Ontario
M5R 2E5

Attn: Mr. Sam Mizrahi

Reference is made to the commitment letter entered into among, *inter alios*, DUCA Financial Services Credit Union Ltd. (the “**Lender**”), as lender, and Mizrahi (128 Hazelton) Inc. (the “**Borrower**”), as borrower, dated January 27, 2017 (the “**Commitment**”). All capitalized terms used herein shall have the meanings ascribed thereto in the Commitment unless otherwise indicated.

The Lender has approved the following amendments to the Commitment:

1. Under the heading **SOURCES AND USES OF FUNDS**, delete:

SOURCES of FUNDS	\$	%	USES of FUNDS	\$	%
Equity	12,785,000	21.7%	Land	15,653,717	26.6%
Construction Loan	33,460,000	56.9%	Hard Costs	27,152,881	46.2%
Purchaser Deposits	11,230,000	19.1%	Soft Costs	14,250,039	24.2%
Deferred Costs	1,325,000	2.3%	Hard Cost Contingency	1,157,837	2.0%
Rounding			Soft Cost Contingency	585,526	1.0%
TOTAL SOURCES	58,800,000	100%	TOTAL USES	58,800,000	100%

and insert:

SOURCES of FUNDS	\$	%	USES of FUNDS	\$	%
Equity	12,785,000	20.4%	Land	15,292,331	24.4%
Construction Loan	33,460,000	53.3%	Hard Costs	27,296,953	43.5%
Purchaser Deposits	15,230,000	24.3%	Soft Costs	18,452,464	29.4%
Deferred Costs	1,325,000	2.1%	Hard Cost Contingency	1,157,837	1.8%
Rounding			Soft Cost Contingency	600,415	1.0%
TOTAL SOURCES	62,800,000	100%	TOTAL USES	62,800,000	100%

2. Under the heading **AVAILABILITY**, delete reference to “\$58,800,000” in the second paragraph thereof and insert “\$62,800,000” in its place.
3. Under the heading **CONDITIONS PRECEDENT TO FIRST ADVANCE**, delete reference to “\$58,800,000” in subsections (7)(r)(A) and (7)(r)(G) thereof and insert “\$62,800,000” in its place in each instance.

4. Under the heading **CONDITIONS PRECEDENT TO FIRST ADVANCE**, delete reference to "\$11,230,000" in subsections (7)(r)(Y)(ii) and (7)(r)(AA) thereof and insert "\$15,230,000" in its place in each instance.
5. Under the definition of "**Undistributed Purchaser Deposits**", delete reference to "\$11,230,000" and insert "\$15,230,000" in its place.
6. This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Borrower and Guarantors irrevocably submit to the non-exclusive jurisdiction of the courts of such Province and acknowledge the competence of such courts and irrevocably agree to be bound by a judgment of any such court.
7. This Amendment is supplemental to and shall be read with and be deemed to be part of the Commitment, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Commitment in any agreements or documents entered into in connection with the Commitment shall mean the Commitment as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Amendment.
8. All the terms and conditions of the Commitment, except insofar as the same are amended by the express provisions of this Amendment, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Amendment and shall hereafter continue in full force and effect, as amended.
9. This Amendment may be executed in any number of separate counterparts by any one or more of the parties hereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterparts.

[signature page follows]

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: _____

Name: Francis S. Sajed

Title: Chief Lending Officer

Per: _____

Name: Greg Romano

Title: Senior Account Manager

ACCEPTED on: May 4, 2017

MIZRAHI (128 HAZELTON) INC.

Per: _____

Name: Sam Mizrahi

Title: President

The undersigned Guarantors have read, understand and accept the terms and conditions of this Commitment.

ACCEPTED on: May ____, 2017

CONSTANTINE ENTERPRISES INC.

Per: _____

Name:

Title:

MIZRAHI DEVELOPMENTS INC.

Per: _____

Name: Sam Mizrahi

Title: President

Witness

Sam Mizrahi

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: _____

Name: Francisco Sajed

Title: Chief Lending Officer

Per: _____

Name: Greg Romano

Title: Senior Account Manager

ACCEPTED on: May ____, 2017

MIZRAHI (128 HAZELTON) INC.

Per: _____

Name:

Title:

The undersigned Guarantors have read, understand and accept the terms and conditions of this Commitment.

ACCEPTED on: May ^{7th}4, 2017

CONSTANTINE ENTERPRISES INC.

Per: _____

Name:

Title:

MIZRAHI DEVELOPMENTS INC.

Per: _____

Name:

Title:

Witness

Sam Mizrahi



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 5290 Yonge Street
 Toronto, ON M2N 5P9
 T 416.223-8502
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 E duca.info@duca.com
www.duca.com

June 19, 2017

Mizrahi (128 Hazelton) Inc.
 126 Hazelton Avenue
 Toronto, Ontario
 M5R 2E5

Attn: Mr. Sam Mizrahi

Reference is made to the commitment letter entered into among, *inter alios*, DUCA Financial Services Credit Union Ltd. (the “**Lender**”), as lender, and Mizrahi (128 Hazelton) Inc. (the “**Borrower**”), as borrower, dated January 27, 2017, as amended by agreement dated May 4, 2017 (collectively, the “**Commitment**”). All capitalized terms used herein shall have the meanings ascribed thereto in the Commitment unless otherwise indicated.

The Lender has approved the following amendments to the Commitment:

1. Effective the date hereof, any reference to “Constantine Enterprises Inc.” is deleted and the definition of “**Corporate Guarantors**” is hereby amended accordingly, in each instance, *mutatis mutandis*.
2. Effective the date hereof, Robert Hiscox is added as a Personal Guarantor and the definition of “**Personal Guarantor**” is hereby amended accordingly, in each instance, *mutatis mutandis*.
3. Under the heading **CONDITIONS PRECEDENT TO FIRST ADVANCE**, delete reference to “which must be addressed to the Lender or accompanied by a transmittal/reliance letter from the Appraiser” at the end of subsection (7)(p).
4. The Borrower shall pay to the Lender an amendment fee in the amount of Fifteen Thousand (\$15,000) Dollars which is payable from the first Advance.
5. This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Borrower and Guarantors irrevocably submit to the non-exclusive jurisdiction of the courts of such Province and acknowledge the competence of such courts and irrevocably agree to be bound by a judgment of any such court.
6. This Amendment is supplemental to and shall be read with and be deemed to be part of the Commitment, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Commitment in any agreements or documents entered into in connection with the Commitment shall mean the Commitment as amended hereby and all

such agreements and documents are also hereby amended *pro tanto* to give effect to this Amendment.

7. All the terms and conditions of the Commitment, except insofar as the same are amended by the express provisions of this Amendment, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Amendment and shall hereafter continue in full force and effect, as amended.
8. This Amendment may be executed in any number of separate counterparts by any one or more of the parties hereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterparts.

[signature page follows]

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: _____

Name: Francis F. Sajed

Title: Chief Lending Officer

Per: _____

Name: Greg Romano

Title: Senior Account Manager

ACCEPTED on: June 19, 2017

MIZRAHI (128 HAZELTON) INC.

Per: _____

Name: Sam Mizrahi

Title: President

The undersigned Guarantors have read, understand and accept the terms and conditions of this Commitment.

ACCEPTED on: June 19, 2017

MIZRAHI DEVELOPMENTS INC.

Per: _____

Name: Sam Mizrahi

Title: President

Witness _____

_____ Sam Mizrahi

Witness _____

_____ Robert Hiscox

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: _____

Name: Francis F. Sajed

Title: Chief Lending Officer

Per: _____

Name: Greg Romano

Title: Senior Account Manager

ACCEPTED on: June ____, 2017

MIZRAHI (128 HAZELTON) INC.

Per: _____

Name: Sam Mizrahi

Title: President

The undersigned Guarantors have read, understand and accept the terms and conditions of this Commitment.

ACCEPTED on: June ____, 2017

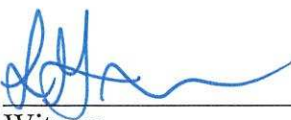
MIZRAHI DEVELOPMENTS INC.

Per: _____

Name: Sam Mizrahi

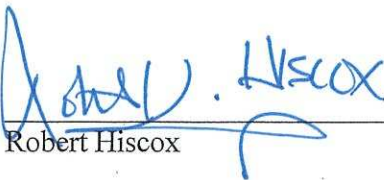
Title: President

Witness



Witness

Sam Mizrahi



Robert Hiscox



Head Office
5290 Yonge Street
Toronto, ON M2N 5P9
T 416 223-8502
F 416 223 2575
E ducainfo@duca.com
www.duca.com

December 4, 2018

Mizrahi (128 Hazelton) Inc.
126 Hazelton Avenue
Toronto, Ontario
M5R 2E5

Attn: Mr. Sam Mizrahi

Reference is made to the commitment letter entered into among, *inter alios*, DUCA Financial Services Credit Union Ltd. (the "Lender"), as lender, and Mizrahi (128 Hazelton) Inc. (the "Borrower"), as borrower, dated January 27, 2017, as amended by agreements dated May 4, 2017 and June 19, 2017 (collectively, the "Commitment"). All capitalized terms used herein shall have the meanings ascribed thereto in the Commitment unless otherwise indicated.

The Lender has approved the following amendments to the Commitment:

- Under the heading **SOURCES AND USES OF FUNDS**, delete:

SOURCES OF FUNDS	\$	%	USES OF FUNDS	\$	%
Equity	12,785,000	20.4%	Land	15,292,331	24.4%
Construction Loan	33,460,000	53.3%	Hard Costs	27,296,953	43.5%
Purchaser Deposits	15,230,000	24.3%	Soft Costs	18,452,464	29.4%
Deferred Costs	1,325,000	2.1%	Hard Cost Contingency	1,157,837	1.8%
Rounding			Soft Cost Contingency	600,415	1.0%
TOTAL SOURCES	62,800,000	100%	TOTAL USES	62,800,000	100%

and insert:

SOURCES OF FUNDS	\$	%	USES OF FUNDS	\$	%
Equity	12,785,000	19.0%	Land	15,483,943	22.9%
Construction Loan	33,460,000	50.0%	Hard Costs	31,274,734	46.3%
Purchaser Deposits	20,030,000	17.0%	Soft Costs	20,131,560	29.8%
Deferred Costs	1,325,000	0.2%	Hard Cost Contingency	532,380	0.9%
		13%	Soft Cost Contingency	177,383	0.1%
TOTAL SOURCES	67,600,000	100%	TOTAL USES	67,600,000	100%

- The Borrower shall pay to the Lender an amendment fee in the amount of \$500 upon acknowledgement of this Agreement and shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Agreement.
- This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

4. This Amendment is supplemental to and shall be read with and be deemed to be part of the Commitment, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Commitment in any agreements or documents entered into in connection with the Commitment shall mean the Commitment as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Amendment.
5. All the terms and conditions of the Commitment, except insofar as the same are amended by the express provisions of this Amendment, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Amendment and shall hereafter continue in full force and effect, as amended.
6. This Amendment may be executed in any number of separate counterparts by any one or more of the parties hereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterparts.

[The remainder of this page is blank. Signature page follows.]

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: 
Name: Riz Ahmad
Title: Chief Risk Officer

mt
RZM
Per: 
Name: Kyle Yatabe
Title: Senior Account Manager, Corporate Finance

ACCEPTED on: December __, 2018.


MIZRAHI (128 HAZELTON) INC.


Per: 
Name: Sam Mizrahi
Title: President

The undersigned Guarantors have read, understand and accept the terms and conditions of this Commitment.


ACCEPTED on: December 7, 2018

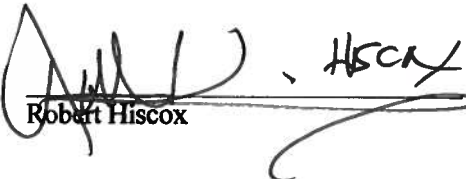
MIZRAHI DEVELOPMENTS INC.

Per: 
Name: Sam Mizrahi
Title: President


Witness


Sam Mizrahi


Witness


Robert Hiscox



5255 Yonge Street, 4th Floor, Toronto, ON M2N 6P4 • 416-223-8838 • www.duca.com

June 30, 2020

Mizrahi (128 Hazelton) Inc.
126 Hazelton Avenue
Toronto, Ontario
M5R 2E5

Attention: Sam Mizrahi

Dear Sirs:

Re: DUCA Financial Services Credit Union Ltd. (the "**Lender**") loan to Mizrahi (128 Hazelton) Inc. (the "**Borrower**")
Guaranteed by Mizrahi Developments Inc., Robert Hiscox and Sam Mizrahi (collectively, the "**Guarantors**") pursuant to a commitment letter dated January 27, 2017, as amended by letters dated May 4, 2017 and June 19, 2017 (collectively, the "**Commitment**")

Reference is made to the Commitment. All capitalized terms used herein shall have the meanings ascribed thereto in the Commitment unless otherwise indicated. We confirm our mutual agreement to amend the Commitment as follows:

1. From and after the date hereof, under the heading **MATURITY DATE**, the following text is hereby deleted:

"The Credit Facilities shall mature and any outstanding balance shall become due and payable in full on the earlier of (1) December 31, 2019, subject to an extension for a period of 6 months which may be offered by the Lender in its sole and unfettered discretion which offer shall be conditional upon, among other things at the sole and unfettered discretion of the Lender, there being no Default, the Lender having received evidence that the maturity date of the Constantine Charge is extended by 6 months (such that it is at least two weeks beyond the extended maturity date of the Credit Facilities) and upon payment by the Borrower of the Extension Fee; and (2) the date on which the Lender demands repayment of the Credit Facilities."

and is replaced with:

"The Credit Facilities shall mature and any outstanding balance shall become due and payable in full on the earlier of (1) December 31, 2020, subject to up to 3 extensions for a period of 1 month each which may be offered by the Lender in its sole and unfettered discretion which offer shall be conditional upon, among other things at the sole and unfettered discretion of the Lender, there being no Default, the Lender having received evidence that the maturity date of the Constantine Charge is extended to a date which is at least two weeks beyond the extended maturity date of the Credit Facilities and upon payment by the Borrower of an extension fee of \$5,500 per extension; and (2) the date on which the Lender demands repayment of the Credit Facilities."

2. From and after the date hereof, under the heading **SOURCES AND USES OF FUNDS**, the following text is hereby deleted:

Sources and Uses					
Source	Current	%	Use	Current	%
Construction Loan	33,460,000	53.3%	Land	15,292,331	24.4%
Equity	12,785,000	20.4%	Hard Costs	27,296,953	43.5%
Purchaser Deposits	15,230,000	24.3%	Soft Costs	18,452,464	29.4%
Deferred Costs	1,325,000	2.1%	Hard Cost Contingency	1,157,837	1.8%
			Soft Cost Contingency	600,415	1.0%
Total	62,800,000	100%	Total	62,800,000	100%

and is replaced with:

Sources and Uses					
Source	Current	%	Use	Current	%
Construction Loan	33,460,000	46.0%	Land	15,451,199	21.2%
Equity	19,315,471	26.5%	Hard Costs	36,226,825	49.8%
Purchaser Deposits	11,230,000	15.4%	Soft Costs	12,584,697	17.3%
Additional Deposits	7,434,529	10.2%	Finance Costs	8,081,039	11.1%
Deferred Costs	1,325,000	1.8%	Contingency	421,240	0.6%
Total	72,765,000	100%	Total	72,765,000	100%

3. Under the heading **AVAILABILITY**, delete reference to "\$62,800,000" in the second paragraph thereof and insert "\$72,765,000" in its place.
4. Under the definition of "**Undistributed Purchaser Deposits**", delete reference to "\$15,230,000" and insert "\$18,664,529" in its place.
5. The Borrower shall pay to the Lender an extension fee in the amount of \$33,460 upon acceptance of and as a condition of this Agreement and shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Agreement.
6. This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Borrower and Guarantors irrevocably submit to the non-exclusive jurisdiction of the courts of such Province and acknowledge the competence of such courts and irrevocably agree to be bound by a judgment of any such court.
7. This Agreement is supplemental to and shall be read with and be deemed to be part of the Commitment, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Commitment in any agreements or documents entered into in connection with the Commitment shall mean the Commitment as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Agreement.

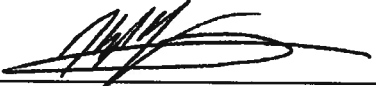
8. All the terms and conditions of the Commitment and the Security, except insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Agreement and shall hereafter continue in full force and effect, as amended.
9. This Agreement may be executed in any number of separate counterparts by any one or more of the parties hereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterparts.


[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]



Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: 
 Name: Kyle Yatabe
 Title: Director, Commercial Lending

Per: 
 Name: Riz Ahmad
 Title: Chief Risk Officer

We have authority to bind the Corporation.

The forgoing is hereby acknowledged and agreed to this 30 day of June, 2020.

MIZRAHI (128 HAZELTON) INC.

Per: 
 Name: Sam Mizrahi
 Title: President

I have authority to bind the Corporation.

The forgoing is hereby acknowledged and agreed to by the Guarantors this 30 day of June, 2020.

MIZRAHI DEVELOPMENTS INC.

Per: 
 Name: Sam Mizrahi
 Title: President

I have authority to bind the Corporation.

Witness

Witness

Sam Mizrahi

Robert Hiscox

FOURTH AMENDMENT TO CREDIT AGREEMENT

THIS AGREEMENT is made as of June 30th, 2020

B E T W E E N:

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

- and -

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

- and

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

- A. The Borrower, the Lender and Mizrahi are parties to a credit agreement dated as of June 19, 2015, as amended by an amendment dated August 13, 2015, and as further amended by an amendment dated May 9, 2017 and as further amended by an amendment dated October 31st, 2018 (as further amended, restated, modified or supplemented from time to time, the "**Credit Agreement**") pursuant to which the
- B. Lender agreed to establish certain credit facilities in favour of the Borrower.
- C. The Parties have agreed to enter into this **FOURTH** Amendment to Credit Agreement pursuant to the terms hereof.

The Parties agree as follows: **Article 1**
INTERPRETATION

1.01 Definitions

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

Article 2 AMENDMENTS TO THE CREDIT AGREEMENT

2.01 Amendments

The Credit Agreement is hereby amended as follows:

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

"Maturity Date" means December 31, 2020 ."

Article 3
CONFIRMATION OF SECURITY

3.01 Confirmation of Security

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

The balance of this page is intentionally left blank.

Two handwritten signatures in black ink, one to the left of the other, appearing to be initials or names.

3.02 Supplemental Nature of Agreement

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

3.03 Ratification and Confirmation of Credit Agreement

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

Article 4 GENERAL PROVISIONS

4.01 Further Assurances

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

4.02 Assignment

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

4.03 Binding Effect

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

4.04 Governing Law

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

4.05 Counterparts

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



IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

MIZRAHI (128 HAZELTON) INC.

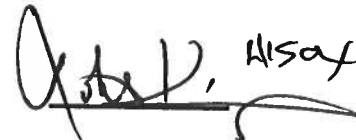
By: 

Sam Mizrahi

Title: President

I/We have authority to bind the Corporation

CONSTANTINE ENTERPRISES INC.

By: 

Title: President & CEO

I/We have authority to bind the Corporation

MIZRAHI DEVELOPMENTS INC.

By: 

Sam Mizrahi

Title: President

I/We have authority to bind the Corporation

[Signature Page to Amendment 4 to Credit Agreement]

January 20, 2021

Mizrahi (128 Hazelton) Inc.
125 Hazelton Avenue
Toronto, Ontario M5R 2E4

Attention: Sam Mizrahi

Dear Mr. Mizrahi:

Re: DUCA Financial Services Credit Union Ltd. (the "**Lender**")
loan to Mizrahi (128 Hazelton) Inc. (the "**Borrower**"),
guaranteed by Mizrahi Developments Inc. (the "**Corporate Guarantor**")
and Sam Mizrahi and Robert Hiscox (collectively, the "**Personal Guarantors**")
and together with the Corporate Guarantor, the "**Guarantors**"), pursuant to
a commitment letter dated January 27, 2017, as amended by
a letter agreement dated May 4, 2017, as further amended by
a letter agreement dated June 19, 2017, as further amended by
a letter agreement dated December 4, 2018, as further amended by
a letter agreement dated June 30, 2020 (collectively, the "**Commitment**")

All capitalized terms used herein shall have the meanings ascribed thereto in the Commitment unless otherwise indicated.

We are pleased to advise that the Lender has approved the following amendments to the Commitment:

1. From and after the date hereof:
 - (a) the first paragraph under the heading "**CREDIT FACILITIES**" set out on Page 1 of the Commitment is hereby deleted and replaced with the following:
 - (1) \$37,460,000 (the "**Construction Commitment**") demand non-revolving facility (the "**Construction Facility**");
 - (b) the table set out under the heading "**SOURCES AND USES OF FUNDS**" is hereby deleted and replaced with the following:

Sources & Uses					
Sources	\$	%	Uses	\$	%
Construction Loan	37,460,000	49	Land	15,506,002	20
Land & Cash Equity	13,100,000	17	Hard Costs	38,634,622	51
Additional Equity	7,840,044	10	Soft Costs	12,854,151	17
Purchaser Deposits	16,439,956	22	Finance Costs	8,736,477	11
Deferred Costs	1,325,000	2	Contingency	433,748	1
TOTAL	76,165,000	100	TOTAL	76,165,000	100

- (c) the paragraph under the heading "**MATURITY DATE**" set out on Page 2 of the Commitment is hereby deleted and replaced with the following:

The Credit Facilities shall mature and any outstanding balance shall become due and payable in full on the earlier of (1) March 31, 2021, subject to one (1) three (3) month extension which may be offered by the Lender in its sole and unfettered discretion which offer shall be conditional upon, *inter alia*, there having been no Default under the Commitment and/or the Loan Documents and upon payment by the Borrower of the Extension Fee and (2) the date on which the Lender demands repayment of the Credit Facilities.

- (d) the second paragraph under the heading "**AVAILABILITY**" on Page 6 of the Commitment is hereby amended replacing "\$72,765,000" with "\$76,165,000";

- (e) the definition of "Construction Lien Act" set out on Page 40 of the Commitment is hereby deleted in its entirety and replaced as follows:

"Construction Lien Act" means the *Construction Act* (Ontario) and any successor legislation in effect from time to time.

- (f) the definition of "Extension Fee" set out on Page 43 of the Commitment is hereby deleted in its entirety and replaced as follows:

"Extension Fee" means a fee of \$12,400 per month for each month that the Credit Facilities are outstanding beyond March 31, 2021, which fee is fully earned and payable on the first day of each month commencing April 1, 2021, and is to be debited from the Project Account and otherwise secured by the Security.

- (g) the definition of "Minimum Required Equity" set out on Page 46 of the Commitment is hereby deleted in its entirety and replaced as follows:

"Minimum Required Equity" means an amount of Project Equity equal to the sum of:

- (1) \$20,940,044; and
- (2) Cost Overruns funded by the Borrower and/or the Guarantors.

- (h) the definition of "**Undistributed Purchaser Deposits**" set out on Page 50 of the Commitment is hereby amended by replacing "\$18,664,529" with "\$16,439,956".

2. The Loan and this Amendment shall be further secured by:

- (a) an agreement amending the Charge to increase the principal amount to \$38,000,000;
- (b) an acknowledgement and confirmation by the Borrower and the Guarantors confirming that, *inter alia*, certain existing Security in favour of the Lender as set out in the Commitment shall continue to secure all present and future obligations of the Borrower and the Guarantors to the Lender, including, without limitation, the following:
 - i. a general security agreement given by the Borrower to the Lender providing a first priority security interest over all the present and future assets, property and undertaking of the Borrower (other than Purchaser Deposits, in which case the security interest created by the general security agreement shall form a second priority interest thereon, subject only to any security interest in favour of DBC) including, plans, contracts, drawings, agreements, permits, approvals, equipment, receivables, inventory and intellectual property;
 - ii. a first ranking general assignment of leases and rents and revenues from the Property given by the Borrower in favour of the Lender;

- iii. an assignment of the Borrower's insurance policies given by the Borrower in favour of the Lender;
 - iv. a cash collateral account given by the Borrower in favour of the Lender pledging term deposits and/or guaranteed investment certificates if and when required by this Commitment to cash collateralize Letters of Credit;
 - v. an indemnification agreement given by the Borrower in favour of the Lender in respect of any Letters of Credit issued;
 - vi. an assignment of the Material Project Agreements given by the Borrower in favour of the Lender;
 - vii. an assignment of the Construction Management Agreement given by the Borrower to the Lender;
 - viii. an assignment of the Borrower's rights under the Sales Agreements, as may be amended, modified or restated from time to time, together with the Purchaser Deposits (subject, in the case of the Purchaser Deposits only, to any prior security interest of DBC) given by the Borrower in favour of the Lender;
 - ix. an assignment of the Construction Contracts given by the Borrower in favour of the Lender;
 - x. the unconditional joint and several guarantee and postponement of claim given by the Guarantors of all Obligations owing by the Borrower to the Lender;
 - xi. a joint and several environmental indemnity given by the Borrower and Guarantors in favour of the Lender;
 - xii. a joint and several debt service, cost overrun and completion undertaking and guarantee given by the Borrower and the Guarantors in favour of the Lender;
 - xiii. a negative covenant given by the Borrower, the Guarantors and shareholders confirming that they will not withdraw equity from the Project until the Loan is repaid in full;
 - xiv. an irrevocable direction by the Borrower to its solicitors (acknowledged by such solicitors) to forward (a) all Purchaser Deposits released by DBC and (b) all Net Closing Proceeds to the Lender for, in the case of (a), deposit to the Project Account for use in payment of the Project Costs and (b), repayment of the Loans, it being understood that such solicitors shall have no obligation to ensure the payment of the Project Costs;
 - xv. a standstill, subordination, postponement, and assignment of claim given by Constantine Enterprises Inc. in favour of the Lender; and
 - xvi. the DBC Priority Agreement.
- (c) if applicable, such other standstills, subordinations, postponements and assignments of claim to be given by any shareholder or stakeholder of the Borrower and any other Person the Lender may designate, acting reasonably; and
- (d) such other security as the Lender or its solicitors require, which is contemplated by this Amendment or which security more fully gives effect to the security contemplated by this Amendment.

3. This Amendment is subject to and conditional upon satisfaction of the following conditions on or before January 31, 2021:
 - (a) duly executed copies of the Security set out in paragraph 2 of this Amendment, registered where required;
 - (b) a renewal certificate or binder of insurance, as applicable, satisfactory to the Lender and its Consultant;
 - (c) confirmation that all Taxes are current;
 - (d) a duly executed copy of this Amendment, together with receipt of the (i) amendment fee of \$40,000 and (ii) extension fee of \$33,400;
 - (e) a satisfactory report from the Project Monitor containing confirmation of the Minimum Required Equity;
 - (f) evidence that the maturity date of the Constantine Charge has been extended to July 15, 2021;
 - (g) receipt of an agreement in favour of the Lender from Constantine Enterprises Inc. to provide partial discharges of the Units without payment provided that the Lender is repaid from the net closing proceeds from the sale of such Units satisfactory to the Lender and its solicitors;
 - (h) receipt of an agreement to amend the DBC Priority Agreement to provide for the increase to the priority in favour of the Lender over the DBC Mortgage to the principal amount of \$38,000,000 satisfactory to the Lender and its solicitors;
 - (i) the Borrower's solicitor's corporate and enforceability opinion in respect of the Borrower and the Corporate Guarantor, satisfactory to the Lender and its solicitors;
 - (j) a legal opinion from the Lender's solicitors satisfactory to the Lender confirming based on title insurance that (i) the Borrower has good and marketable title to the Property and (ii) the Charge, as amended by this Amendment, continues to constitute a good and valid first charge on the Property; and
 - (k) such other information, documentation, opinions and registrations as the Lender or its solicitors may request.
4. The Borrower shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Amendment, including without limitation, the cost of the insurance Consultant retained by the Lender to review the Borrower's insurance coverage to ensure that it meets the Lender's requirements.
5. This Amendment shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Borrower irrevocably submits to the non-exclusive jurisdiction of the courts of such Province and acknowledges the competence of such courts and irrevocably agrees to be bound by a judgment of any such court.
6. This Amendment is supplemental to and shall be read with and be deemed to be part of the Commitment, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Commitment in any agreements or documents entered into in connection with the Commitment shall mean the Commitment as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Amendment.

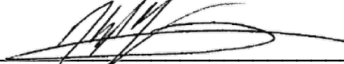
7. All the terms and conditions of the Commitment, except insofar as the same are amended by the express provisions of this Amendment, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Amendment and shall hereafter continue in full force and effect, as amended.
8. This Amendment may be executed in any number of separate counterparts by any one or more of the parties hereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterparts.

[THE REMAINDER OF THIS PAGE IS BLANK. SIGNATURE PAGE FOLLOWS.]



Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: 

Name: Kyle Yatabe

Title: Director, Corporate Finance

Per: 

Name: Riz Ahmad

Title: Chief Risk Officer

I/We have authority to bind the Corporation.

Address for Service:

5255 Yonge Street, 4th Floor

Toronto, Ontario M2N 6P4

E-Mail: commercialadmin@duca.com

ACCEPTED as of: January 21, 2021.

MIZRAHI (128 HAZELTON) INC.

Per: 

Name: Sam Mizrahi

Title: President

I have authority to bind the Corporation.

Mizrahi (128 Hazelton) Inc.

125 Hazelton Avenue

Toronto, Ontario M5R 2E4

E-Mail: sam@mizrahicorp.com

The undersigned Guarantors have read, understand and accept the terms and conditions of this Amendment.

ACCEPTED as of: January 21, 2021.

MIZRAHI DEVELOPMENTS INC.

Per: 

Name: Sam Mizrahi

Title: President


I have authority to bind the Corporation.

Address for Service:

189 Forest Hill Road

Toronto, Ontario M5P 2N3

E-Mail: sam@mizrahicorp.com



 Witness



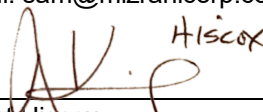
 Sam Mizrahi

Address for Service:
 189 Forest Hill Road
 Toronto, Ontario M5P 2N3

E-Mail: sam@mizrahiCorp.com



 Witness



 Robert Hiscox

Address for Service:
 36 Berryman Street
 Toronto, Ontario M5R 1M6

E-Mail: robert@hiscox.org



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June 30, 2021

Mizrahi (128 Hazelton) Inc.
125 Hazelton Avenue
Toronto, Ontario M5R 2E4

Attention: Sam Mizrahi

Dear Mr. Mizrahi:

Re: DUCA Financial Services Credit Union Ltd. (the “**Lender**”) loan to Mizrahi (128 Hazelton) Inc. (the “**Borrower**”), guaranteed by Mizrahi Developments Inc. (the “**Corporate Guarantor**”) and Sam Mizrahi and Robert Hiscox (collectively, the “**Personal Guarantors**”) and together with the Corporate Guarantor, the “**Guarantors**”), pursuant to a commitment letter dated January 27, 2017, as amended by a letter agreement dated May 4, 2017, as further amended by a letter agreement dated June 19, 2017, as further amended by a letter agreement dated December 4, 2018, as further amended by a letter agreement dated June 30, 2020, as further amended by a letter agreement dated January 20, 2021 (collectively, the “**Commitment**”)

All capitalized terms used herein shall have the meanings ascribed thereto in the Commitment unless otherwise indicated.

We are pleased to advise that the Lender has approved the following amendments to the Commitment:

1. From and after the date hereof:
 - (a) The paragraph under the heading “**MATURITY DATE**” set out on Page 2 of the Commitment is hereby deleted and replaced with the following:

“The Credit Facilities shall mature and any outstanding balance shall become due and payable in full on the earlier of (1) November 30, 2021, subject to one (1) three (3) month extension which may be offered by the Lender in its sole and unfettered discretion which offer shall be conditional upon, *inter alia*, there having been no Default under the Commitment and/or the Loan Documents and upon payment by the Borrower of an extension fee of \$20,000 and (2) the date on which the Lender demands repayment of the Credit Facilities.”
 - (b) The table set out under the heading “**SOURCES AND USES OF FUNDS**” is hereby deleted and replaced with the following:

Sources & Uses					
Sources	\$	%	Uses	\$	%
Construction Loan	37,460,000	46	Land	15,692,920	19
Land & Cash Equity	13,100,000	16	Hard Costs	41,747,742	52
Additional Equity	12,529,044	15	Soft Costs	13,111,909	16
Purchaser Deposits	16,439,956	20	Finance Costs	10,168,526	13
Deferred Costs	1,325,000	2	Contingency	132,903	0
TOTAL	80,854,000	100	TOTAL	80,854,000	100

- (c) The definition of "Minimum Required Equity" set out on Page 46 of the Commitment is hereby deleted in its entirety and replaced as follows:

"Minimum Required Equity" means an amount of Project Equity equal to the sum of:

- (1) \$25,629,044; and
- (2) Cost Overruns funded by the Borrower and/or the Guarantors.

- (d) References to "\$76,165,000" are hereby deleted and replaced with "\$80,854,000".

- (e) The definition of "Extension Fee" set out on Page 43 of the Commitment is hereby deleted in its entirety.

2. Interest due on the Construction Facility and the Swingline Facility on October 1, 2021, and November 1, 2021, for the period commencing September 1, 2021, to and including November 1, 2021, shall be capitalized to the Construction Facility on such payment due dates provided that the unadvanced amount of the Construction Facility (for greater certainty unadvanced amount as reduced by any capitalized interest), Undistributed Purchaser Deposits, Deferred Costs and remaining Offsetting Income less Holdbacks and unpaid payables being equal to the Cost-to-Complete. Any shortfall shall be met by the Borrower injecting additional cash equity on a 1:1 basis.
3. The Borrower shall pay to the Lender an extension fee in the amount of \$30,000 which fee is earned as of the date hereof, secured by the security delivered in connection with the Commitment and payable on or before September 15, 2021.
4. 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.
5. The Borrower shall be responsible for all legal fees and disbursements incurred by the Lender in connection with the preparation and negotiation of this Amendment, including without limitation, the cost of the insurance Consultant retained by the Lender to review the Borrower's insurance coverage to ensure that it meets the Lender's requirements.
6. This Amendment shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Borrower irrevocably submits to the non-exclusive jurisdiction of the courts of such Province and acknowledges the competence of such courts and irrevocably agrees to be bound by a judgment of any such court.
7. This Amendment is supplemental to and shall be read with and be deemed to be part of the Commitment, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Commitment in any agreements or documents entered into in connection with the Commitment shall mean the Commitment as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Amendment.
8. All the terms and conditions of the Commitment, except insofar as the same are amended by the express provisions of this Amendment, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Amendment and shall hereafter continue in full force and effect, as amended.
9. This Amendment may be executed in any number of separate counterparts by any one or more of the parties hereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterparts.

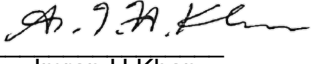
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Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: 
 Name: Kyle Yatabe
 Title: AVP, Corporate Finance

SB Per: 
 Name: Riz Ahmad Imran H Khan
 Title: Chief Risk Officer VP, Commercial Credit

We have authority to bind the Corporation.

Address for Service:
 5255 Yonge Street, 4th Floor
 Toronto, Ontario M2N 6P4
 E-Mail: commercialadmin@duca.com

ACCEPTED as of: June 30, 2021.

MIZRAHI (128 HAZELTON) INC.

Per: 
 Name: Sam Mizrahi
 Title: President

I have authority to bind the Corporation.

Mizrahi (128 Hazelton) Inc.
 125 Hazelton Avenue
 Toronto, Ontario M5R 2E4
 E-Mail: sam@mizrahiincorp.com

The undersigned Guarantors have read, understand and accept the terms and conditions of this Amendment.

ACCEPTED as of: June 30, 2021.

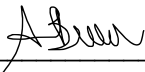
MIZRAHI DEVELOPMENTS INC.

Per: 
 Name: Sam Mizrahi
 Title: President


I have authority to bind the Corporation.

Address for Service:
 189 Forest Hill Road
 Toronto, Ontario M5P 2N3
 E-Mail: sam@mizrahiincorp.com

Witness



Sam Mizrahi

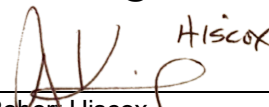


Address for Service:
189 Forest Hill Road
Toronto, Ontario M5P 2N3

E-Mail: sam@mizrahiCorp.com

Witness

Robert Hiscox



Address for Service:
36 Berryman Street
Toronto, Ontario M5R 1M6

E-Mail: robert@hiscox.org



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February 28, 2022

Mizrahi (128 Hazelton) Inc.
125 Hazelton Avenue
Toronto, Ontario M5R 2E4

Attention: Sam Mizrahi

Dear Mr. Mizrahi:

Re: DUCA Financial Services Credit Union Ltd. (the “**Lender**”) loan to Mizrahi (128 Hazelton) Inc. (the “**Borrower**”), guaranteed by Mizrahi Developments Inc. (the “**Corporate Guarantor**”) and Sam Mizrahi and Robert Hiscox (collectively, the “**Personal Guarantors**”) and together with the Corporate Guarantor, the “**Guarantors**”), pursuant to a commitment letter dated January 27, 2017, as amended by a letter agreement dated May 4, 2017, as further amended by a letter agreement dated June 19, 2017, as further amended by a letter agreement dated December 4, 2018, as further amended by a letter agreement dated June 30, 2020, as further amended by a letter agreement dated January 20, 2021, as further amended by a letter agreement dated June 30, 2021 (collectively, the “**Commitment**”)

All capitalized terms used herein shall have the meanings ascribed thereto in the Commitment unless otherwise indicated.

We are pleased to advise that the Lender has approved the following amendments to the Commitment:

1. From and after the date hereof:
 - (a) The paragraph under the heading “**MATURITY DATE**” set out on Page 2 of the Commitment is hereby deleted and replaced with the following:


“The Credit Facilities shall mature and any outstanding balance shall become due and payable in full on the earlier of (1) March 31, 2022, subject to three (3) one (1) month extensions each of which may be offered by the Lender in its sole and unfettered discretion and shall be conditional upon, *inter alia*, there having been no Default under the Commitment and/or the Loan Documents and upon payment by the Borrower of an extension fee of \$15,000 for each one (1) month extension and (2) the date on which the Lender demands repayment of the Credit Facilities.”
2. The Borrower shall pay to the Lender an extension fee in the amount of \$15,000 which fee is earned as of the date hereof, secured by the security delivered in connection with the Commitment and payable on or before March 18, 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.
4. This Amendment shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Borrower irrevocably submits to the non-exclusive jurisdiction of the courts of such Province and acknowledges the competence of such courts and irrevocably agrees to be bound by a judgment of any such court.


5. This Amendment is supplemental to and shall be read with and be deemed to be part of the Commitment, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Commitment in any agreements or documents entered into in connection with the Commitment shall mean the Commitment as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Amendment.
6. All the terms and conditions of the Commitment, except insofar as the same are amended by the express provisions of this Amendment, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Amendment and shall hereafter continue in full force and effect, as amended.
7. This Amendment may be executed in any number of separate counterparts by any one or more of the parties hereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterparts.

[THE REMAINDER OF THIS PAGE IS BLANK. SIGNATURE PAGE FOLLOWS.]

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: 
 Name: Kyle Yatabe
 Title: AVP, Construction Finance

Per: 
 Name: Imran H Khan
 Title: VP, Commercial Credit

We have authority to bind the Corporation.

Address for Service:
 5255 Yonge Street, 4th Floor
 Toronto, Ontario M2N 6P4
 E-Mail: commercialadmin@duca.com

ACCEPTED as of the date first written above.

MIZRAHI (128 HAZELTON) INC.

Per: 
 Name: Sam Mizrahi
 Title: President

I have authority to bind the Corporation.

Mizrahi (128 Hazelton) Inc.
 125 Hazelton Avenue
 Toronto, Ontario M5R 2E4
 E-Mail: sam@mizrahicorp.com

The undersigned Guarantors have read, understand and accept the terms and conditions of this Amendment.


ACCEPTED as of the date first written above.

MIZRAHI DEVELOPMENTS INC.

Per: 
 Name: Sam Mizrahi
 Title: President

I have authority to bind the Corporation.

Address for Service:
 189 Forest Hill Road
 Toronto, Ontario M5P 2N3
 E-Mail: sam@mizrahicorp.com



Witness  _____

 _____
Sam Mizrahi

Address for Service:
189 Forest Hill Road
Toronto, Ontario M5P 2N3

E-Mail: sam@mizrahiCorp.com

Witness _____

  _____
Robert Hiscox

Address for Service:
36 Berryman Street
Toronto, Ontario M5R 1M6

E-Mail: robert@hiscox.org

Dated as of June 30, 2022

Mizrahi (128 Hazelton) Inc.
125 Hazelton Avenue
Toronto, Ontario M5R 2E4

Attention: Sam Mizrahi

Dear Mr. Mizrahi:

Re: DUCA Financial Services Credit Union Ltd. (the “**Lender**”) loan to Mizrahi (128 Hazelton) Inc. (the “**Borrower**”), guaranteed by Mizrahi Developments Inc. (the “**Corporate Guarantor**”) and Sam Mizrahi and Robert Hiscox (collectively, the “**Personal Guarantors**”) and together with the Corporate Guarantor, the “**Guarantors**”), pursuant to a commitment letter dated January 27, 2017, as amended by a letter agreement dated May 4, 2017, as further amended by a letter agreement dated June 19, 2017, as further amended by a letter agreement dated December 4, 2018, as further amended by a letter agreement dated June 30, 2020, as further amended by a letter agreement dated January 20, 2021, as further amended by a letter agreement dated June 30, 2021, as further amended by a letter agreement dated February 28, 2022 (collectively, the “**Commitment**”)

All capitalized terms used herein shall have the meanings ascribed thereto in the Commitment unless otherwise indicated.

We are pleased to advise that the Lender has approved the following amendments to the Commitment:

1. From and after the date hereof, the paragraph under the heading “**MATURITY DATE**” set out on Page 2 of the Commitment is hereby deleted and replaced with the following:

“The Credit Facilities shall mature and any outstanding balance shall become due and payable in full on the earlier of: (1) August 31, 2022, subject to two (2) one (1) month extensions each of which may be offered by the Lender in its sole and unfettered discretion and shall be conditional upon, *inter alia*, there having been no Default under the Commitment and/or the Loan Documents and upon payment by the Borrower of an extension fee of \$25,000 for the first extension and \$30,000 for the second and final extension; and (2) the date on which the Lender demands repayment of the Credit Facilities.”
2. The Borrower shall pay to the Lender an extension fee in the amount of \$35,000 which fee is earned as of the date hereof, secured by the security delivered in connection with the Commitment and payable on or before August 17, 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.
4. This Amendment shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Borrower irrevocably submits to the non-exclusive jurisdiction of the courts of such Province and acknowledges the competence of such courts and irrevocably agrees to be bound by a judgment of any such court.

5. This Amendment is supplemental to and shall be read with and be deemed to be part of the Commitment, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Commitment in any agreements or documents entered into in connection with the Commitment shall mean the Commitment as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Amendment.
6. All the terms and conditions of the Commitment, except insofar as the same are amended by the express provisions of this Amendment, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Amendment and shall hereafter continue in full force and effect, as amended.
7. This Amendment may be executed in any number of separate counterparts by any one or more of the parties hereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterparts.

[THE REMAINDER OF THIS PAGE IS BLANK. SIGNATURE PAGE FOLLOWS.]

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: 

Name: Kyle Yatabe

Title: Vice President, Commercial Banking, Construction & Leasing

Per: 

Name: Riz Ahmad

Title: Chief Risk Officer

We have authority to bind the Corporation.

Address for Service:

5255 Yonge Street, 4th Floor

Toronto, Ontario M2N 6P4

E-Mail: commercialadmin@duca.com

ACCEPTED as of the date first written above.

MIZRAHI (128 HAZELTON) INC.

Per: 

Name: Sam Mizrahi

Title: President

I have authority to bind the Corporation.

Mizrahi (128 Hazelton) Inc.

125 Hazelton Avenue

Toronto, Ontario M5R 2E4

E-Mail: sam@mizrahicorp.com

The undersigned Guarantors have read, understand and accept the terms and conditions of this Amendment.

ACCEPTED as of the date first written above.

MIZRAHI DEVELOPMENTS INC.

Per: 

Name: Sam Mizrahi

Title: President

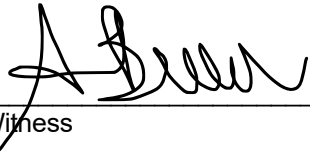
I have authority to bind the Corporation.

Address for Service:


189 Forest Hill Road

Toronto, Ontario M5P 2N3

E-Mail: sam@mizrahicorp.com




 Witness



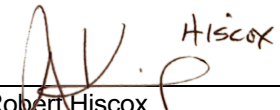
 Sam Mizrahi

Address for Service:
 189 Forest Hill Road
 Toronto, Ontario M5P 2N3

E-Mail: sam@mizrahiCorp.com



 Witness



 Robert Hiscox

Address for Service:
 36 Berryman Street
 Toronto, Ontario M5R 1M6

E-Mail: robert@hiscox.org



Do more. Be more. Achieve more

5255 Yonge Street, 4th Floor, Toronto, ON M2N 6P4 • 416-223-8838 • www.duca.com

Dated as of October 31, 2022

Mizrahi (128 Hazelton) Inc.
125 Hazelton Avenue
Toronto, Ontario M5R 2E4

Attention: Sam Mizrahi

Dear Mr. Mizrahi:

Re: DUCA Financial Services Credit Union Ltd. (the “**Lender**”) loan to Mizrahi (128 Hazelton) Inc. (the “**Borrower**”), guaranteed by Mizrahi Developments Inc. (the “**Corporate Guarantor**”) and Sam Mizrahi and Robert Hiscox (collectively, the “**Personal Guarantors**”) and together with the Corporate Guarantor, the “**Guarantors**”), pursuant to a commitment letter dated January 27, 2017, as amended by a letter agreement dated May 4, 2017, as further amended by a letter agreement dated June 19, 2017, as further amended by a letter agreement dated December 4, 2018, as further amended by a letter agreement dated June 30, 2020, as further amended by a letter agreement dated January 20, 2021, as further amended by a letter agreement dated June 30, 2021, as further amended by a letter agreement dated February 28, 2022, as further amended by a letter agreement dated June 30, 2022 (collectively, the “**Commitment**”)

All capitalized terms used herein shall have the meanings ascribed thereto in the Commitment unless otherwise indicated.

We are pleased to advise that the Lender has approved the following amendments to the Commitment:

1. From and after the date hereof, the paragraph under the heading “**MATURITY DATE**” set out on Page 2 of the Commitment is hereby deleted and replaced with the following:

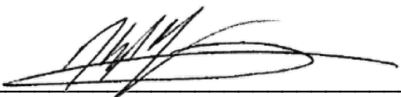
“The Credit Facilities shall mature and any outstanding balance shall become due and payable in full on the earlier of: (1) November 30, 2022, subject to two (2) one (1) month extensions each of which may be offered by the Lender in its sole and unfettered discretion and shall be conditional upon, *inter alia*: (i) there having been no Default under the Commitment and/or the Loan Documents; (ii) upon payment by the Borrower of an extension fee of \$30,000 at the time of the first extension which fee shall be reduced to \$15,000 in the event that the principal amount of the Credit Facilities is permanently reduced by \$3,900,000 on or before December 12, 2022, and an extension fee of \$30,000 at the time of the second and final extension which fee shall be reduced to \$10,000 in the event that the principal amount of the Credit Facilities is permanently reduced by \$3,900,000 on or before December 12, 2022, and by a further \$3,500,000 on or before December 31, 2022; and (2) the date on which the Lender demands repayment of the Credit Facilities.”
2. The Borrower shall pay to the Lender an extension fee in the amount of \$30,000 which fee is earned as of the date hereof, secured by the security delivered in connection with the Commitment and payable on or before December 12, 2022, provided that in the event that the principal amount of the Credit Facilities is permanently reduced by \$3,900,000 on or before December 12, 2022, such extension fee shall be reduced to \$20,000.
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.

4. This Amendment shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Borrower irrevocably submits to the non-exclusive jurisdiction of the courts of such Province and acknowledges the competence of such courts and irrevocably agrees to be bound by a judgment of any such court.
5. This Amendment is supplemental to and shall be read with and be deemed to be part of the Commitment, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Commitment in any agreements or documents entered into in connection with the Commitment shall mean the Commitment as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Amendment.
6. All the terms and conditions of the Commitment, except insofar as the same are amended by the express provisions of this Amendment, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Amendment and shall hereafter continue in full force and effect, as amended.
7. This Amendment may be executed in any number of separate counterparts by any one or more of the parties hereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterparts.

[THE REMAINDER OF THIS PAGE IS BLANK. SIGNATURE PAGE FOLLOWS.]

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: 
 Name: Kyle Yatabe
 Title: VP, Commercial Banking, Construction & Leasing

Per: 
 Name: Riz Ahmad
 Title: Chief Risk Officer


RG
AM

We have authority to bind the Corporation.

Address for Service:
 5255 Yonge Street, 4th Floor
 Toronto, Ontario M2N 6P4
 E-Mail: commercialadmin@duca.com

ACCEPTED as of the date first written above.

MIZRAHI (128 HAZELTON) INC.

Per: 
 Name: Sam Mizrahi
 Title: President

I have authority to bind the Corporation.

Mizrahi (128 Hazelton) Inc.
 125 Hazelton Avenue
 Toronto, Ontario M5R 2E4
 E-Mail: sam@mizrahiCorp.com

The undersigned Guarantors have read, understand and accept the terms and conditions of this Amendment.


ACCEPTED as of the date first written above.

MIZRAHI DEVELOPMENTS INC.

Per: 
 Name: Sam Mizrahi
 Title: President

I have authority to bind the Corporation.

Address for Service:
 189 Forest Hill Road
 Toronto, Ontario M5P 2N3
 E-Mail: sam@mizrahiCorp.com



Witness



Sam Mizrahi

Address for Service:
189 Forest Hill Road
Toronto, Ontario M5P 2N3

E-Mail: sam@mizrahiCorp.com

Witness

Robert Hiscox

Address for Service:
36 Berryman Street
Toronto, Ontario M5R 1M6

E-Mail: robert@hiscox.org



Do more. Be more. Achieve more

5255 Yonge Street, 4th Floor, Toronto, ON M2N 6P4 • 416-223-8838 • www.duca.com

Dated as of January 31, 2023

Mizrahi (128 Hazelton) Inc.
125 Hazelton Avenue
Toronto, Ontario M5R 2E4

Attention: Sam Mizrahi

Dear Mr. Mizrahi:

Re: DUCA Financial Services Credit Union Ltd. (the “**Lender**”) loan to Mizrahi (128 Hazelton) Inc. (the “**Borrower**”), guaranteed by Mizrahi Developments Inc. (the “**Corporate Guarantor**”) and Sam Mizrahi and Robert Hiscox (collectively, the “**Personal Guarantors**”) and together with the Corporate Guarantor, the “**Guarantors**”), pursuant to a commitment letter dated January 27, 2017, as amended by a letter agreement dated May 4, 2017, as further amended by a letter agreement dated June 19, 2017, as further amended by a letter agreement dated December 4, 2018, as further amended by a letter agreement dated June 30, 2020, as further amended by a letter agreement dated January 20, 2021, as further amended by a letter agreement dated June 30, 2021, as further amended by a letter agreement dated February 28, 2022, as further amended by a letter agreement dated June 30, 2022, as further amended by a letter agreement dated October 31, 2022 (collectively, the “**Commitment**”)

All capitalized terms used herein shall have the meanings ascribed thereto in the Commitment unless otherwise indicated.

We are pleased to advise that the Lender has approved the following amendments to the Commitment:

1. From and after the date hereof, the paragraph under the heading “**MATURITY DATE**” set out on Page 2 of the Commitment is hereby deleted and replaced with the following:

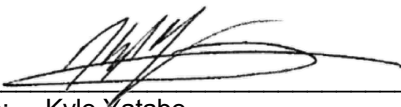
“The Credit Facilities shall mature and any outstanding balance shall become due and payable in full on the earlier of: (1) March 31, 2023, subject to one (1) extension for one (1) month which may be offered by the Lender in its sole and unfettered discretion and shall be conditional upon, *inter alia*: (i) there having been no Default under the Commitment and/or the Loan Documents; (ii) upon payment by the Borrower of an extension fee of \$5,000 on or before March 31, 2023; and (2) the date on which the Lender demands repayment of the Credit Facilities.”
2. The Borrower shall pay to the Lender an extension fee in the amount of \$10,000 which fee is earned as of the date hereof, secured by the security delivered in connection with the Commitment and payable on or before March 10, 2023.
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.
4. This Amendment shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Borrower irrevocably submits to the non-exclusive jurisdiction of the courts of such Province and acknowledges the competence of such courts and irrevocably agrees to be bound by a judgment of any such court.


5. This Amendment is supplemental to and shall be read with and be deemed to be part of the Commitment, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Commitment in any agreements or documents entered into in connection with the Commitment shall mean the Commitment as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Amendment.
6. All the terms and conditions of the Commitment, except insofar as the same are amended by the express provisions of this Amendment, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Amendment and shall hereafter continue in full force and effect, as amended.
7. This Amendment may be executed in any number of separate counterparts by any one or more of the parties hereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterparts.

[THE REMAINDER OF THIS PAGE IS BLANK. SIGNATURE PAGE FOLLOWS.]

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

rg
Per: 
Name: Kyle Yatabe
Title: VP, Commercial Banking, Construction & Leasing

sk
Per: 
Name: Imran Khan
Title: VP Commercial Credit

We have authority to bind the Corporation.

Address for Service:
5255 Yonge Street, 4th Floor
Toronto, Ontario M2N 6P4
E-Mail: commercialadmin@duca.com

ACCEPTED as of the date first written above.

MIZRAHI (128 HAZELTON) INC.

Per: 
Name: Sam Mizrahi
Title: President

I have authority to bind the Corporation.

Mizrahi (128 Hazelton) Inc.
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
E-Mail: sam@mizrahiCorp.com

The undersigned Guarantors have read, understand and accept the terms and conditions of this Amendment.


ACCEPTED as of the date first written above.

MIZRAHI DEVELOPMENTS INC.

Per: 
Name: Sam Mizrahi
Title: President

I have authority to bind the Corporation.

Address for Service:
189 Forest Hill Road
Toronto, Ontario M5P 2N3
E-Mail: sam@mizrahiCorp.com


 Witness Amanda Brown


 Witness Chris Donlan


 Sam Mizrahi

Address for Service:
 189 Forest Hill Road
 Toronto, Ontario M5P 2N3

E-Mail: sam@mizrahiCorp.com

 Hiscox
 .Type text here
 Robert Hiscox

Address for Service:
 36 Berryman Street
 Toronto, Ontario M5R 1M6

E-Mail: robert@hiscox.org

Effective as of April 30, 2023

Mizrahi (128 Hazelton) Inc.
125 Hazelton Avenue
Toronto, Ontario M5R 2E4

Attention: Sam Mizrahi

Dear Mr. Mizrahi:

Re: DUCA Financial Services Credit Union Ltd. (the “**Lender**”) loan to Mizrahi (128 Hazelton) Inc. (the “**Borrower**”), guaranteed by Mizrahi Developments Inc. (the “**Corporate Guarantor**”) and Sam Mizrahi and Robert Hiscox (collectively, the “**Personal Guarantors**”) and together with the Corporate Guarantor, the “**Guarantors**”), pursuant to a commitment letter dated January 27, 2017, as amended by a letter agreement dated May 4, 2017, as further amended by a letter agreement dated June 19, 2017, as further amended by a letter agreement dated December 4, 2018, as further amended by a letter agreement dated June 30, 2020, as further amended by a letter agreement dated January 20, 2021, as further amended by a letter agreement dated June 30, 2021, as further amended by a letter agreement dated February 28, 2022, as further amended by a letter agreement dated June 30, 2022, as further amended by a letter agreement dated October 31, 2022, as further amended by a letter agreement dated January 31, 2023 (collectively, the “**Commitment**”)

All capitalized terms used herein shall have the meanings ascribed thereto in the Commitment unless otherwise indicated.

We are pleased to advise that the Lender has approved the following amendments to the Commitment:

1. From and after the date hereof, the paragraph under the heading “**MATURITY DATE**” set out on Page 2 of the Commitment is hereby deleted and replaced with the following:

“The Credit Facilities shall mature and any outstanding balance shall become due and payable in full on the earlier of: (1) May 31, 2023, subject to four (4) extensions to the Maturity Date for one (1) month each, each of which may be offered by the Lender in its sole and unfettered discretion and shall be conditional upon, *inter alia*: (i) there having been no Default under the Commitment and/or the Loan Documents; (ii) payment by the Borrower to the Lender of an extension fee of \$5,000 per extension on or before the last Business Day prior to the Maturity Date, as extended from time to time; and (2) the date on which the Lender demands repayment of the Credit Facilities.”
2. The Borrower shall pay to the Lender an extension fee in the amount of \$5,000, which fee is earned as of the date hereof, secured by the security delivered in connection with the Commitment and payable on or before May 5, 2023.
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.
4. This Amendment shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Borrower irrevocably submits to the non-


exclusive jurisdiction of the courts of such Province and acknowledges the competence of such courts and irrevocably agrees to be bound by a judgment of any such court.


5. This Amendment is supplemental to and shall be read with and be deemed to be part of the Commitment, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Commitment in any agreements or documents entered into in connection with the Commitment shall mean the Commitment as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Amendment.
6. All the terms and conditions of the Commitment, except insofar as the same are amended by the express provisions of this Amendment, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Amendment and shall hereafter continue in full force and effect, as amended.
7. This Amendment may be executed in any number of separate counterparts by any one or more of the parties hereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterparts.

[THE REMAINDER OF THIS PAGE IS BLANK. SIGNATURE PAGE FOLLOWS.]

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: 
 Name: Kyle Yatabe
 Title: VP, Commercial Banking, Construction & Leasing


Per: 
 Name: Imran Khan
 Title: VP, Commercial Credit

We have authority to bind the Corporation.

Address for Service:
 5255 Yonge Street, 4th Floor
 Toronto, Ontario M2N 6P4
 E-Mail: commercialadmin@duca.com

ACCEPTED as of the date first written above.

MIZRAHI (128 HAZELTON) INC.

Per: 
 Name: Sam Mizrahi
 Title: President

I have authority to bind the Corporation.

Mizrahi (128 Hazelton) Inc.
 125 Hazelton Avenue
 Toronto, Ontario M5R 2E4
 E-Mail: sam@mizrahiCorp.com

The undersigned Guarantors have read, understand and accept the terms and conditions of this Amendment.

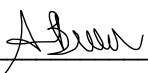
ACCEPTED as of the date first written above.

MIZRAHI DEVELOPMENTS INC.

Per: 
 Name: Sam Mizrahi
 Title: President

I have authority to bind the Corporation.

Address for Service:
 189 Forest Hill Road
 Toronto, Ontario M5P 2N3
 E-Mail: sam@mizrahiCorp.com



Witness



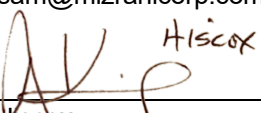
Sam Mizrahi

Address for Service:
189 Forest Hill Road
Toronto, Ontario M5P 2N3

E-Mail: sam@mizrahiCorp.com



Witness



Robert Hiscox

Address for Service:
36 Berryman Street
Toronto, Ontario M5R 1M6

E-Mail: robert@hiscox.org

This is Exhibit “**F**” referred to in the Affidavit of Robert Hiscox sworn December 22, 2025. The affiant and I were located in the City of Toronto in the Province of Ontario. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to read 'J. Bornstein', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Commissioner Name: Jeremy Bornstein
Law Society of Ontario Number: 65425C

Hoy, Alec

From: Andrew Driver <andrew.driver@altusgroup.com>
Sent: Friday, November 08, 2019 8:00 AM
To: 'Chris Donlan'
Subject: RE: Cost reports

Importance: High

Hi Chris,

We have been advised that the remaining is deferred and as such we have not increased the budget.

I will make an adjustment against revenue on the cash flow to show the additional interest if that works.

Andrew Driver

Associate Director, Cost Consulting and Project Management
Altus Expert Services, Altus Group
andrew.driver@altusgroup.com | www.altusgroup.com

D: 416.641.9630 | T: 416.641.9500 ext. 2016 | M: 416.357.6065
33 Yonge Street, Suite 500
Toronto, ON, M5E1G4 Canada

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REAL ESTATE DEVELOPMENT TRENDS REPORT



Altus Group is a leading provider of commercial real estate advisory services, software and data solutions.

From: Chris Donlan <chris.donlan@constantineinc.com>
Sent: Thursday, November 7, 2019 1:19 PM
To: Andrew Driver <andrew.driver@altusgroup.com>
Subject: Cost reports

[External Sender: chris.donlan@constantineinc.com]

Hi Andrew,

I'm doing some updating on the 128 Hazelton costs and I'm looking at the Altus reports. Can you tell me how line 70 in the Sep-2019 report (Constantine Loan Interest) is calculated for each report? It hasn't changed even though the project completion date has been extended multiple times.

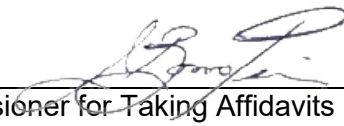
Thanks,

CMD



CONSTANTINE ENTERPRISES INC.
CHRIS DONLAN | Chief Financial Officer | www.constantineinc.com
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1235 Bay St., Suite 701, Toronto, Ontario, Canada M5R 3K4

This is Exhibit “**G**” referred to in the Affidavit of Robert Hiscox sworn December 22, 2025. The affiant and I were located in the City of Toronto in the Province of Ontario. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'J. Bornstein', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Commissioner Name: Jeremy Bornstein
Law Society of Ontario Number: 65425C

CITATION: Mizrahi v. Rogers, 2025 ONSC 4439
COURT FILE NO.: CV-24-00728675-00CL
DATE: 20250731

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Sam Mizrahi, Mizrahi 128 Hazelton Retail Inc., Sam M (180 SAW) LP Ind., Sam M (180 SAW) Inc., and 1000041090 Ontario Inc., Plaintiffs

AND:

Edward S. Rogers III, Robert Hiscox, and Constantine Enterprises Inc., Defendants

BEFORE: Cavanagh J.

COUNSEL: *Jerome Morse and David Trafford*, for the Plaintiffs

Eliot Kolers and Nicholas Avis, for the Defendants

HEARD: April 17, 2025

ENDORSEMENT

Introduction

[1] The Defendants move for an order striking out the Plaintiffs’ Amended Statement of Claim, without leave to amend, on the ground that it discloses no reasonable cause of action or on the ground that it is scandalous, frivolous, or vexatious, or an abuse of the court’s process.

[2] For the following reasons, I grant the Defendants’ motion to strike out the Amended Statement of Claim on the ground that it discloses no reasonable cause of action. I grant leave to the Plaintiffs to amend the Amended Statement of Claim within 45 days.

Background Facts

[3] The Plaintiffs filed an Amended Statement of Claim on April 8, 2024.

[4] The Plaintiffs are Sam Mizrahi (“Sam”), Mizrahi 128 Hazelton Retail Inc. (“Retail Inc.”), Sam M (180 SAW) LP Inc. (“Sam M Inc.”), Sam M (180 SAW) Inc. (Sam M 180 SAW Inc.”), and 1000041090 Ontario Inc. (“Mizrahi SPV”).

[5] The Defendants are Edward S. Rogers III (“Edward”), Robert Hiscox (“Robert”), and Constantine Enterprises Inc. (“CEI”).

[6] I use these abbreviated names, including first names for the individual parties, for clarity, because they are used in the Amended Statement of Claim.

[7] In the Amended Statement of Claim, the Plaintiffs plead that Sam is the principal of Mizrahi Developments Inc. ("MDI") and MDI is the 50% shareholder of Mizrahi (128 Hazelton) Inc. The Plaintiffs plead that Sam is the principal of Retail Inc., Sam M 180 SAW Inc., and Mizrahi SVP.

[8] In the Amended Statement of Claim, the Plaintiffs plead that Edward is the co-founder of CEI, owns 90% of its shares, and is its directing mind. They plead that Robert is co-founder and CEO of CEI and owns 10% of its shares.

[9] The Plaintiffs' claim relates to two real estate developments in Toronto – one at 128 Hazelton Avenue and one at 180 Steeles Avenue West.

[10] In the Amended Statement of Claim, Sam claims:

- (a) general damages in the sum of \$50,000,000 for breach of contract, negligence, negligent misrepresentation, breach of fiduciary duty, breach of duty of good faith, unjust enrichment, tortious interference with economic interests and conspiracy to cause economic harm.
- (b) a declaration that (i) he is not indebted to the Defendants or others with respect to the 128 Hazelton project, (ii) he is not indebted to the Defendants or others with respect to the 180 SAW project, (iii) no funds are payable by him to the Defendants.
- (c) a declaration and order for contribution and indemnity in respect of all expenses, losses, damages and liabilities of whatsoever kind in his favour in respect of the 128 Hazelton project and the 180 SAW project.
- (d) Aggravated, exemplary or punitive damages.

[11] In the Amended Statement of Claim, Sam M Inc. and Sam M (180 SAW) Inc. each claim a declaration that it is not indebted to the Defendants or others with respect to the 180 SAW project. Mizrahi SPV claims a declaration that it is not indebted to the Defendants or others with respect to the 128 Hazelton project.

[12] In the Amended Statement of Claim, The Plaintiffs also claim special damages (estimated) in the sum of \$10,000,000.00.

[13] In paragraphs 16-21 of the Amended Statement of Claim, the Plaintiffs plead an Overview of their claims. I reproduce these paragraphs below:

16. This action arises from the Parties' agreement to develop two real estate projects. Sam utilized various corporate entities to undertake the development of the projects and borrow funds and partner with CEI and its related entities who provided capital to the projects. Edward and Robert utilized CEI to fund the projects and partner with SAM and the Sam entities.

17. Edward and Robert conspired to cause CEI and the 180 SAW GP to undertake the projects in a manner intended to harm the economic interests of Sam and the

Sam entities and are therefore liable for conspiracy to cause economic harm and tortious interference with economic interests causing Sam and the Sam entities the losses pleaded herein. These losses were also sustained due to CEI's breach of contracts, negligence, breach of fiduciary duty, and breach of the duty of good faith causing Sam and the Sam entities the losses pleaded herein. Sam and the Sam entities were owed fiduciary and good faith duties by CEI and the 180 SAW GP and when breached, unjustly enriched CEI to the detriment of Sam and the Sam entities. These actionable wrongs entitle the Plaintiffs to the declaratory relief sought.

18. The Defendants knew CEI, not Sam, would incur losses on the 128 Hazelton project. The Defendants refused to realize the profit to be garnered on the 180 SAW project based upon offers Sam solicited, because Sam asserted his legal rights and could not be coerced to agree to indemnify CEI 50% of its losses on the 128 Hazelton project as a condition of accepting the offers on the 180 SAW project. These 180 SAW project offers would have retired all debt Sam owed CEI on the 180 SAW project and earned Sam a profit. The Defendants caused the 180 SAW GP to reject these offers on the 180 SAW project which would generate CEI (and the Sam entities) returns at no less than commercially reasonable rates of returns so that CEI could increase the interest owing on loans advanced to Sam and the Sam entities to be in a position to eliminate Sam M Inc.'s one-third interest and thereby take over 100% of the project, realize 100% of the profits to be garnered on the 180 SAW project, and pursue Sam and the Sam entities for their 180 SAW project debts. The Defendants therefore were in a position to proceed with a Receivership referable to Sam's one-third interest, and did so, and thereby harmed Sam's reputational interest.

19. The Defendants carried on the business of the 128 Hazelton project so Sam could not reduce the debt he had guaranteed on that project that ranked ahead of CEI's debt, refused to close the sale of the Retail Unit (defined below) to Retail Inc., who was entitled to acquire the Retail Unit at a profit, self-dealt when it acquired a number of units of the 128 Hazelton project at a gain to CEI and Robert and at a loss to the 128 Hazelton project, again putting Sam at risk for the indebtedness he guaranteed and refused to refinance to bring the project to an orderly conclusion and put the project into receivership which will incur costs that also increases the risk of Sam having to pay indebtedness he guaranteed. The Receivership harms Sam's reputational interests.

20. The Defendants' unlawful conduct aforesaid and pleaded herein was undertaken in a manner that was calculated to harm Sam's reputational interests, entitling Sam to an award of aggravated damages.

21. The Defendants' unlawful conduct aforesaid and pleaded herein was high-handed, outrageous, and a contumelious and callous disregard of the rights of Sam and the Sam entities, for which punitive or exemplary damages should be awarded to sanction the Defendants' conduct and deter the like-minded.

Analysis

[14] I first address the Defendants' motion that the Amended Statement of Claim should be struck out pursuant to rule 21.01(1)(b) on the ground that it discloses no reasonable cause of action.

Legal Principles

[15] Rule 21.01(1)(b) of the *Rules of Civil Procedure* provides that a party may move before a judge to strike out a pleading on the ground that it discloses no reasonable cause of action or defence. Under rule 21.01(2)(b), no evidence is admissible on such a motion.

[16] In *Deep v. M.D. Management*, 2007 CanLII 22655 (ON SC), affirmed 2008 ONCA 211, D. M. Brown J., as he then was, at para. 9, summarized the general principles applicable on a motion to strike out a statement of claim under rule 21.01(1)(b):

- (i) The power to strike out a claim must be used sparingly, and caution and prudence are to govern the court's exercise of its discretion; only in the clearest of cases should a party be deprived of the opportunity of persuading a trial judge that the evidence and the law entitle it to a remedy or a defence: *Atlantic Steel Industries Inc. v. CIGNA Insurance Co. of Canada* (1997), 1997 CanLII 12125 (ON SC), 33 O.R. (3d) 12 (Gen. Div.), at p. 18;
- (ii) the court must accept the facts alleged in the statement of claim as proven unless they are patently ridiculous or incapable of proof, and must read the statement of claim generously with allowance for inadequacies due to drafting deficiencies: *Nash v. Ontario* (1995), 1995 CanLII 2934 (ON CA), 27 O.R. (3d) 1 (C.A.), at page 6;
- (iii) when a defendant moves to strike a claim, it is contending that the claim fails to disclose a wrong that is recognized as a violation of the plaintiff's rights, with the result that a court would be unable to grant a remedy even if the plaintiff proved all the facts alleged. The only question on such a motion is the substantive adequacy of the plaintiff's claim: i.e. whether a plaintiff will have established a cause of action entitling it to some form of relief assuming it can prove the allegations pleaded in the claim or, put another way, whether the plaintiff has sought relief for acts proscribed at law: *Dawson v. Rexcraft Storage and Warehouse Inc.* (1998), 1998 CanLII 4831 (ON CA), 164 D.L.R. (4th) 257 (C.A.), at paras. 8 and 9;
- (iv) the court hearing the motion cannot consider any evidence: Rule 21.01(2)(b). Instead, the court must consider whether the material facts pleaded in accordance with Rule 25.06(1) disclose a claim in respect of which relief may be granted.
- (v) Where the level of material facts pleaded fails to meet the level required to disclose a cause of action – i.e. if any fact material to the establishment of a cause of action is omitted - the remedy is a motion to strike the pleading, not a motion for particulars: *Balanyk v. University of Toronto*, 1999 CanLII

14918 (ON SC), [1999] O.J. No. 2162 (S.C.J.), at para. 29; *Copland v. Commodore Business Machines Ltd.* (1985), 1985 CanLII 2190 (ON SC), 52 O.R. (2d) 586 (Master);

- (vi) the novelty of the cause of action or the novelty of the application of a recognized cause of action should not prevent a plaintiff from proceeding with its case. Whether there is good reason to extend a tort to a new context is the kind of question for a trial judge to consider in light of all the evidence. The fact that a pleading reveals an arguable, difficult or important point of law may well make it critical that the action be allowed to proceed: *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959, at paras. 33, 34, 49 and 52; and,
- (vii) the court should not, at this stage of the proceedings, dispose of matters of law that are not fully settled in the jurisprudence: *R.D. Belanger & Associates Ltd. v. Stadium Corp. of Ontario Ltd.* (1991), 1991 CanLII 2731 (ON CA), 5 O.R. (3d) 778, at p. 782 (C.A.).

[17] In *Barbra Schlifer Commemorative Clinic v. HMQ Canada*, 2012 ONSC 5271, D.M. Brown J., as he then was, summarized the principles governing motions to strike out claims as disclosing no reasonable cause of action:

In sum, Rule 21.01(1)(b) operates to weed out the hopeless claims, based on a review of the pleadings, because they fail to state legally sufficient claims. If the pleading asserts a legally sufficient claim, Rule 21.01(1)(b) does not subject the claim to an analysis of the strength or weakness of the evidence advanced by the party in support of its claim. That is why under the Rule a court assumes the facts pleaded in the claim can be proved. Put another way, Rule 21.01(1)(b) does not provide a vehicle by which an opposing party can seek a final disposition of a claim on the evidence – that function falls to a motion for summary judgment or the trial. The purpose of Rule 21.01(1)(b) is more modest – to assess the tenability at law of a pleaded claim.

[18] Vague or conclusory allegations in a statement of claim are insufficient to avoid the pleading being struck out. See *Boudreau v. Bank of Montreal*, 2012 ONSC 3965, at para. 14; affirmed 2013 ONCA 211.

Does the Amended Statement of Claim plead the existence of a partnership among Sam and the Defendants?

[19] In the Amended Statement of Claim, Sam claims general damages for breach of contract and for several other causes of action, including breach of fiduciary duty and breach of duty of good faith. In the Amended Statement of Claim, Sam does not claim general damages for breach of a partnership agreement with one or more of the Defendants.

[20] The Plaintiffs submit that the claims for damages for breach of fiduciary duty and breach of duty of good faith are claims that are founded on a partnership among Sam and “the Sam entities” and the Defendants (and 180 SAW GP, a non-party to this action). Throughout the

Amended Statement of Claim, the Plaintiffs refer to “the Sam entities”. This term is not defined in the Amended Statement of Claim and it is not clear which entities are included when this term is used.

[21] The Plaintiffs submit that they properly plead in the Amended Statement of Claim that Sam entered into a partnership with Edward, Robert and CEI and that the Defendants breached their duties owed to Sam as partners, breached contractual duties, and committed torts against Sam with the intention of harming him.

[22] With respect to the alleged partnership, in the Amended Statement of Claim, at paragraphs 16 and 29, the Plaintiffs plead:

16. This action arises from the Parties' agreement to develop two real estate projects. Sam utilized various corporate entities to undertake the development of the projects and borrow funds and partner with CEI and its related entities who provided capital to the projects. Edward and Robert utilized CEI to fund the projects and partner with SAM and the Sam entities.

29. CEI pressed Sam to include as a term of the Retail loan a requirement that Sam indemnify CEI for 50% of the principal and interest owed to CEI including its existing loan with security for the indemnity in the form of a pledge of Sam's interest in the 180 SAW project. CEI knew and understood Sam had no personal liability for CEI's loans to Hazelton Inc., yet it conducted itself in a manner going forward to obtain such indemnity from Sam that amounts to a breach of the duty of good faith owed Sam and the Sam entities as partners of Robert, Edward, CEI and 180 SAW GP, in the development and construction of the 128 Hazelton project and the development and sale of the 180 SAW project.

[23] The Plaintiffs rely on these paragraphs in support of their submission that the existence of a partnership between Sam and the Defendants is properly pleaded.

[24] At paragraph 31 of the Amended Statement of Claim, the Plaintiffs plead:

On April 30, 2019, CEI and Sam M Inc ., as limited partners, and 180 SAW GP, as general partner, entered into a partnership agreement to create a limited partnership, Mizrahi Constantine (180 SAW) LP ("180 SAW LP"), to acquire and develop the 180 SAW project for sale. CEI had a two-thirds interest and Sam M Inc. a one-third interest in 180 SAW LP. Sam M 180 SAW Inc. guaranteed certain of the indebtedness of Sam and the Sam entities on the 180 SAW project.

[25] This is a pleading of a partnership agreement for the creation of a partnership to acquire and develop the 180 SAW project for sale. This pleading does not allege that Sam was a partner in 180 SAW LP.

[26] In the Amended Statement of Claim at paragraph 33, the Plaintiffs plead that on December 3, 2021, CEI, Sam M Inc., and 180 SAW GP entered into an Amended Partnership Agreement. In paragraph 55 of the Amended Statement of Claim, the Plaintiffs allege that Sam and the Sam entities were entitled to rely on CEI, Robert, and the 180 SAW GP meeting their duties with respect

to the conduct of the partnership for the 180 SAW project. The Plaintiffs allege in paragraph 56 of the Amended Statement of Claim that Robert and Edward acted to coerce Sam to pay 50% of the losses on the 128 Hazelton project which was a breach of the Amended Partnership Agreement and a breach of their fiduciary and good faith duties.

[27] The Amended Statement of Claim does not include any pleaded factual allegation, beyond a conclusory allegation, that Sam, in his personal capacity, is a partner with the Defendants under the Amended Partnership Agreement. As noted, the Plaintiffs plead in paragraph 33 the parties to the Amended Partnership Agreement and the identified parties do not include Sam.

[28] In their factum in response to this motion, the Plaintiffs submit that the Amended Statement of Claim includes pleadings that Sam and his companies “partnered” with the Defendants Rogers and Hiscox and their company CEI on two real estate developments – one at 128 Hazelton and another at 180 Steeles Ave. West. They submit that the partnership between the parties was “amorphous” and subject to a number of “intertwined contracts”, some formal, and others informal, such as verbal agreements later confirmed in emails.

[29] In paragraph 16 of the Amended Statement of Claim, the Plaintiffs plead that Sam utilized various corporate entities to undertake the development of the projects “and partner with CEI and its related entities” and that Edward and Robert utilized corporate entities to “partner with Sam and the Sam entities”. There are many contracts pleaded in the Amended Statement of Claim made between various corporate entities where there is no pleading that Sam, himself, is a party.

[30] In *Backman v. Canada*, 2001 SCC 10, the Supreme Court of Canada held, at para. 17, that “[p]artnership is a legal term derived from common law and equity as codified in various provincial and territorial statutes”. The Court held, at para. 18, that the essential ingredients of a partnership relationship are (1) a business, (2) carried on in common, (3) with a view to profit. The Court noted, at para. 21, that in determining whether a business is carried on “in common”, “it should be kept in mind that partnerships arise out of contract”. The Court observed that “the common purpose required for establishing a partnership will usually exist where the parties entered into a valid partnership agreement setting out their respective rights and obligations as partners”.

[31] The Plaintiffs do not plead, with clarity, factual allegations showing when, how, or on what terms Sam, in his personal capacity, entered into a partnership agreement with the Defendants or when or how particular commercial contracts made between identified corporate entities established, by their terms, a legal partnership relationship between Sam and the Defendants, as opposed to being commercial agreements between corporate entities in connection with the development of the two projects.

[32] It is not sufficient for Sam to submit in response to this motion that the alleged partnership was “amorphous” and somehow emerges from or is subject to unspecified other “intertwined” contracts made between corporate entities. The pleadings in paragraphs 16 and 29 of the Amended Statement of Claim that Sam and the Defendants were “partners” consist of vague and conclusory allegations that do not disclose the existence of a legal partnership relationship among Sam (in his personal capacity) and the Defendants.

[33] I conclude that the Plaintiffs do not sufficiently plead in the Amended Statement of Claim the existence of a partnership among Sam and the Defendants as partners.

Should Sam’s claim for damages for breach of contract be struck out?

[34] In paragraph 1(i) of the Amended Statement of Claim, Sam claims general damages in the sum of \$50,000,000.00 for breach of contract.

[35] In *Cameron-Gardos v. Crawford and Company (Canada) Inc.*, 2024 ONSC 700, at para. 76, the Court held that the elements of a breach of contract claim, which is actionable without proof of damages, are: (a) the plaintiff and the defendant are parties to a validly formed contract; and, (b) the defendant fails to perform his or her obligations under the contract.

[36] In *Brown v. Belleville (City)*, 2013 ONCA 148, at para. 73, the Court of Appeal for Ontario confirmed that under the common law doctrine of privity of contract, an established principle is that “no one but the parties to a contract can be bound or entitled under it”.

[37] In the Amended Statement of Claim at para. 16, the Plaintiffs plead that “[t]his action arises from the Parties’ agreement to develop two real estate projects”.

[38] This pleading, without more, is insufficient to plead the existence of a contract between Sam and one or more of the Defendants. The Plaintiffs must plead the particulars of each contract they allege was made between Sam and one or more Defendants. They must do so with clarity and precision, identifying the particular entity or entities that are alleged to have entered into a given contract, when the contract was made, whether the contract was in writing or oral, and the material terms of the contract. The Plaintiffs must also plead how the contract is alleged to have been breached by each Defendant.

[39] In the Amended Statement of Claim, the Plaintiffs refer in various paragraphs to 27 contracts or agreements. In some, but not all, cases, the parties are identified. In some cases, the parties named in the pleading include entities which are not parties to this action. Of these 27 contracts, the Plaintiffs allege that the following 10 contracts were breached:

- (i) Amended Partnership Agreement for 180 SAW LP between Sam M Inc. and CEI (paras. 33, 55, 56);
- (ii) the “Waterfall Agreement” dated December 3, 2021 between Sam M Inc., 180 SAW LP by its general partner 180 SAW GP (not parties to this action), Mizrahi SVP and Hazelton Inc. (not a party) and CEI (paras. 37, 40, 55, 56, 71) establishing an agreed-upon “waterfall” or flow of amounts payable to Sam M Inc. by 180 SAW LP;
- (iii) the “Hazelton Deficiency Agreement” (paras. 37(viii), 39, 40, 55, 56, and 71) entered into by Sam M Inc. which specified Sam M Inc. would only absorb losses up to 50% of the 128 Hazelton project, payable from its share of the profits on the 180 SAW project;
- (iv) Allegation that CEI acted in “breach of the agreements in place” (para. 41);

- (v) Agreement reached by CEI with Sam that CEI would discharge the \$1,500,000 Mizrahi SPV loan upon closing of the sale of unit 601 that was allegedly breached by CEI (para. 44);
- (vi) Allegation that CEI, by refusing to discharge the Mizrahi SPV loan upon closing of CEI's other retail units, acted "in breach of agreements and fiduciary and good faith duties" (paras. 44, 96(iv));
- (vii) "Contribution Agreement". The Plaintiffs plead that "[t]he loan agreement in place, being the Contribution Agreement, was between MDI (Mizrahi Developments Inc., not a Plaintiff) and CEI with no back stop or guarantee by Sam. Plaintiffs allege that CEI breached loan agreements (para. 49);
- (viii) "Term sheet of the Retail loan". Plaintiffs plead that Hiscox was "clearly in breach of section 3(d) of the Term sheet of the Retail loan ..." (para. 52);
- (ix) "[S]et off agreement in place". Plaintiffs plead that the "Retail loan was to be extinguished upon Retail Inc. closing on the unit. This is a breach of the set-off agreement in place ..." (para. 52);
- (x) December 22, 2023 agreement. Plaintiffs plead that there were outstanding issues between CEI and Sam and the "Sam entities" and that an email was sent by Rogers to Sam on December 21, 2023 of the terms that CEI would agree to so that the HAM [Hyundai Asset Management] revised offer could proceed and the sale of 180 SAW closed. Plaintiffs plead that on December 22, 2023, Edward Rogers and Sam met remotely and "Sam memorialized the agreement reached on each of the points set out in Edwards's December 21, 2023 email. Plaintiffs plead that Sam sent Edward an email confirming the agreement reached at the December 22, 2023 meeting (defined as the "December 22 Agreement"). (paras. 88-93)

[40] The only Plaintiff who pleads a claim for damages for breach of contract is Sam. When I review the Amended Statement of Claim and take the factual allegations pleaded to be true, there is no pleading that Sam, acting in his personal capacity, is a party to any of the contracts that are alleged to have been breached, with the possible exception of the "December 22 Agreement". Even in respect of this alleged contract, the Plaintiffs do not plead that Sam was acting in his personal capacity when it was made, as opposed to acting as a representative of a corporation.

[41] Sam's claim for damages for breach of contract is made against all of the Defendants. However, the Plaintiffs do not consistently plead in the Amended Statement of Claim who the parties to each contract are, when the contract was made, whether it was written or oral, what the material terms are, who breached the contract, or how the alleged breaches occurred. The Defendants are not able to determine from the pleading whether a claim is made against a particular Defendant for damages for breach of contract in relation to a particular contract.

[42] The Plaintiffs do not plead that Edward or Robert is a party in his personal capacity to the contracts that were allegedly breached, with the possible exception of the December 22 Agreement. Even in respect of this alleged contract, the Plaintiffs plead that Edward resiled from

the December 22 Agreement and this failure “is a breach of CEI’s contractual, fiduciary and good faith, duties”. There is no pleading that Edward or Robert breached contractual obligations to which he was personally bound to fulfill.

[43] The pleaded factual allegations in support of Sam’s claim for damages for breach of contract are vague and conclusory. Sam’s claim in paragraph 1(i) of the Amended Statement of Claim for damages for breach of contract fails to plead material facts setting out with clarity and precision (a) the existence of one or more contracts between Sam (acting in his personal capacity) and one or more of the Defendants, (b) an alleged breach of a contract by one or more of the Defendants, including the particular acts or omissions that constitute such breach or breaches, or (c) that any privity of contract exception applies.

[44] Sam is required to properly plead the material facts in support of his claims for damages breach of contract. He has not done so.

[45] For these reasons, I conclude that the Amended Statement of Claim discloses no reasonable cause of action on the part of Sam for damages for breach of contract against the Defendants or any one or more of them.

Should Sam’s claim for damages for “tortious interference with economic interests” be struck out?

[46] In the Amended Statement of Claim, Sam claims general damages against the Defendants for tortious interference with economic interests.

[47] In *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12, the Supreme Court of Canada decided an appeal that addressed what the trial judge had referred to as the tort of unlawful interference with economic relations. Cromwell J., who delivered the judgment of the Court, observed that this tort is variously referred to by other names. Cromwell J. referred to the tort as the “unlawful means” tort.

[48] Cromwell J., at para. 26, addressed the scope of liability for the tort of causing loss by unlawful means. He held that the unlawful conduct must be an actionable civil wrong or conduct that would be actionable if it had caused loss to the person at whom it was directed. There is no requirement that the unlawful means be otherwise actionable by the plaintiff. The definition of unlawful means should not be subject to principled exceptions.

[49] Cromwell J., at para. 37, addressed the possible rationales for the unlawful means tort which, he noted, are mostly rationales on two themes. The first, the “intentional harm” rationale, focuses on the fact that harm has been intentionally inflicted. Cromwell J. noted that this rationale supports the creation of new tort liabilities in order to reach clearly excessive and unacceptable intentional conduct. The second rationale focuses on extending an existing right to sue from the immediate victim of the unlawful act to another party whom the defendant intended to target with the unlawful conduct. Cromwell J. called this the “liability stretching” rationale. Cromwell J., at para. 44, expressed his preference for the liability stretching rationale which, he held, supports a narrow definition of “unlawful means” by which the tort simply expands the range of persons who may sue for harm intentionally caused by existing actionable wrongs to a third party. Cromwell J., at para. 45, held that the two core components of the unlawful means tort are that the defendant

must use unlawful means, in the narrow sense, and that the defendant must intend to harm the plaintiff through the use of unlawful means.

[50] The Defendants submit that factual allegations that satisfy the required elements for the unlawful means tort are absent from the Amended Statement of Claim. They submit that the Plaintiffs have failed to plead with clarity and particularity (a) conduct by the Defendants against a third party that rises to the level of being unlawful; (b) the identity of a third party; or (c) an intention on the Defendants' behalf to cause economic injury to any of the Plaintiffs.

[51] The Plaintiffs submit that the tort named tortious interference with economic interests is recognized in Canadian common law and applies when a defendant intentionally and unlawfully interferes with the plaintiff's economic interests. In support of this submission, the Plaintiffs cite *Pro-Sys Consultants Ltd. v. Microsoft Corp.*, 2013 SCC 57 which sets out the elements for tortious interference with economic interests, which include that the defendant intended to injure the plaintiff and interfered with the economic interests of the plaintiff by unlawful or illegal means.

[52] I do not accept this submission by the Plaintiffs. It is not enough that a defendant intentionally and unlawfully interferes with a plaintiff's economic interests. This formulation of the unlawful means tort focuses on a rationale that Cromwell J. rejected in *A.I. Enterprises*, that harm has been intentionally inflicted. The decision in *Pro-Sys* was released approximately one year before the decision in *A.I. Enterprises*, and the decision in *A.I. Enterprises* narrowed the scope of unlawful means as a core component of this tort.

[53] In the Amended Statement of Claim, the Plaintiffs plead the tort of tortious interference with economic interests at para. 17:

Edward and Robert conspired to cause CEI and the 180 SAW GP to undertake the projects in a manner intended to harm the economic interests of Sam and the Sam entities and are therefore liable for conspiracy to cause economic harm and tortious interference with economic interests causing Sam and the Sam entities the losses pleaded herein. These losses were also sustained due to CEI's breach of contracts, negligence, breach of fiduciary duty, and breach of the duty of good faith causing Sam and the Sam entities the losses pleaded herein. Sam and the Sam entities were owed fiduciary and good faith duties by CEI and the 180 SAW GP and when breached, unjustly enriched CEI to the detriment of Sam and the Sam entities. These actionable wrongs entitle the Plaintiffs to the declaratory relief sought.

[54] This pleading, although made by way of overview, does not sufficiently plead the required elements of the unlawful means tort because it does not plead with particularity the unlawful conduct by the Defendants against one or more identified third parties and the Defendants' intention to harm Sam through the use of unlawful means.

[55] The Plaintiffs refer to paragraph 40 of the Amended Statement of Claim which, they submit, is a pleading that the Defendants acted with an intention to injure the Plaintiffs' economic interests. This applicable part of this paragraph reads:

... Edward and Robert conspired to cause the 180 SAW GP to use its 50% voting right in the 180 SAW project and CEI's rights as a shareholder and lender in the

128 Hazelton project to harm Sam's interest in the Hazelton 128 project, so as to increase Sam M Inc.'s liability under the Hazelton Deficiency Agreement and the Waterfall Agreement and to expose Sam to liability on his personal guarantee to DUCA, Aviva and CEI on the Retail Inc. loan.

[56] This is a pleading that Edward and Robert acted with the intention of harming Sam's interests. This pleading focuses on the "intentional harm" rationale for the tort, one that was not accepted by Cromwell J. in *A.I. Enterprises*. It is not a pleading of an actionable civil wrong directed to an identified third party which was intended to harm Sam.

[57] The Plaintiffs also refer to paragraph 46 of the Amended Statement of Claim which, in relation to the 128 Hazelton Project, reads:

CEI, due to the conspiracy of Robert and Edward to harm Sam's economic interests, breached fiduciary and good faith duties when it refused to refinance to "take out " the expiring DUCA facility.

[58] This is a pleading that the Defendants acted with the intention of harming Sam's economic interests. It is not a pleading of an actionable civil wrong directed to a third party which was intended to harm Sam.

[59] The Plaintiffs refer to paragraphs 52 and 72 of the Amended Statement of Claim which read:

52. On February 5, 2024, Robert communicated that CEI would proceed with closing the Retail Unit provided that both the Retail loan was repaid to CEI and the full purchase price required under the APS paid to Hazelton Inc. This was clearly in breach of section 3(d) of the Term sheet of the Retail loan which requires CEI to sign any documentation required to permit the loan set-offs "free and clear of any security interests held by the Lender [CEI] in connection with any other loans made by it [CEI] to ProjectCo". The Retail loan was to be extinguished upon Retail Inc. closing on the unit. This is a breach of the set-off agreement in place and another instance of CEI's breach of contract, breach of fiduciary duty, and breach of the duty of good faith, causing Sam's damages, all in furtherance of Robert and Edward's conspiracy to harm Sam's economic interests.

72. On July 14, 2023, Robert advised Sam that CEI would not proceed with the HAM transaction unless Sam entered into a binding agreement to pay 50% of the losses, estimated at that time at more than \$30,000,000. on the 128 Hazelton project. This requirement of CEI was the result of the conspiracy of Edward and Robert to harm the economic interests of Sam by causing the 180 SAW GP to refuse a purchase price on the 180 SAW project at no less than or at the market price, and in excess of CEI's target price, contrary to CEI's, Robert's and 180 SAW GP's fiduciary and good faith duties. Edward and Robert are therefore liable for tortious interference with the economic interests of Sam and the Sam entities in the 180 SAW project since there was no binding agreement for Sam to incur 50% of the

losses on the 128 Hazelton project and therefore no justification to reject the HAM offer for that reason.

[60] Paragraph 52 of the Amended Statement of Claim makes a factual allegation that CEI communicated to Sam that it intended to proceed to close a transaction involving the Retail Unit on a basis that would be a breach of the term sheet of the Retail loan, and that this communication was made with the intention of harming Sam. The pleaded communication to Sam of the Defendants' expressed intention with respect to the Retail Inc. in relation to the term sheet is not a pleading of unlawful conduct against Retail Inc. that would be an actionable civil wrong.

[61] Paragraph 72 of the Amended Statement of Claim does not allege unlawful conduct by the Defendants against an identified third party that would be an actionable civil wrong by that third party. The pleaded alleged breaches of fiduciary and good faith duties by Rogers, Hiscox and 180 SAW GP are duties pleaded as owed to Sam.

[62] The Plaintiffs do not plead in the Amended Statement of Claim that the Defendants engaged in unlawful conduct directed against identified third parties that would be an actionable civil wrong by that third party, and that such unlawful conduct against such third parties was intended to harm Sam.

[63] I conclude that the Amended Statement of Claim discloses no reasonable cause of action by Sam for the unlawful means tort or, as named in the Amended Statement of Claim, for tortious interference with economic interests.

Should the Plaintiffs' claim for damages for breach of a duty of good faith be struck out?

[64] In paragraph 1(i) of the Amended Statement of Claim, Sam claims general damages for "breach of duty of good faith". This is pleaded as a separate cause of action from the causes of action pleaded for breach of fiduciary duty or breach of contract.

[65] In paragraph 17 of the Amended Statement of Claim (quoted above), the Plaintiffs allege that Edward and Robert conspired to cause CEI and 180 SAW GP to undertake the projects in a manner intended to harm the economic interests of Sam and the Sam entities, causing Sam and the Sam entities the losses pleaded in the Amended Statement of Claim. The Plaintiffs plead that these losses were also sustained due to CEI's "breach of the duty of good faith" and breach of "good faith duties" owed by CEI and 180 SAW GP to Sam and the Sam entities.

[66] In paragraph 29 of the Amended Statement of Claim, the Plaintiffs plead that CEI's conduct in seeking to obtain an indemnity from Sam when it knew he had no personal liability for CEI's loans to Hazelton Inc. amounts to a breach of the duty of good faith owed Sam and the Sam entities as partners of Edward, Robert, CEI and 180 SAW GP in the development and construction of the 128 Hazelton project and the development and sale of the 180 SAW project.

[67] In the Amended Statement of Claim, the Plaintiffs refer to the duty of good faith eighteen more times. These references are conclusory allegations of breaches of fiduciary and good faith duties.

[68] In *Bhasin v. Hrynew*, 2014 SCC 71, the Supreme Court of Canada, at para. 63, enunciated a general organizing principle of good faith that parties generally must perform their contractual duties honestly and reasonably and not capriciously or arbitrarily. Cromwell J. explained, at para. 64, that an organizing principle “is not a free-standing rule, but rather a standard that underpins and is manifested in more specific legal doctrines and may be given different weight in different situations: [citations omitted]. It is a standard that helps to understand and develop the law in a coherent and principled way”.

[69] In *Bhasin*, Cromwell J., at para. 93, held that it is appropriate to recognize a new common law duty that applies to all contracts as a manifestation of the organizing principle of good faith: a duty of honest performance, which requires the parties to be honest with each other in relation to the performance of their contractual obligations.

[70] In *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7, the Supreme Court of Canada, at para. 111, held that where a party to a contract exercises its discretion unreasonably (in this context, in a manner not connected to the underlying purposes of the discretion granted by the contract), its conduct amounts to a breach of the duty to exercise contractual discretionary powers in good faith.

[71] The organizing principle of good faith as explained by Cromwell J. in *Bhasin* does not establish a standalone cause of action for breach of a duty of good faith. The Plaintiffs submit that their claim does not allege a standalone breach of a duty of good faith. Rather, the Amended Statement of Claim alleges a duty of good faith is owed because the Defendants were Sam’s partners in the two projects. They submit that partners owe each other fiduciary duties and duties of good faith.

[72] The Plaintiffs point to paragraph 29 of the Amended Statement of Claim where it is pleaded that Sam and the Sam entities were partners of Robert, Edward, CEI and 180 SAW GP in the development and construction of the 128 Hazelton project and the development and sale of the 180 SAW project. I have held that this conclusory allegation is insufficient to properly plead the existence of a partnership relationship among Sam and the “Sam entities” and the Defendants. It follows that the Plaintiffs have not pleaded facts to support the existence of duties arising from such a partnership.

[73] Even if the pleaded allegations are read as failures by the Defendants to comply with contractual duties of good faith, the Plaintiffs do not plead with clarity and precision factual allegations of conduct by the Defendants, or any of them, in relation to a particular contract, or particular contracts, to which Sam is pleaded to be a party, which, if taken to be true, would give rise to liability on the parts of Hiscox, Rogers, and CEI, as contracting parties, for breach of a duty of honest performance of a contractual obligation or breach of a duty to exercise a contractual discretionary power in good faith.

[74] I conclude that the Amended Statement of Claim discloses no reasonable cause of action for breach of duty of good faith.

Should the Plaintiffs' claim for damages for breach of fiduciary duty be struck out?

[75] In the Amended Statement of Claim, Sam claims general damages for breach of fiduciary duty.

[76] The elements of a claim for breach of fiduciary duty are: (1) a fiduciary relationship; (2) a fiduciary duty; and (3) breach of the fiduciary duty.

[77] In paragraph 17 of the Amended Statement of Claim, in the overview section, the Plaintiffs plead that Sam and the Sam entities sustained losses due to CEI's breach of fiduciary duty. They allege that Sam and the Sam entities were owed fiduciary duties by CEI and the 180 SAW GP (as noted, not a party to the action).

[78] In paragraph 40, the Plaintiffs plead that Sam M Inc. entered into the Hazelton Deficiency Agreement and the Waterfall Agreement with the expectation that CEI as a partner on the 180 SAW project would meet its fiduciary duties to ensure a reasonable return on the 180 SAW project in the time frame it would take to sell the property. In paragraph 41, the Plaintiffs plead that CEI and Robert, as a director of the 180 SAW GP, breached fiduciary duties owed to its partner and its borrower, being Sam and the Sam entities.

[79] In paragraphs 74 and 81, the Plaintiffs plead that the CEI's rejection of the offer by HAM to purchase the 180 SAW project was a breach of fiduciary duties.

[80] In several other paragraphs of the Amended Statement of Claim, the Plaintiffs allege that CEI breached fiduciary duties, sometimes pleading that such breach was in furtherance of Robert's and Edward's conspiracy to harm Sam's economic interests, and sometimes alleging such breaches with respect to "the conduct of the partnership agreed to for the 180 SAW project".

[81] As I have noted, although the Plaintiffs submit that the Amended Statement of Claim should be read as alleging that Sam entered into a partnership with Edward, Robert and CEI on two real estate developments, there is no allegation in the Amended Statement of Claim that Sam, in his personal capacity, made a partnership agreement with CEI or Edward or Robert.

[82] The Plaintiffs have not pleaded facts that establish the existence of a fiduciary relationship between the Defendants or any combination of them, on the one hand, and Sam, or any combination of the Plaintiffs, on the other hand. The Plaintiffs do not allege in the Amended Statement of Claim any *per se* category of fiduciary relationship which is applicable in the context of the relationships pleaded. The Plaintiffs do not make factual allegations that support the existence of an *ad hoc* fiduciary relationship giving rise to fiduciary duties owed to Sam.

[83] The pleaded allegations of breach of fiduciary duty are vague and conclusory allegations.

[84] I conclude that the Amended Statement of Claim fails to disclose a reasonable cause of action by Sam for breach of fiduciary duty.

Should the Plaintiffs' claim for damages for unjust enrichment be struck out?

[85] In the Amended Statement of Claim, Sam claims general damages for unjust enrichment.

[86] In *Kerr v. Baranow*, 2011 SCC 10, the Supreme Court of Canada, at para. 32, confirmed that where an unjust enrichment claim is made, Canadian law permits recovery whenever a plaintiff can establish three elements: an enrichment of or benefit to the defendant, a corresponding deprivation of the plaintiff, and the absence of a juristic reason for the enrichment. Cromwell J., writing for the Court, at para. 40, explained that the absence of a juristic reason for the enrichment means that there is no reason in law or justice for the defendant's retention of the benefit conferred by the plaintiffs, making its retention "unjust" in the circumstances of the case.

[87] In paragraph 17 of the Amended Statement of Claim, the Plaintiffs plead that Sam and the Sam entities were owed fiduciary and good faith duties by CEI and 180 SAW GP and when breached, unjustly enriched CEI to the detriment of Sam and the Sam entities. This is a conclusory pleading that, standing alone, discloses no reasonable cause of action.

[88] There are several other references in the Amended Statement of Claim to unjust enrichment.

[89] In paragraph 55, the Plaintiffs plead that the Defendants refused to sell the 180 SAW project at a profit and used such refusal as leverage to "(1) coerce Sam to agree to pay 50% of the losses on the 128 Hazelton project: (2) delay any exit on the 180 SAW project to increase Sam's interest liability to CEI, given his indebtedness was at an interest rate of 28% per annum: and (3) eliminate Sam M Inc.'s 1/3 interest in the project, amounting to an unjust enrichment of the Defendants and corresponding deprivation to Sam and the Sam entities".

[90] The alleged conduct by the Defendants of refusing to sell the 180 Saw Project is not an allegation that the Defendants, or any of them, were enriched or received a benefit from this conduct. The Plaintiffs do not plead factual allegations that, if taken to be true, show that the Defendants were enriched or received an unjust benefit from refusing to sell the 180 SAW Project, as alleged. It follows that there are no factual allegations, beyond bald assertions, that support the existence of a corresponding deprivation by Sam. Although Sam is the party claiming damages for unjust enrichment, the Plaintiffs do not plead factual allegations that show that Sam, as opposed to Sam M Inc., held an interest in the 180 SAW project.

[91] In paragraph 81 of the Amended Statement of Claim, the Plaintiffs plead that Hyundai Asset Management ("HAM") made an offer for the purchase of the 180 SAW project that was at or no less than a market price and in excess of the CEI target price. The Plaintiffs plead that the failure to close this purchase was intended to cause economic harm to Sam and the Sam entities and caused Sam damages. The Plaintiffs plead in paragraph 82 that "[t]he actionable wrongs pleaded in paragraph 81 have unjustly enriched the Defendants, and the Defendants must disgorge their unjust enrichment to Sam and Sam M Inc.".

[92] In these paragraphs, the Plaintiffs do not plead factual allegations that, if taken to be true, show that the Defendants were enriched by failing to complete a purchase by HAM of the SAW Project or that Sam suffered a corresponding deprivation. Through this pleading, the Plaintiffs make a conclusory allegation that the Defendants were unjustly enriched. This conclusory allegation discloses no reasonable cause of action.

[93] In paragraph 93 of the Amended Statement of Claim, the Plaintiffs plead that Rogers resiled from the December 22 Agreement and the failure to honour the “December 22 Agreement is a breach of CEI’s contractual, fiduciary, and good faith duties. In paragraph 94, the Plaintiffs plead that “[t]he actionable wrongs pleaded in paragraph 93 have unjustly enriched the Defendants, and the Defendants must disgorge such unjust enrichment to Sam and Sam M Inc.”.

[94] The Plaintiffs’ factual allegations as pleaded in these paragraphs do not show that the failure to honour the December 22 Agreement resulted in an enrichment of the Defendants. Absent such factual allegations, the assertion that the pleaded actionable wrongs “have unjustly enriched the Defendants” is a conclusory allegation which discloses no reasonable cause of action.

[95] I conclude that the Amended Statement of Claim discloses no reasonable cause of action for Sam’s claim for unjust enrichment.

Should the Plaintiffs’ claim for damages for conspiracy be struck out?

[96] In the Amended Statement of Claim, Sam claims general damages for conspiracy to cause economic harm.

[97] There are two forms of conspiracy recognized in Canadian common law:

- (a) the essence of unlawful act conspiracy is an agreement pursuant to which two or more defendants use unlawful conduct directed towards a plaintiff that the defendant ought to have known would likely, and does, result in injury to the plaintiff; and
- (b) the essence of predominant purpose conspiracy is an agreement pursuant to which two or more defendants use lawful or unlawful means for the predominant purpose of causing injury to the plaintiff, and injury to the plaintiff does result. See *Agribrands Purina Canada Inc. v. Kasamekas*, 2011 ONCA 460, at para. 24.

[98] A plaintiff asserting a cause of action for conspiracy must plead material facts in sufficient detail to support the claim and the relief sought. A plaintiff must plead with sufficient detail the constituent elements of each cause of action. The pleadings must tell a defendant who, when, where, how and what gave rise to its liability. Assumptions, speculation and facts that lack sufficient particularity are not enough to constitute material facts. See *Jensen v. Samsung Electronics Co. Ltd.*, 2021 FC 1185, at para. 75; *aff’d Jensen v. Samsung Electronics Co. Ltd.*, 2023 FCA 89, leave to appeal dismissed, 2024 CanLII 543.

[99] In paragraph 17 of the Amended Statement of Claim, as part of the overview, the Plaintiffs plead that Edward and Robert “conspired to cause CEI and the 180 SAW GP to undertake the projects in a manner intended to harm the economic interests of Sam and the Sam entities and are therefore liable for conspiracy to cause economic harm”.

[100] In paragraph 41 of the Amended Statement of Claim, the Plaintiffs plead:

CEI, due to the conspiracy of Robert and Edward to harm Sam and the Sam entities' economic interests, consistently took steps to prevent Sam and the Sam entities from repaying loans. It was in CEI's interest to accrue interest on Sam's and Sam-related entities' indebtedness to it, to the detriment of Sam and the Sam entities' interest in breach of the agreements in place. CEI and Robert, as a director of 180 SAW GP, breached both fiduciary duties and good faith duties owed to its partner and its borrower, being Sam and the Sam entities.

[101] In *Jensen*, at para. 125, the Court held that “[t]o properly plead a conspiracy, a plaintiff must specify the agreement to conspire between the defendants, and its purpose or object, as well as any specific conduct, described with clarity and precision, that is alleged to have been adopted by each of the conspirators in furtherance of the conspiracy”.

[102] The conclusory allegation that Edward and Robert “conspired” or that CEI acted “due to the conspiracy” of Edward and Robert is not a proper pleading of a cause of action against them for conspiracy. The Plaintiffs have failed to plead with clarity and precision the agreement to conspire between or among the Defendants or the time, place or nature of the specific conduct alleged to have been adopted by each of the conspirators in furtherance of the conspiracy.

[103] In addition, in paragraph 41 of the Amended Statement of Claim in which a conspiracy is alleged, the conduct complained of is the conduct of CEI. The pleaded allegation that a company acted through its directing minds in breach of an agreement does not make the company’s action to breach the agreement the result of a conspiracy recognized by law.

[104] I conclude that the Amended Statement of Claim discloses no reasonable cause of action for conspiracy.

Does the Amended Statement of Claim disclose a reasonable cause of action for negligence?

[105] In the Amended Statement of Claim, Sam claims general damages against the Defendants for negligence.

[106] In *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63, at para. 77, the Supreme Court of Canada held that in a successful negligence action, a plaintiff must demonstrate that (1) the defendant owed him or her a duty of care; (2) the defendant’s behaviour breached the standard of care; (3) the plaintiff sustained damage; and (4) the damage was caused, in fact and in law, by the defendant’s breach.

[107] The requirements for the finding of a duty of care are: (a) reasonable foreseeability of harm; (b) the sufficiently close and direct proximity between the parties such that the defendant is under an obligation to be mindful of the plaintiff’s interests; and (c) the absence of overriding policy considerations which negate a *prima facie* duty of care established by foreseeability and proximity. See *Stewart v. The Corporation of the Township of Douro-Dummer*, 2018 ONSC 4009, at paras. 105-108, citing *Cooper v. Hobart*, [2001] 3 S.C.R. 537 and *Rankin (Rankin’s Garage & Sales) v. J. (J.)*, 2018 SCC 19.

[108] At paragraphs 96 and 97, the Plaintiffs plead that CEI was negligent with respect to the 128 Hazelton project and the 180 SAW project, respectively, with particulars of the alleged negligence pleaded in these paragraphs. The Plaintiffs do not make allegations of negligence in these paragraphs against the individual Defendants that could support a claim against them that they failed to meet the required standard of care and breached a duty of care.

[109] At paragraph 104 of the Amended Statement of Claim, the Plaintiffs plead that “[t]he Defendants owed the Plaintiffs a duty of care”. This is a conclusory allegation. There are no facts pleaded in this paragraph which, if taken to be true, establish that the requirements for a finding of a duty of care owed to Sam are satisfied in respect of CEI or the other Defendants. The Plaintiffs do not plead the standard of care that would apply if there were a duty of care owed by CEI or the other Defendants to Sam.

[110] The particulars of alleged negligence pleaded in relation to CEI in paragraphs 96 and 97 of the Amended Statement of Claim are not tied to a duty of care arising from pleaded factual allegations or to a standard of care that is pleaded as applying to actions or omissions of CEI in relation to Sam.

[111] I conclude that the Amended Statement of Claim discloses no reasonable cause of action in negligence.

Does the Amended Statement of Claim disclose a reasonable cause of action for negligent misrepresentation?

[112] In the Amended Statement of Claim, Sam claims general damages against the Defendants for negligent misrepresentation.

[113] In *Deep v. M.D. Management*, 2007 CanLII 22655, D.M. Brown J., as he then was, at paragraph 10, held that in order to establish a claim for negligent misrepresentation a plaintiff must specifically plead (i) the existence of a duty of care based on a special relationship between the representor and the representee; (ii) that the representation in question was untrue, inaccurate or misleading; (iii) the representor must have acted negligently in making the misrepresentation; (iv) the representee must have relied, in a reasonable manner, on the negligent misrepresentation; and (v) the reliance must have been detrimental to the representee in the sense that damages resulted.

[114] The Plaintiffs’ pleaded allegation in paragraph 104 of the Amended Statement of Claim that “[t]he Defendants owed the Plaintiffs a duty of care” is a conclusory allegation. The Plaintiffs fail to adequately plead facts that show that the requirements for a finding of duty of care owed to Sam, in his personal capacity, by each of the Defendants, are satisfied.

[115] In paragraphs 98-100 of the Amended Statement of Claim, the Plaintiffs’ plead allegations of negligent misrepresentations by CEI. The Plaintiffs do not plead that these misrepresentations were made to Sam in his personal capacity or how, in this capacity, he relied on the alleged misrepresentations in such a way that he suffered damages as a result.

[116] I conclude that the Amended Statement of Claim discloses no reasonable cause of action for negligent misrepresentation.

Adequacy of pleading as against Edward and Rogers

[117] I have concluded that the Amended Statement of Claim discloses no reasonable cause of action against the Defendants.

[118] Sam's claims for general damages for all causes of action are made against all Defendants.

[119] In the Amended Statement of Claim, the Plaintiffs plead that CEI is a body corporate that is a private real estate fund and the 50% shareholder of Mizrahi (128 Hazelton) Inc.

[120] The Plaintiffs plead that Edward and Robert are co-founders of CEI, that Robert is the Chief Executive Officer of CEI and that Edward owns 90% of the shares of CEI. They plead that Edward is the controlling mind of both CEI and 50% of 180 SAW GP. The Plaintiffs plead that Robert owns 10% of the shares of CEI and is the director of 180 SAW GP and takes direction from Edward to enable Edward to control 50% of 180 SAW GP.

[121] In the Amended Statement of Claim, the Plaintiffs do not plead allegations of fact that Edward or Robert, on the one hand, have privity of contract with Sam, or any of the Plaintiffs, on the other hand. There is no tenable claim for breach of contract as against Edward or Robert.

[122] The claim that Edward and Rogers, by acting as the directing minds of CEI and 180 SAW GP, engaged in conduct that is a conspiracy as a matter of law does not adequately plead a cause of action for conspiracy.

[123] With respect to the other causes of action pleaded, the Plaintiffs do not plead factual allegations that Edward or Robert acted in any capacity other than as directors and corporate officers of CEI and 180 SAW GP.

[124] The Plaintiffs do not plead facts that justify the piercing of the corporate veil of CEI such that Edward or Robert are personally liable for claims made against CEI.

[125] Even if I had concluded that the Amended Statement of Claim discloses one or more reasonable causes of action against CEI, I would conclude that the claims pleaded against Edward and Robert disclose no reasonable cause of action against either of them.

Should the Plaintiffs be given leave to amend the Amended Statement of Claim?

[126] The Defendants submit that if their motion to strike out the Amended Statement of Claim as disclosing no reasonable cause of action is granted, the Plaintiffs should not be given leave to amend their pleading.

[127] The Defendants submit that the defects in the Amended Statement of Claim persist notwithstanding that the Plaintiffs have already amended their pleading on one occasion. The Defendants note that the Plaintiffs did not amend their Amended Statement of Claim to correct the defects even after service of the Defendants' notice of motion for this motion which sets out the Defendants' concerns with the Amended Statement of Claim.

[128] The Defendants submit that granting leave to amend would be significantly prejudicial to them because, they submit, this action at its core was an attempt to delay a receivership application. The Defendants submit that to allow the Plaintiffs to amend their pleading would indulge their efforts to delay and hinder the ongoing receivership proceedings.

[129] I do not accept that the fact that the Plaintiffs amended their pleading once is a reason to deny leave to amend. The first amendment was made on the next business day after the Statement of Claim was issued and the amendments were not substantive.

[130] In *South Holly Holdings Limited v. The Toronto-Dominion Bank*, 2007 ONCA 456, The Court of Appeal for Ontario held that a litigant's pleading should not lightly be struck out without leave to amend, and that leave to amend should only be denied in the clearest of cases.

[131] I am not satisfied that the Defendants will be prejudiced if leave to amend is granted. The receivership proceedings are subject to court supervision, and the court will be able to ensure that these proceedings are not hindered or unfairly delayed.

[132] I grant leave to the Plaintiffs to amend the Amended Statement of Claim within 45 days of the release of this endorsement.

[133] As a result of my decision that the Amended Statement of Claim should be struck out on the ground that it discloses no reasonable cause of action, it is not necessary for me to address the Defendants' motion to strike out the Amended Statement of Claim because it is scandalous, frivolous, or vexatious, or an abuse of the court's process.

Disposition

[134] For these reasons, the Defendants' motion to strike out the Amended Statement of Claim on the ground that it discloses no reasonable cause of action is granted. The Amended Statement of Claim is struck out.

[135] The Plaintiffs are granted leave to amend the Amended Statement of Claim within 45 days.

[136] If the parties are unable to resolve costs, they may make written submissions (with reasonable page limits) in accordance with a timetable to be agreed upon by counsel and approved by me.

Cavanagh J.

Date: July 31, 2025

This is Exhibit “H” referred to in the Affidavit of Robert Hiscox sworn December 22, 2025. The affiant and I were located in the City of Toronto in the Province of Ontario. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to read 'Bornstein', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Commissioner Name: Jeremy Bornstein
Law Society of Ontario Number: 65425C

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

B E T W E E N :

SAM MIZRAHI, MIZRAHI 128 HAZELTON RETAIL INC.,
SAM M (180 SAW) LP INC., SAM M (180 SAW) INC.,
and 1000041090 ONTARIO INC.

Plaintiffs

- and -

EDWARD S. ROGERS III, ROBERT HISCOX,
and CONSTANTINE ENTERPRISES INC.

Defendants

**NOTICE OF MOTION
(Motion to Strike)**

The Defendants, Edward S. Rogers III, Robert Hiscox, and Constantine Enterprises Inc. (“CEI”), will make a motion before a judge presiding over the Commercial List at 330 University Avenue, Toronto, Ontario, M5G 1R8, on March 3, 2026, at 10:00 a.m. or as soon thereafter as a motion may be heard.

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

- ☐ in writing under subrule 37.12.1(1) because it is (on consent or unopposed or made without notice);
- ☐ in writing as an opposed motion under subrule 37.12.1(4);
- ☒ in person;
- ☐ by telephone conference;
- ☐ by video conference.

THE MOTION IS FOR:

- (a) An Order pursuant to Rule 21.01(1)(b) of the Rules of Civil Procedure R.R.O. 1990, Reg. 194 (the “**Rules**”) striking out the Plaintiffs’ fresh-as-amended statement of claim (the “**Fresh SOC**”) dated October 14, 2025, a copy of which is attached hereto at **Appendix “A”**, without leave to amend, on the ground that it discloses no reasonable cause of action;
- (b) In the further alternative, an Order pursuant to Rule 21.01(1)(b) of the *Rules* striking, without leave to amend, those paragraphs of the Fresh SOC that disclose no reasonable cause of action;
- (c) An Order requiring the Plaintiffs to pay the costs of this motion; and
- (d) Such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

The Pleading

- (e) This action was initially commenced by a statement of claim issued in the Ontario Superior Court of Justice on April 5, 2024, which statement of claim was amended and re-issued on April 8, 2024 (the “**SOC**”);
- (f) This action was transferred to the Commercial List by order of the Honourable Justice Conway dated September 3, 2024;
- (g) On April 17, 2025, the Honourable Justice Cavanagh heard the Defendants’ motion to strike the SOC;
- (h) On July 31, 2025, the Honourable Justice Cavanagh issued an endorsement striking the Plaintiffs’ SOC on the ground that it disclosed no reasonable cause of action, with leave to amend;

- (i) The Fresh SOC is the Plaintiffs' attempt to amend the SOC in furtherance of Justice Cavanagh's Order;
- (j) At para. 1(i) of the Fresh SOC, the Plaintiff Sam Mizrahi, alone, seeks \$50 million in damages based on causes of action including breach of partnership, breach of contract, breach of fiduciary duties, breach of duties of good faith, and intentional or tortious interference with economic interests (collectively, the "**Alleged Causes of Action**");
- (k) In addition, the Plaintiffs seek, individually or collectively, declaratory relief (including in connection with allegations of oppressive and unfairly prejudicial conduct), aggravated damages, and exemplary or punitive damages predicated on the Alleged Causes of Action, as well as interest pursuant to the *Courts of Justice Act*, R.S.O., 1990, c. 43;
- (l) The Fresh SOC is based on the same factual allegations as the SOC and contains many of the same fatal flaws;
- (m) The Fresh SOC should be struck for the same reasons that the SOC was struck;
- (n) It is plain and obvious that each of the Alleged Causes of Action, even if accepted as true for the limited purpose of this motion while incorporating by reference the pleaded documents, discloses no reasonable causes of action and/or fails to provide the necessary particulars of the Alleged Causes of Action;

No Partnership Between the Defendants and Mr. Mizrahi

- (o) The Fresh SOC, principally at paras. 1(i), 11 to 15, 18 to 20, 22 to 26 and 136, seeks damages for breach of partnership and contract between the Defendants Mr. Rogers and Mr. Hiscox, or in the alternative CEI, on the one hand, and Mr. Mizrahi, on the other hand (such partnership, the "**Alleged Partnership**");
- (p) The Alleged Partnership is a bald pleading that is incapable of proof. It is a transparent attempt to force a partnership framework onto a fact pattern where a

partnership clearly does not exist in an effort to hold Mr. Rogers and Mr. Hiscox personally liable;

- (q) There are many contracts pleaded in the Fresh SOC, and thereby incorporated by reference, that are between some combination of the Plaintiffs and the corporate Defendant, CEI, which undermine the Alleged Partnership due to clauses that (a) expressly deny the existence of a partnership between the signatories; and/or (b) provide that the entire agreement between the signatories is contained in the written contract;
- (r) The Fresh SOC alleges at para. 12 that the Alleged Partnership formed in or around 2015, but expressly admits that there is no written partnership agreement between the Defendants and Mr. Mizrahi. The Fresh SOC fails to sufficiently plead the particulars of a partnership at common law, such as the common property owned by the alleged partnership, the sharing of any profits from such common property, or the receipt of a share of the profits of a business;
- (s) The Fresh SOC alleges at para. 14 that, as an alternative, the Alleged Partnership formed in 2021 when the “Waterfall Agreement”, the “Contribution Agreement”, and the “Hazelton Deficiency Agreement” were executed. The Fresh SOC fails to plead that any of Mr. Mizrahi, Mr. Rogers or Mr. Hiscox are parties to any of these agreements, and it fails to plead that corporate separateness between the signatories and Mr. Mizrahi, Mr. Rogers or Mr. Hiscox should be disregarded;
- (t) The Fresh SOC expressly admits at paras. 26 and 47 that Mr. Mizrahi and the corporate Defendant CEI formed a new entity, Mizrahi (128 Hazelton) Inc., and a limited liability partnership, Mizrahi Constantine (180 SAW) LP, for the purposes of pursuing the development projects from which the Alleged Causes of Action arise;
- (u) Mizrahi (128 Hazelton) Inc. is subject to a unanimous shareholder agreement, as pleaded in the Fresh SOC, which contains a clause rejecting the making of a partnership between signatories. Mizrahi Constantine (180 SAW) LP is subject to

a partnership agreement, as pleaded in the Fresh SOC, which contains a clause providing that the partnership agreement is the entire agreement between the signatories on the subject matter;

- (v) The establishment of Mizrahi (128 Hazelton) Inc. and Mizrahi Constantine (180 SAW) LP, and the related unanimous shareholder agreement and partnership agreement, unequivocally contradict any claims that Mr. Mizrahi and any combination of the Defendants were in a partnership at common law;

Tortious Interference with Economic Relations: Not a Cause of Action

- (w) As with the SOC, the Fresh SOC, principally at paras. 1(i), 17 and 137 to 141, seeks damages for tortious interference with economic relations. This Alleged Cause of Action is not a cause of action recognized under Canadian common law. This same alleged tort was struck in the SOC and the Fresh SOC does not plead it in a manner in which it could survive a motion to strike. Tortious interference with economic interests was replaced by the unlawful means tort and the Fresh SOC fails to plead the unlawful means tort and, in any event, does not satisfy the criteria of said tort;

Duty of Good Faith: Not a Cause of Action

- (x) The Fresh SOC, principally at paras. 1(i), 15 to 17, 25, 27, 57, 63 to 64, 82, 110 to 111, 129 to 130, 133, 138, 140, and 145, seeks damages for breach of the duty of good faith. This Alleged Cause of Action is not a free-standing cause of action recognized under Canadian common law. The same cause of action was struck in the SOC and the Fresh SOC does not plead it in a manner in which it could survive a motion to strike;

Fiduciary Duty: Elements Not Pled

- (y) The Fresh SOC, principally at paras. 1(i), 15 to 17, 25, 27, 57, 60 to 64, 82, 110 to 111, 129 to 130, 133, 138, 140 and 145, seeks damages for breach of fiduciary duty;

- (z) The Fresh SOC relies on the Alleged Partnership to establish a fiduciary duty between the Defendants and the Plaintiffs
- (aa) If the Alleged Partnership falls away (as it should), then the Fresh SOC fails to adequately plead the elements of this Alleged Cause of Action, including but not limited to:
 - (i) that there was a fiduciary duty between the Defendants and the Plaintiffs;
 - (ii) the acts that constitute the alleged breaches of such fiduciary duty; and
 - (iii) that the Plaintiffs suffered damages resulting from the breach of that duty by the Defendants;

Breach of Contract: Elements Not Pleased

- (bb) The Fresh SOC, principally at paras. 1(i), 17, 124, 136, and 141, seeks damages for breach of contract, but fails to plead the facts that set out the existence of a contract between one of more of the Plaintiffs, on the one hand, and one or more of the Defendants, on the other hand;
- (cc) The Fresh SOC generally fails to disclose the contractual terms that were allegedly breached by one or more of the Defendants;
- (dd) The Fresh SOC alleges at para. 68 that the “Contribution Agreement” was breached by CEI, but fails to plead that any of the Plaintiffs were party to this alleged contract;

Oppression: No Connection Between Alleged Oppressed and Oppressor

- (ee) The Fresh SOC, principally at para. 2(b), claims that the business affairs of Mizrahi (128 Hazelton) Inc. (which is not a defendant in the action) have been carried on by the Defendants in a manner that is oppressive and unfairly prejudicial to 1000041090 Ontario Inc., but it fails to plead that 1000041090 Ontario Inc. is a shareholder of Mizrahi (128 Hazelton) Inc. or in any other way connected to Mizrahi (128 Hazelton) Inc.;

The SOC Should be Struck in its Entirety

- (ff) The Fresh SOC is the Plaintiffs' attempt to remedy the SOC, which was struck for failing to disclose any reasonable cause of action;
- (gg) The Fresh SOC fails to disclose reasonable causes of action and should be struck in its entirety, without any further leave to amend;

Grounds

- (hh) The provisions of the *Rules*, and in particular Rules 21.01(1)(b), 21.01(3)(d), 25.06 and 25.11;
- (ii) The provisions of the *Partnerships Act*, R.S.O. 1990, c. P.5;
- (jj) The provisions of the *Business Corporations Act*, R.S.O. 1990, c. B.16;
- (kk) Such further and other grounds as counsel may advise and this Honourable Court deems just.

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

- (ll) The Plaintiff's Fresh SOC dated October 14, 2025;
- (mm) The agreements incorporated by reference in the Fresh SOC; and
- (nn) Such further and other material as counsel may advise and this Honourable Court deems just.

December 17, 2025

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APPENDIX “A”

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

B E T W E E N:

**SAM MIZRAHI, MIZRAHI 128 HAZELTON RETAIL INC.,
SAM M (180 SAW) LP INC., SAM M (180 SAW) INC.,
and 1000041090 ONTARIO INC.**

Plaintiffs

and

**EDWARD S. ROGERS III, ROBERT HISCOX,
and CONSTANTINE ENTERPRISES INC.**

Defendants

**FRESH AS AMENDED STATEMENT OF CLAIM OF SAM MIZRAHI
AND 1000041090 ONTARIO INC.**

1. THE PLAINTIFF, SAM MIZRAHI, CLAIMS:

- (i) General Damages and special damages in the sum of \$50,000,000.00 for breach of partnership and contract between the Defendants, Edward Rogers (“Rogers”) and Robert Hiscox (“Hiscox”), or, in the alternative, Constantine Enterprises Inc. (“CEI”), breach of fiduciary duties and duties of good faith owed by Rogers and Hiscox (or, in the alternative, CEI) as partners, and intentional or tortious interference with economic interests by Hiscox and CEI;
- (ii) A declaration that he is not indebted to the Defendants or others with respect to the 128 Hazelton Project (defined below), including with respect to the Retail Loan (defined below);

- (iii) A declaration that he is not indebted to the Defendants or others with respect to the 180 SAW Project (defined below), including with respect to the 180 SAW Loan or the 180 SAW Note (both defined below);
- (iv) A declaration that no funds are payable by him to the Defendants;
- (v) A declaration and order for contribution and indemnity in respect of all expenses, losses, damages, demands and liabilities of whatsoever kind in his favour in respect of the 128 Hazelton Project and the 180 SAW Project;
- (vi) Aggravated damages in the sum of \$2,000,000.00;
- (vii) Exemplary or punitive damages in the sum of \$1,500,000.00;
- (viii) Prejudgment interest in accordance with s.128 of the *Courts of Justice Act* (“CJA”) RSO 1990, c. C43 as amended;
- (ix) Postjudgment interest in accordance with s.129 of the *CJA*;
- (x) A declaration that the business affairs of Mizrahi (128 Hazelton) Inc. and Mizrahi Constantine (180 SAW) Inc. have been carried on by CEI, Rogers and Hiscox in a manner that is oppressive and unfairly prejudicial to Sam Mizrahi; and
- (xi) Such further and other relief as this Honourable court may deem just.

2. THE PLAINTIFF, 1000041090 ONTARIO INC., CLAIMS:

- a. A declaration that it is not indebted to the Defendants or others with respect to the 128 Hazelton Project; and
- b. A declaration that the business affairs of Mizrahi (128 Hazelton) Inc., has been carried on by CEI, Rogers and Hiscox in a manner that is oppressive and unfairly prejudicial to 1000041090 Ontario Inc.

THE PARTIES

3. The Plaintiff, Sam Mizrahi (“Sam”), is an individual residing in the City of Toronto in the Province of Ontario. Sam is an experienced real estate developer. Sam is the principal of the Plaintiff, Mizrahi Developments Inc. (“MDI”). MDI is the 50% shareholder of Mizrahi (128 Hazelton) Inc.
4. The Plaintiff, Mizrahi 128 Hazelton Retail Inc. (“Retail Inc.”), is a body corporate, incorporated pursuant to the laws of Ontario. Sam is the principal of Retail Inc.
5. Sam M (180 SAW) LP Inc. (“Sam M Inc.”), is a body corporate, incorporated pursuant to the laws of Ontario. Sam is the principal of Sam M Inc. Sam M (180 SAW) Inc. (“Sam M 180 SAW Inc”), is a body corporate, incorporated pursuant to the laws of Ontario. Sam is the principal of Sam M 180 SAW Inc.
6. 1000041090 Ontario Inc. (“Mizrahi SPV”), is a body corporate, incorporated pursuant to the laws of Ontario. Sam is the principal of Mizrahi SPV.
7. The Defendant, (“Rogers”), is co-founder of the Defendant, CEI and the Chairman of Rogers Communications Inc., and resides in the City of Toronto in the Province of Ontario.
8. The Defendant, Hiscox, is co-founder and Chief Executive Officer of CEI, and resides in the City of Toronto in the Province of Ontario.
9. The Defendant, CEI, is a body corporate, incorporated pursuant to the laws of Ontario, and is a private real estate fund which holds itself out to be a company that invests, develops, and manages, real estate, predominantly in the greater Toronto area and southern Ontario. CEI is the 50% shareholder of Mizrahi (128 Hazelton) Inc.

10. Edward owns 90% of the shares of CEI and is the controlling mind of both CEI and 50% of Mizrahi Constantine (180 SAW) Inc. (“180 SAW GP”). Robert owns 10% of the shares of CEI and is the director of 180 SAW GP.

OVERVIEW

11. This proceeding arises from a failed partnership between the Plaintiff, Sam, and the Defendants, Rogers, Hiscox, and CEI, in connection with the development of two real estate projects in the Greater Toronto Area: the 128 Hazelton Project and the 180 SAW Project (collectively, the “Projects”).
12. In and around 2015, Sam, Rogers, and Hiscox (or, in the alternative, Sam and CEI) formed a partnership to act in concert and jointly develop the Projects with a view to profit (the “Partnership”). The Partnership was not formalized in a written agreement but was evidenced by the parties’ conduct, shared decision-making, and mutual contributions.
13. As a term of the Partnership, Sam was responsible for overseeing design, approvals, and construction of the developments, while Rogers and Hiscox, (or in the alternative, CEI), provided capital and financing. The parties shared joint decision-making for the development of the Projects. The parties agreed to use corporate vehicles to pursue the Projects as part of the Partnership, including CEI, Mizrahi SPV.
14. In and around December 2021, after CEI has suffered substantial losses on the 128 Hazelton Project, the partners agreed that Sam would absorb 50% of CEI’s losses on the 128 Hazelton Project within the 180 SAW Project, which was posed to garner the Partnership a significant return on investment. To achieve this end, the partners caused their corporations such as CEI and the special purpose vehicles created to develop the Projects (reviewed in detail below) to enter into a series of agreements that co-mingled the finances for the 128 Hazelton and 180 SAW Projects,

such as the Waterfall Agreement, the Contribution Agreement, and the Hazelton Deficiency Agreement (all reviewed and defined below). In the alternative to the pleading that Sam, Rogers and Hiscox, (or in the alternative Sam and CEI) formed the Partnership in 2015, Sam pleads that the Partnership was formed in December 2021 coincident with the execution of these agreements, which formally joined the two Projects.

15. Rogers and Hiscox, or in the alternative CEI, owed Sam a fiduciary duties and duties of good faith as partners in the Partnership. In the addition, Rogers and Hiscox (or, in the alternative, CEI) were required to use their authority to conduct the affairs of the special purpose vehicles created to effect the development of the Projects, such as Mizrahi (128 Hazelton) Inc. and 180 SAW GP in keeping with Sam's reasonable expectations as an indirect shareholder, and a director, as well as Sam's status as a debtor and guarantor for loans advanced to Sam or guaranteed by Sam as part of the Projects.
16. Rogers and Hiscox, or in the alternative, CEI, breached the fiduciary duties and duties of good faith owed to Sam as partners. They also conducted themselves in a manner that was oppressive and unfairly prejudicial to Sam's reasonable expectations as an indirect shareholder, director, debtor and guarantor. The oppressive conduct and breaches of fiduciary duties and duties of good faith of Rogers and Hiscox, or, in the alternative, CEI, included engaging Hiscox and CEI engaging in self-dealing, Rogers, Hiscox (or in the alternative CEI) blocking reasonable efforts to refinance the 128 Hazelton Project so that the development could be completed and avoid a receivership, and refusing to close on a lucrative sale of the 180 SAW Project with the intention of preventing Sam from realizing any gain on his investment and involvement in the Project.
17. Owing to the breaches of fiduciary and good faith duties, oppressive conduct, breaches of contract, and tortious or unlawful interference with economic relations by Rogers, Hiscox or CEI as pleaded

below, Sam seeks declarations of non-indebtedness, contribution and indemnity, and pecuniary damages, and punitive and aggravated damages.

ROGERS, HISCOX AND SAM FORM A PARTNERSHIP FOR THE DEVELOPMENT OF TWO REAL ESTATE PROJECTS

18. In and around June 2015, Sam, Rogers and Hiscox agreed to work together with a view to earning a profit in the development and construction of real estate projects in the Greater Toronto Area. In doing so, Sam, Rogers and Hiscox formed the Partnership. Ultimately, the partners agreed to work together with a view to earning a profit by developing two real estate development projects at 128 Hazelton Ave (the “128 Hazelton Project”) and 180 Steeles Ave West (the “180 SAW Project”) (collectively the “Projects”).
19. The Partnership was not formalized in any written document and there is no partnership agreement. The terms of the Partnership and the agreement between the partners is evidence by their conduct in the development of the Projects.
20. As part of the efforts of Sam, Rogers and Hiscox to work together with a view to earning a profit in the development of the Projects, the parties agreed, as a term of the Partnership, that Sam would be responsible for the design of the Projects, obtaining the required approvals for zoning and permitting, and overseeing the development and construction of the Projects through his corporation, Mizrahi Inc., which would act as both general contractor and developer for the Projects. Sam, in other words, provided effort, knowledge and skill towards the Partnership’s common undertaking of developing the Projects with a view to a profit. Sam undertook this development work through various special purpose vehicle corporations, such as Mizrahi SPV.
21. Rogers and Hiscox were responsible for contributing the capital and financing required to construct and develop the Projects. In addition, the parties would also rely on third-party construction

financing. Rogers and Hiscox contributed capital to the Project through their corporation, CEI, with a view to working in concert with Sam to earn a profit from the development of the Projects.

22. The Partnership was formed when Sam, Rogers and Hiscox agreed to work or act together in concert with a view to earning a profit on the Projects. They agreed, through their conduct, if not explicitly, to use different legal structures for 128 Hazelton and 180 SAW and to use corporations, such as MDI, Sam M. Inc and CEI, as the vehicles to pursue the development of the Projects. They collectively agreed to have joint decision-making authority for the Projects, except as otherwise provided in the agreements that pertained to the Projects individually, such as a shareholder's agreement for 128 Hazelton or the partnership agreement for 180 SAW (discussed below). Sam, Rogers and Hiscox, or, in the alternative, Sam and CEI, held themselves out to the public as partners in the construction and development of the Projects. The parties also referred to themselves as partners in the Partnership in their communications amongst themselves.
23. At all times, Sam, Rogers and Hiscox as partners in the development of the Projects had, personally and/or through the corporations that they controlled, contributed to the common undertaking of developing the Projects, with a view to sharing profits and losses in accordance with the contractual documents for the Projects individually, and had mutual control and management of the Projects.
24. In the alternative to the pleading that Sam, Rogers and Hiscox formed the Partnership, Sam pleads that the Partnership was formed between him and CEI for the development of the Projects.
25. Sam pleads and the fact is that Rogers and Hiscox (and alternatively CEI) as partners of Sam owed Sam fiduciary duties and a duty of utmost good faith in their dealings and conduct of the Partnership.

THE PROJECTS: 128 HAZELTON

26. In and around 2014, Sam, Rogers and Hiscox (or CEI) agreed that the Partnership would form a corporation, Mizrahi (128 Hazelton) Inc., which they would cause to acquire the properties necessary to develop the 128 Hazelton Project. This was the Partnership's first development.
27. Sam's interest in Mizrahi (128 Hazelton) Inc. was held through his wholly owned and/or controlled corporation Mizrahi Enterprises Inc. ("MEI"). The interests of Rogers and Hiscox in Mizrahi (128 Hazelton) Inc. were held indirectly through CEI. MEI and CEI were 50% shareholders in Mizrahi (128 Hazelton) Inc. At all material times, Hiscox was a director of Mizrahi (128 Hazelton) Inc. and owed it duties of good faith and fiduciary duties as a director.
28. On June 19, 2015, Sam, Mizrahi Inc. and Mizrahi (128 Hazelton) Inc., consistent with the terms of the Partnership, entered into a Development Management Agreement (the "Development Management Agreement") appointing Mizrahi Inc. as the developer for the 128 Project.
29. On March 31, 2017, Mizrahi Inc. and Mizrahi (128 Hazelton) Inc., consistent with the terms of the Partnership, entered into a CCDC5A Construction Management Contract (the "Construction Management Agreement") appointing Mizrahi Inc. as the general contractor for the 128 Hazelton Project.
30. On or about December 10, 2014, Mizrahi (128 Hazelton) Inc. acquired the property municipally known as 128 Hazelton Avenue in the City of Toronto.
31. On or about June 19, 2015, Mizrahi (128 Hazelton) Inc. acquired the property municipally known as 126 Hazelton Avenue.
32. The 128 Hazelton Project was intended by Sam, Rogers and Hiscox to be developed into a 9-story, 20-unit luxury condominium with approximately 1,922 square feet of ground floor commercial retail space and three levels of underground parking.

33. The 128 Hazelton Project had a retail component. Sam's interest in the retail component of the Project was held by Sam through a separate entity, Mizrahi 128 Hazelton Retail Inc. ("Retail Inc.").
34. Sam was appointed the President and Secretary of Mizrahi (128 Hazelton) Inc. and Hiscox was appointed the Vice President and a director of Mizrahi (128 Hazelton) Inc.
35. Consistent with the terms of the Partnership and the obligation of Rogers and Hiscox to provide the capital and funding required to develop the Projects, on or about June 19, 2015, Mizrahi (128 Hazelton) Inc. entered into a credit agreement with CEI, whereby CEI loaned \$21 million (the "128 Credit Agreement"). Sam caused his corporation, MEI, to be a signatory to the 128 Credit Agreement, under which it pledged its shares in the capital of Mizrahi (128 Hazelton) Inc.
36. On June 19, 2015, MEI, CEI, and Mizrahi (128 Hazelton) Inc., entered into a unanimous shareholders agreement (the "128 Shareholders Agreement"), which reflected the beneficial ownership interest in Mizrahi (128 Hazelton) Inc of Sam, Rogers and Hiscox - 50% of the shares were held by MEI (an entity controlled by Sam), and the other 50% by CEI (the entity controlled by Rogers and Hiscox).
37. The 128 Shareholders Agreement provided, *inter alia*, for the purchase of space or units within the 128 Hazelton project ultimately by Retail Inc. and CEI.
38. On or about August 13, 2015, Sam caused his interest in the 128 Hazelton Project, held through MEI, to be transferred to MDI, another company wholly owned and/or controlled by Sam.
39. On November 29, 2016, Sam's company, Mizrahi Inc., entered into an agreement of purchase and sale ("APS") with Mizrahi (128 Hazelton) Inc. for the purchase of unit 1, Level 1 ("the Retail Unit"). On November 10, 2020, this APS was assigned by Mizrahi Inc. to Retail Inc. Similarly, CEI entered into an APS with Mizrahi (128 Hazelton) Inc. for units 201 and 205 (now known as 201 and 204).

40. Section 4.1 of the Shareholders' Agreement required funds to be raised by debt. In September 2020, Mizrahi (128 Hazelton) Inc. required \$4,200,000.00, and Sam obtained a term sheet from the lender, Kingsett Mortgage Corporation ("Kingsett"). CEI proposed an alternative to Kingsett whereby each of the shareholders would loan \$2,100,000.00 to Mizrahi (128 Hazelton) Inc. and such loans would be deposits under the APS for units in the 128 Hazelton Project.
41. Since Sam did not want, nor was he required, to put capital into the 128 Hazelton Project, CEI agreed to lend the money to Retail Inc., personally guaranteed by Sam, to make this loan on substantially the same terms as Kingsett had offered (the "Retail Loan"). On October 25, 2020, CEI, as lender, Retail Inc., as borrower, and Sam, as guarantor entered into a term sheet for the Retail Loan (the "Retail Term Sheet"). The Retail Term sheet provided that the Retail Loan would be repaid upon the closing of the Retail Unit free and clear of CEI's security interest on the 128 Project. In particular, section 3d of the Retail Term Sheet provided that the Retail Loan, among other things, would be paid free and clear of any other security interests held by CEI in connection with any other loans made by it to Mizrahi (128 Hazelton) Inc.
42. Similarly, CEI agreed as a term of the Retail Term Sheet that it would complete its sale of units 201 and 205 and, at that time, Mizrahi (128 Hazelton) Inc. would repay its loan to CEI for these units. The promissory note Retail Inc. gave CEI reflected that the set-off arrangement had to take into account financing ahead of CEI which had to be paid in totality before the note matured, and the Retail Unit transferred by Mizrahi (128 Hazelton) Inc.
43. On September 22, 2016, Hazelton Inc. obtained an excess deposit insurance policy from Aviva Insurance Company of Canada ("Aviva") and in connection therewith provided a second charge

to Aviva on the 128 Hazelton Project in the sum of \$18,500,000.00. Sam provided a personal guarantee of this indebtedness.

44. On June 27, 2017, DUCA Financial Services Credit Union LTD. (“DUCA”) granted a credit facility to Mizrahi (128 Hazelton) Inc. in the amount of \$34,460,000.00 (“the DUCA loan”). Both CEI and Aviva postponed their interests to the DUCA loan. Sam provided a personal guarantee of this indebtedness.

THE PROJECTS: 180 SAW

45. In and around 2018, Sam, Rogers and Hiscox, or, in the alternative, Sam and CEI, agreed to expand the Partnership and to pursue the development of the 180 SAW Project.
46. On December 20, 2018, further to the partnership between Sam, Rogers and Hiscox (or in the alternative CEI) to develop 180 SAW with a view to a profit, Sam caused a corporation that he owned and/or controlled, Mizrahi Real Estate Group Inc., to enter into an agreement of purchase and sale for lands and premises municipally known as 180 Steeles Avenue West in the City of Vaughan for \$120,000,000.00. This property was intended to be the location for the development of the 180 SAW Project by the Partnership. 180 SAW was planned as a high-rise mixed-use development on the property consisting of up to 2,196 residential units with heights up to 178.1m for the two towers fronting on Steeles Avenue West and heights up to 113.7m for the two towers without direct frontage on Steeles Ave West, to replace a large plaza and low-rise office building.
47. In contrast to the manner in which the Partnership agreed to pursue the development of 128 Hazelton, as part of their efforts to act jointly together in the pursuit of profit for the 180 SAW Project, the partners elected to form a limited partnership, Mizrahi Constantine (180 SAW) LP (“180 SAW LP”) through which the corporations that they wholly owned and/or controlled would act as limited partners. The interests of Rogers and Hiscox in 180 SAW was created by appointing

their corporation, CEI, as a limited partner. Meanwhile, Sam caused his corporation, Sam M (180 SAW) LP Inc. (“Sam M Inc.”), to be appointed as a limited partner. 180 SAW GP was the general partner.

48. On or about April 30, 2019, Sam, Rogers and Hiscox caused Sam M Inc, CEI, as limited partners, and 180 SAW GP, as general partner, to enter into a partnership agreement (the “180 SAW Partnership Agreement”).
49. Under the terms of the 180 SAW Partnership Agreement, CEI had two-thirds interest in 180 SAW LP and Sam M Inc. held a one-third interest.
50. Another company indirectly owned and/or controlled by Sam, Sam M (180 SAW) Inc. guaranteed the indebtedness of Sam and Sam M Inc on the 180 SAW Project.
51. On December 3, 2021, CEI, Sam M Inc., and 180 SAW GP entered into amended partnership agreement (the “Amended 180 SAW Partnership Agreement”) coincident with closing 180 SAW LP’s acquisition of the lands at 180 Steeles Ave West comprising the 180 SAW Project.
52. In connection with the purchase of the 180 SAW Project lands, 180 SAW LP obtained financing from Canadian Western Bank (“CWB”), as agent for a syndicate of lenders, in the principal sum of \$78,000,000.00 secured by, among other things, a first mortgage on 180 SAW project.
53. In connection with the purchase of the 180 SAW Project lands, 180 SAW LP obtained financing from Trez Capital Limited Partnership (“Trez”), which advanced a loan for \$20,000,000.00 secured by, among other things, a second mortgage on the 180 SAW property.
54. Pursuant to the agreement between Sam, Rogers and Hiscox (or, in the alternative between Sam and CEI) for the operation of the Partnership and the development of the Projects, Rogers and Hiscox caused CEI to contribute capital for the 180 SAW Project in the sum of \$8,167,576.65.

55. In contrast to the manner in which the partners agreed to develop the 128 Hazelton Project, Sam agreed to cause his corporation, Sam M Inc. to contribute capital for the 180 SAW Project in the sum of \$4,083,788.33. Sam M Inc. had invested \$8,300,000.00 in the project before this additional capital payment.

THE PARTNERSHIP AGREES TO CO-MINGLE THE PROJECTS INTO AN OVERARCHING EFFORT TO ACT IN CONCERT WITH A VIEW TO A PROFIT

56. By 2021, Rogers and Hiscox, through CEI, had suffered a substantial loss on the 128 Hazelton Project as a result of the financing provided by CEI to the 128 Project. It was unlikely that CEI would recover its loan to the 128 Hazelton Project. Since Sam had not contributed any capital or financing for the 128 Hazelton Project, Sam had not suffered a corresponding loss.
57. Up to and throughout 2021, Rogers and Hiscox pressed Sam to agree to absorb 50% of the losses they suffered, through CEI, on the 128 Hazelton Project. No contract required either Sam, or any of his corporate entities, to absorb the losses suffered by Rogers and Hiscox.
58. On December 3, 2021, as a means to address the losses suffered by Rogers and Hiscox on the 128 Hazelton Project, and to provide clarity on the flow of profits (if any) arising from the development of both Projects, Sam, Rogers and Hiscox caused Sam M Inc, CEI, 180 SAW LP by its general partner 180 SAW GP, Mizrahi SPV and Mizrahi (128 Hazelton) Inc. to enter into an Agreement re Direction and Waterfall dated December 3, 2021 (“the Waterfall Agreement”).
59. Also on December 3, 2021, Sam caused Sam M Inc. and Rogers and Hiscox caused CEI to enter into an agreement to address the losses suffered by Rogers and Hiscox on the 128 Hazelton Project (the “Hazelton Deficiency Agreement”).
60. Sam agreed with Rogers and Hiscox to have Sam M Inc., which was entity created for the purposes of developing 180 SAW, enter into the Hazelton Deficiency Agreement with CEI to address the

losses suffered by Rogers and Hiscox, through CEI, on the 128 Hazelton Project. The Hazelton Deficiency Agreement specified Sam M inc. would absorb losses up to 50% of the losses suffered on the 128 Hazelton Project, payable from its share of the profits on the 180 SAW project.

61. Also on December 3, 2021, Mizrahi (128 Hazelton) Inc, Mizrahi Inc. and CEI entered into the Fee Reimbursement Agreement (the “Fee Reimbursement Agreement”) under which Mizrahi Inc. agreed to defer all fees owed to it under the Construction Management Agreement and the Development Management Agreement pursuant to the terms of the Hazelton Deficiency Agreement.
62. Also on December 3, 2021, Mizrahi (128 Hazelton) Inc., MDI and CEI entered into a contribution agreement (the “Contribution Agreement”) in which MDI and CEI reached agreement on the advance of capital for the 128 Hazelton Project to be contributed to Mizrahi (128 Hazelton) Inc. in the event that CEI had reasonable grounds to believe that there would be budget deficit for the 128 Hazelton Project after the advancement of \$3 million pursuant to two loans, defined in the Contribution Agreement as the CEI Note and the MDI Note.
63. The Hazelton Deficiency Agreement, the Contribution Agreement and the Fee Reimbursement Agreement are a reflection of the Partnership between Sam, Rogers and Hiscox (or, in the alternative between Sam and CEI) to act together with a view towards earning a profit on both Projects and effected the formal co-mingling of the finances of the Projects, even though the legal structures for each Project were separate.
64. In the alternative to the pleading that the Partnership was formed in 2015 when Rogers, Hiscox and Sam (or, in the alternative, Sam and CEI) agreed to form the Partnership with the intention of working together in concert in the development of the Projects with a view to a profit, Sam pleads that the Partnership was formed between Sam, Rogers and Hiscox (or, in the alternative, between

Sam and CEI) in December 2021 when Sam agreed to absorb 50% of his partners losses in the 128 Hazelton Project.

65. Like the Hazelton Deficiency Agreement, the Contribution Agreement and the Fee Reimbursement Agreement, the Waterfall Agreement reflected the Partnership between Sam, Rogers and Hiscox (or, in the alternative between Sam and CEI) to act together with a view towards earning a profit on both Projects and formally co-mingled the sharing of profits on the Projects between the partners.
66. The Waterfall Agreement established an agreed-upon “waterfall” or flow of amounts payable to Sam M Inc. by 180 SAW LP as follows and specifically addressed the flow of funds by Mizrahi Inc., the general contractor for 128 Hazelton, and Mizrahi (128 Hazelton) Inc., which was, other than through the Partnership between Sam, Rogers and Hiscox, unrelated to the 180 SAW Project.
67. The waterfall under the Waterfall Agreement provides for the following:
 - a) Default loan obligations of Sam M Inc. to CEI;
 - b) 180 SAW Loan (defined below) in the principal amount of \$9,209,071.57;
 - c) 180 SAW Note (defined below) in the principal amount of \$4,866,735.00;
 - d) Trez Capital loan to Sam M Inc. not to exceed \$5,100,000.00;
 - e) Sam M Inc.’s capital contributions to 180 SAW LP less any contributed capital that was funded by a default loan;
 - f) Amounts owing by Mizrahi Inc. to Hazelton Inc. under the Fee Reimbursement Agreement;
 - g) Amounts owing by 180 SAW LP to Hazelton Inc. pursuant to the Development Management Agreement;
 - h) Amounts owing to CEI by Sam M Inc. under the Hazelton Deficiency Agreement; and

i) The balance, if any, to Sam M Inc.

56. In the case of the obligations enumerated in subparagraph (ii) and (iii) above, Sam is either the borrower, or he personally guaranteed such obligation. The 180 SAW Loan is an amended and restate promissory note issued by Sam Mizrahi to CEI, dated December 3, 2021. The 180 SAW Note is a promissory note from Sam M (180 Saw) LP Inc. to CEI, dated December 3, 2021, for which Sam is a guarantor.

ROGERS AND HISCOX BREACHED THEIR DUTIES OF GOOD FAITH AND FIDUCIARY DUTIES TO THEIR PARTNER SAM

A. 128 Hazelton: The Unreasonable Actions by Rogers and Hiscox to Harm the Interests of their Partner Sam

57. Sam caused Sam M Inc. to enter into the Hazelton Deficiency Agreement and the Waterfall Agreement with the expectation that Rogers and Hiscox (or, in the alternative CEI) would reasonably conduct themselves as a partners on the Projects and would meet their duties of good faith and fiduciary duties owed to Sam as their partner.
58. In particular, Sam reasonably expected that Rogers and Hiscox (or, in the alternative CEI) would not take unreasonable steps to prohibit the sale of the 180 SAW Project and deprive the Partnership of a reasonable return on investment. In addition, Sam reasonably expected that Rogers and Hiscox (or, in the alternative CEI) would not block efforts to finance the 128 Hazelton Project or close on units so that the 128 Hazelton Project could earn revenue necessary to pay down the liabilities of the Project and therefore pay down Sam's exposure to personal guarantees.
59. Unknown to Sam, in and around September 2023, Rogers and Hiscox reached an agreement amongst themselves to increase Sam's liability, which would be directly incurred by Sam M. Inc, under the Hazelton Deficiency Agreement and the Waterfall Agreement, and to expose Sam to

personal liability on his personal guarantee to DUCA, Aviva and to CEI on the Retail Inc. loan, along with the 180 SAW Loan and the 180 Saw Note.

60. Rogers and Hiscox sought to accomplish this goal, in breach of their good faith duties and fiduciary duties owed to Sam as partners, by using their 50% voting rights in the 180 SAW Project and CEI's rights as a shareholder and lender on the 128 Hazelton Project to prevent the repayment of loans, such as the loans owed to DUCA, the Retail Loan, or the Sam 180 Saw Loan and the Sam M. Inc. 180 Saw Loan.
61. On July 21, 2023, Rogers, Hiscox and CEI were put on notice of their bad faith and breach of fiduciary duties referable to the 128 Hazelton Project. At that time, and as early as March 2023, multiple offers had been received from a strongly incentivised purchaser of "orphaned" 7th floor space at 128 Hazelton, which, if accepted, would have reduced the DUCA debt and provided necessary capital to pay trades to finish the 128 Hazelton Project. By refusing to close on the sale of this unit, Rogers and Hiscox purposefully sought to increase Sam's exposure to his personal guarantees on the DUCA debt. Rogers and Hiscox also sought to manufacture the insolvency of the 128 Hazelton Project, so that they could put the Project into receivership, which would have the result of forcing Sam, their partner, out of the Project.
62. Similarly, Rogers and Hiscox reached an agreement amongst themselves to purposefully prevent the closing of the Retail Unit with an aim of increasing Sam's personal liability. On May 12, 2023, Sam communicated to Rogers and Hiscox that DUCA was prepared to consent to the sale of the Retail Unit which would enable Sam to reduce the interest payable by Retail Inc. and Sam to CEI and the Retail Unit paid for in full on closing.

63. On July 21, 2023, Rogers and Hiscox were also put on notice that it was in breach of their fiduciary and good faith duties to Sam when they failed to honour an agreement reached with Sam that when CEI sold unit 601, it would discharge the a \$1,500,000.00 loan referred to by the parties as the “Mizrahi SPV Loan” upon the closing of unit 601. Similarly, Rogers and Hiscox, through CEI, had refused to discharge the Mizrahi SPV Loan upon the closing of CEI’s other retail units, unreasonably preferring their own interests to prevent repayment of Sam’s indebtedness to CEI.
64. In addition to unit 601, CEI and Robert Hiscox, acquired units 201, 204, 401, 402, 403, and 404, at below-market prices, depriving the 128 Hazelton Project of additional revenue for upgrades if sold to third parties, and then assigned these units at a profit. This self-dealing is a breach of the duty of good faith Rogers and Hiscox owed Sam as partners. The self-dealing is also a breach of fiduciary duty and duty of good faith owed by Hiscox to Mizrahi (128 Hazelton) Inc. as a director. This self-dealing enriched the Rogers and Hiscox and increased the losses on the 128 Hazelton Project, exposing Sam on his personal guarantee on the DUCA debt and the Retail Loan.
65. On November 21, 2023, CEI signed a Non-Binding Proposal with Third Eye Capital (“TEC”) for the inventory loan required for the 128 Hazelton project. Item (f)(viii) of Appendix A of the proposal specified the usual lender requirement of execution of definitive documentation satisfactory to TEC of postponement, subordination, and standstill of claims of credit parties in respect of other credit parties.
66. Section 3.5 of TEC’s standard form of guarantee, also in keeping with usual lender requirements, provided that the guarantor will not exercise any rights of indemnification, contribution, or subrogation, so long as the guarantee is in effect and such rights are terminated in the event of sale, foreclosure, or other disposition, of any equity securities. CEI sought from TEC changes to S. 3.5

to permit CEI guarantors to pursue indemnification, contribution, or subrogation, against the Mizrahi guarantors. On January 11, 2024, predictably TEC refused to make the changes.

67. On January 24, 2024, Rogers and Hiscox (and CEI) were advised by Sam that the TEC financing would avoid the appointment of a receiver and enable them to recover \$11,400,000.00 from the 128 Hazelton Project that it was unlikely to recover with the appointment of a Receiver.
68. On January 25, 2024, Rogers and Hiscox (and CEI) refused to meet to discuss the issue with TEC and Sam. Rogers, Hiscox and CEI then demanded that the TEC financing proceed on the condition Sam execute a contribution agreement requiring Sam to personally pay 50% of whatever capital CEI decided was required to fund the 128 Hazelton Project and a guarantee indemnity agreement with interest paid at 28%. This demand by CEI was a breach of the Contribution Agreement with MDI, which set out the terms and obligations with respect to the payment of capital for the 128 Hazelton Project.
69. On January 19, 2024, DUCA served a Notice of Application for the appointment of a receiver owing to the filing of a lien on the 128 Hazelton project by CEC Mechanical Inc. (“CEC”). Since TEC was no longer an option to refinance DUCA, Sam repeatedly pursued CEI for a plan on a way forward.
70. On January 27, 2024, when no plan was forthcoming from CEI, Sam outlined a way forward to bond off the CEC lien that was the cause of the default DUCA relied upon for its contended right to a Receivership, pay down of the DUCA debt with immediate closings of suite 701 and the balance of all other units that are available and have occupancy under APS so that DUCA could be paid out in advance of its March 4 return date of its receivership application.

71. The CEC lien could be removed with an Aviva bond in three days. This would avoid the unnecessary costs of a Receivership.
72. On January 29, 2024, Rogers and Hiscox, through CEI, rejected the suggested plan and instead suggested a meeting to discuss options to take place Friday February 2, 2024.
73. On or about February 2, 2024, without advance notice to Sam, CEI announced it had acquired the DUCA debt by buying out DUCA and taking an assignment of its rights to include Sam's personal guarantee. The purchase of the DUCA debt by CEI was part of the plan of Rogers and Hiscox to force Sam out of the Partnership and the 128 Hazelton Project. Rogers and Hiscox had intentionally blocked reasonable proposals and efforts to close on units in the 128 Hazelton Project and to pay down the DUCA debt and the Retail Loan, which would, in turn, reduce Sam's personal liability on personal guarantees.
74. On February 2, 2024, CEI advised it had, contrary to the Shareholders' Agreement, which provides for joint decision making on the 128 Hazelton Project, unilaterally negotiated a settlement agreement with Ozz Electric that was not in the interests of the 128 Hazelton Project. The settlement agreement was deficient since it did not clarify remaining outstanding work to be completed by Ozz Electric, the timing of the works, or the value of the works. CEI was informed the Ozz Electric settlement was not an authorized liability of Mizrahi (128 Hazelton) Inc. CEI therefore proceeded to acquire the Ozz Electric claim so the liens were lifted. The cost to do so is CEI's liability since the Ozz Electric claims should have been bonded at a fraction of the costs of acquiring the claim and there was merit to a defence of its claims.
75. On February 5, 2024, Hiscox communicated that CEI would proceed with closing the Retail Unit provided that both the Retail Loan was repaid to CEI and the full purchase price required under

the APS paid to Mizrahi (128 Hazelton) Inc. In other words, Hiscox sought to require that the Retail Loan and the full purchase price for the Retail Unit be paid, effectively doubling the cost. This was a breach of section 3(d) of the Term sheet of the Retail Loan which requires CEI to sign any documentation required to permit the loan set-offs “free and clear of any security interests held by the Lender [CEI] in connection with any other loans made by it [CEI] to ProjectCo”. The Retail Loan was to be extinguished from the proceeds payable upon Retail Inc. closing on the unit.

76. On February 14, 2024, CEI purported to make a capital call for the 128 Hazelton Project pursuant to the Contribution Agreement. On February 15, 2024, Sam responded that no additional capital was required to exit the Project since the assets of the Project were well in excess of the DUCA debt (by approximately \$14.5M) and all other ongoing obligations were met as eight units with a value of \$15.5M were ready to close and the CEC lien could be bonded for \$9,000.00.
77. On February 22, 2024, CEI proceeded with a Notice of Application for the appointment of a receiver naming Mizrahi (128 Hazelton) Inc. and Retail Inc. as respondents. The receivership was granted by Order of Justice Cavanagh dated June 4, 2024.
78. The receivership for 128 Hazelton came at substantial costs to the 128 Hazelton Project, which would have been avoided if not for the unreasonable decisions made by Rogers and Hiscox with an aim of damaging the economic interests of their partner Sam.
79. If Rogers and Hiscox had agreed to proceed with Sam’s plans for exiting the 128 Hazelton Project in and prior to July 2023, or the TEC refinancing, or Sam’s plan proposed on January 27, 2024, the receivership for 128 Hazelton and its substantial costs and damage to Sam’s reputational interests would have been avoided.
80. Sam’s proposals for the 128 Hazelton Project set out above would have resulted in the DUCA debt being paid in full and the elimination of both Sam’s exposure to his personal guarantee on that

debt. Similarly, the 50% of losses to be sustained on the 128 Hazelton Project and payable by Sam (by agreement) out of what should have been substantial profits on the 180 SAW project would be substantially reduced.

81. Sam therefore seeks to recover from the Defendants any and all amounts payable by Sam pursuant to the DUCA guarantee, should CEI advance a claim on that guarantee. In the case of the losses of CEI payable by Sam under the Hazelton Deficiency Agreement, Sam's liability should be reduced by any and all costs associated with the receivership for 128 Hazelton and the Defendants' unreasonable refusal to carry out Sam's plans as pleaded above or the TEC financing.

B. 180 SAW: The Unreasonable Decisions of Rogers and Hiscox to Harm the Interests of their Partner Sam

82. Rogers and Hiscox (and in the alternative CEI) intentionally harmed Sam's economic interests and breached their good faith duties and fiduciary duties owed to Sam as their partner in the development of the 180 SAW Project by unreasonably rejecting the sale of the Project.
83. In particular, Rogers and Hiscox refused to sell the 180 SAW project at a profit and used their ability to refuse the proposed sale as leverage to: (1) coerce Sam to agree to pay 50% of the losses on the 128 Hazelton project; (2) delay any exit on the 180 SAW Project to increase Sam's exposure on personal guarantees provided for the indebtedness of both Projects and to increase his interest liability to CEI, given the indebtedness was at an interest rate of 28% per annum; and (3) eliminate Sam M Inc.'s 1/3 interest in the 180 SAW Project.
84. On April 28, 2023, Hiscox and Chris Donlan, CEI's Chief Financial Officer, attended an introductory meeting with potential Korean investors, Hyundai Asset Management ("HAM") in the 180 SAW Project arranged by Sam.

85. In early May 2023, Rogers and Hiscox unequivocally told Sam they wanted him to pursue negotiations with HAM as prospective buyers of the 180 SAW project. The partners set a target price of \$200,000,000.00 for the sale.
86. As of February 2023, the 180 SAW Project had already been listed for sale with CBRE. In July 2023 it was listed against with Cushman. These listings did not result in any offers. There was one preliminary enquiry expression of interest at a potential purchase price of \$170,000,000.00 subject to due diligence.
87. Hiscox, as a director of 180 SAW GP, refused to pursue negotiations as a response to this expression of interest, notwithstanding CEI was adamant in its communications with Sam the 180 SAW Project had to be sold.
88. By May 8, 2023, Sam confirmed HAM's interest in acquiring the 180 SAW Project. Data relevant to the Project was requested by HAM for them to review by the end of May when Sam was scheduled to travel to Korea to meet to negotiate the HAM purchase of the 180 SAW project. A 'data room' was to be created to enable HAM's due diligence.
89. On May 26, 2023, Sam arrived in Korea with a mandate from CEI to attempt to obtain a purchase price of \$200,000,000.00 for the 180 SAW Project. CEI understood HAM could be interested in acquiring 100% of the Project or an acquiring less than 100%, in which case it would partner on the 180 Project with Rogers, Hiscox (or, in the alternative CEI) and Sam.
90. On June 2, 2023, the meeting and negotiations with HAM and Sam concluded. In the period May 6 to June 2, 2023, Sam provided daily reports to Rogers, Hiscox (and CEI) on the progress and terms of negotiations. The outcome was that HAM committed to draft and deliver a letter of intent

(the “HAM LOI”) with a purchase price of \$220,000,000.00 for the 180 SAW Project that would generate net proceeds to 180 SAW LP of approximately \$200,000,000.00 in exchange for a 70% interest in the 180 SAW Project with the remaining 30% of the Project going forward to be held by Rogers and Hiscox through CEI and an entity to be controlled by Sam. HAM becoming a partner of Rogers, Hiscox and Sam in the 180 SAW Project was approved in principal by Rogers and Hiscox while Sam was in Korea meeting with HAM to negotiate the HAM LOI.

91. On June 3, 2023, Sam reported to Rogers, Hiscox (and CEI) the terms of the HAM LOI to be delivered by HAM.
92. On June 8, 2023, Hiscox communicated CEI was only interested in a deal with HAM that provided for CEI’s 100% exit from the 180 SAW Project. This was contrary to all of the discussions between Sam, Rogers and Hiscox and the communications Sam had received from Chris Donlan, CEI’s Chief Financial Officer.
93. It was based on these discussions with Hiscox and Rogers, and the instructions received from CEI that Sam negotiated the HAM LOI on the basis that Sam, Rogers and Hiscox would continue as partners in the 180 SAW Project.
94. On June 8, 2023, Sam responded immediately to Hiscox and noted that Sam’s mandate in going to Korea and as confirmed during his daily updates to Chris Donlan was that Rogers and Hiscox, through CEI, were prepared to remain partners in the 180 SAW Project going forward with HAM. CEI agreed to review the HAM LOI when received from HAM.
95. On June 30, 2023, Sam received and forwarded the HAM LOI.

96. On July 4, 2023, CEI advised HAM it would review the HAM LOI and a draft advisory agreement and respond with CEI's mark-up, comments and questions.
97. On July 5, 2023, Rogers, Hiscox, Chris Donlan, and Sam, met with the HAM representative in Toronto at the 180 SAW Project site.
98. By July 11, 2023, Sam and the Defendants had communicated their positions on the Waterfall Agreement regarding the flow of funds based upon the HAM LOI targeting a closing of the transaction for the end of October 2023.
99. On July 12, 2023, Sam sought a meeting to confirm CEI was in agreement in anticipation of Sam flying to Korea the following week to finalize the terms of agreement on the terms of the HAM LOI.
100. On July 14, 2023, Hiscox advised Sam for the first time that he and Rogers required a 100% exit from the 180 SAW Project. Rogers and Hiscox then rejected the HAM LOI, in part because only 77% of CEI's interest would be acquired so that CEI retained a 15% interest in the Project going forward.
101. The \$200,000,000.00 HAM purchase price for 70% of the Project would generate a cash flow sufficient to pay all of the obligations set out in the Hazelton Deficiency Agreement and the Waterfall Agreement.
102. Rogers and Hiscox knew the HAM LOI for a 70% interest in the 180 SAW Project was no less than market and was, in fact, in excess of the target market price for the 180 SAW Project and was the only commercially reasonable path forward.

103. On July 14, 2023, Hiscox advised Sam that they would not proceed with the HAM transaction unless Sam entered into a binding agreement to pay 50% of CEI's losses, estimated at that time at more than \$30,000,000 on the 128 Hazelton Project. On July 17, 2023, Robert advised that they would not advance the negotiations with HAM without this agreement.
104. On July 21, 2023, Sam put Rogers, Hiscox and CEI on notice that, if they failed to cooperate and advance the HAM LOI, then they took all the risks associated with the rejection of the HAM LOI. At that time, the HAM LOI garnered CEI a simple return of approximately 116% and an annual return of approximately 26.2% on the 180 SAW Project.
105. On September 1, 2023, and in his meetings with Rogers on September 9, 2023, Sam offered to purchase CEI's 15% interest in the new 180 SAW entity if the HAM LOI closed.
106. On August 11, 2023, Sam again put CEI on notice it took all the risks associated with the rejection of the HAM LOI and requested CEI's mark-up and comments on the HAM LOI.
107. On August 31, 2023, CEI provided its mark-up and comments on the HAM LOI.
108. On September 28, 2023, Hiscox conveyed to HAM the letter of intent CEI was prepared to agree to for the HAM purchase of the 180 SAW Project.
109. On October 1, 2023, HAM rejected the revisions to the HAM LOI conveyed by CEI.
110. The HAM LOI dated June 30, 2023 was at or no less than a market price and in excess of the CEI target price for the 180 SAW project and should have closed by no later than October 31, 2023, and the failure to do so was owing to Rogers and Hiscox's plan to intentionally cause economic

harm to Sam. It amounted to a breach of their good faith duties and fiduciary duties owed to Sam as their partner.

111. Hiscox also breached his fiduciary and good faith duties owed as a director to 180 SAW GP by preferring his own interests and the interests of CEI and his partner Rogers over the best interest of 180 Saw GP, by using his 50% voting rights in 180 SAW GP to reject the HAM LOI.
112. On October 1, 2023, Sam, with a CEI mandate to negotiate with HAM, travelled to Korea in the hope a deal with HAM could be salvaged.
113. On October 20, 2023, HAM delivered a revised LOI (the “Revised HAM LOI”). Sam was prepared to accept the Revised HAM LOI.
114. On October 25, 2023, the parties met remotely, and a revised offer was agreed to and HAM committed to travel to Toronto the following week to finalize the transaction.
115. On November 22, 2023, the Revised HAM LOI was signed by CEI, Sam, and HAM.
116. On December 11-13, 2023, Rogers and Hiscox, unknown to Sam, travelled to Korea and met with HAM and the investor it represented, Daewoo Engineering and Construction.
117. On December 17, 2023, Sam and Rogers met to discuss the Revised HAM LOI transaction.
118. On December 21, 2023, Rogers emailed Sam the terms he and Hiscox through CEI would agree to so that the Revised HAM LOI could proceed, and the sale of 180 SAW Project could close.
119. On December 22, 2023, Rogers and Sam met remotely, and Sam memorialized the agreement reached on each of the points set out in Rogers’ December 21, 2023 email. Sam sent Rogers an email confirming the agreement reached at the December 22 meeting (“the December 22

Agreement”), immediately following the meeting. The December 22 Agreement enabled the Revised HAM LOI to proceed to a closing of the sale of the 180 SAW Project.

120. On December 22, 2023, Sam’s email memorializing the December 22 Agreement was sent to Rogers, copied to Hiscox, Chris Donlan, CEI’s lawyer, and the lawyer for Sam.
121. The December 22 Agreement was a contract entered into between Sam and Rogers as partners in the Partnership. In the alternative, the December 22 Agreement was a contract entered into between Sam and CEI.
122. The essential terms of the December 22 Agreement confirmed that the Revised HAM LOI would close by January 16, 2024, freeze interest accumulation owed to CEI as of October 31, 2023, that CEI would prepay an HST refund, and that Rogers (or CEI) would bridge \$9.2 million required to close on the Revised HAM LOI.
123. On January 10, 2024, CEI’s lawyer sent the draft of an agreement purported to reflect the terms of the December 22 Agreement that did not reflect its terms.
124. On January 10, 2024, Rogers and/or CEI reneged on the December 22 Agreement amounting to a breach of contract with Sam by, among other things, requiring further personal guarantees from Sam, which was not a term, condition or warranty of the December 22 Agreement.
125. On February 22, 2024, CEI proceeded with a Notice of Application for the appointment of a receiver over the 180 SAW Project, naming Sam M Inc. and Sam M 180 SAW Inc. as Respondents. On June 4, 2024, a receiver was appointed over the 180 SAW Project by order of Justice Cavanagh.

126. The receivership for the 180 SAW Project has resulted in the Project incurring costs and consequent liabilities that would have been avoided but-for the unreasonable and unlawful conduct of Rogers, Hiscox and CEI.
127. As part of the receivership, Rogers and Hiscox, through CEI, obtained Sam's 1/3 interest in the 180 SAW Project through a credit bid in a court ordered Sales and Solicitation Process. In doing so, Rogers and Hiscox accomplished their goal of increasing the 180 SAW Project's liabilities to CEI and Sam's exposure to the personal guarantees for such liabilities and forced Sam out of the 180 SAW Project and the Partnership.
128. If CEI and the 180 SAW GP had proceeded with the Revised HAM LOI or the December 22 Agreement reached between Sam and Rogers, the receivership and its attendant costs would be avoided, the partners would have enjoyed a substantial profit on the sale of the 180 SAW Project and all of the liabilities in the Waterfall Agreement and/or the Hazelton Deficiency Agreement would have been eliminated or substantially reduced.

BREACH OF PARTNERSHIP, DUTY OF GOOD FAITH AND FIDUCIARY DUTY

129. Rogers and Hiscox (or, in the alternative CEI) breached their duties of good faith and fiduciary duties owed to Sam as their partner on both Projects.
130. With respect to the 128 Hazelton Project, Rogers and Hiscox (or, in the alternative CEI) breached their duties of good faith and fiduciary duties owed to Sam as their partner on the Projects by, among other things, and without limiting the generality of the foregoing:
- a. Refusing to close on the TEC financing;

- b. With respect to Hiscox (or in the alternative CEI), self-dealing on the purchase and subsequent sale of units at 128 Hazelton;
- c. Unreasonably refusing to close on unit 701;
- d. Unreasonably refusing to allow Sam to close on the Retail Unit;
- e. Unreasonably requiring Sam to agree to absorb CEI's losses on 128 Hazelton contrary to the agreed upon terms of the Partnership; and
- f. Allowed Hiscox and CEI to engage in the self-dealing for the acquisitions of units in the 128 Hazelton Project.

131. Sam pleads and the fact is that Rogers and Hiscox (or, in the alternative CEI) conducted themselves as they did on the 128 Hazelton Project with the express intention of causing Sam economic harm. They also conducted themselves as they did with the intention of unreasonably preferring their own economic interests to the detriment of their partner, Sam, and contrary to Sam's reasonable expectations on the conduct of the partnership.

132. As a result of these breaches pleaded aforesaid, Sam has suffered damages for, among other things, increased interest costs, exposure to personal guarantees that would have otherwise had no or reduced exposure, the costs incurred by the Project for the receivership proceeding for 128 Hazelton which has reduced the assets available to pay the 128 Hazelton Project's liabilities, and the loss of Sam's beneficial interest in the Retail Unit.

133. With respect to the 180 SAW Project, Rogers and Hiscox (or, in the alternative CEI) breached their duties of good faith and fiduciary duties owed to Sam as their partner on the Project by, among other things, and without limiting the generality of the foregoing:
- a. Unreasonably refusing to close on the HAM LOI and the Revised HAM LOI; and
 - b. Unreasonably requiring Sam to agree to absorb CEI's losses on the 128 Hazelton Project as a condition of continuing with the 180 SAW Project.
134. Sam pleads and the fact is that Rogers and Hiscox (or in the alternative CEI) conducted themselves as they did on the 180 SAW Project with the express intention of causing Sam economic harm. They also conducted themselves as they did with the intention of unreasonably preferring their own economic interests to the detriment of their partner, Sam, and contrary to Sam's reasonable expectations on the conduct of the Partnership.
135. As a result of these breaches pleaded aforesaid, Sam has suffered damages for, among other things, increased interest costs, exposure to personal guarantees that would have otherwise had no or reduced exposure, the costs incurred by the Project for the receivership proceeding for 180 SAW which has reduced the assets available to pay the 180 SAW Project's liabilities, and the loss of Sam's beneficial interest in the 180 SAW Project.
136. Sam pleads that the actionable wrongs pleaded aforesaid also amount to a breach of contract for the unwritten partnership agreement between Sam, Rogers and Hiscox (or, in the alternative between Sam and CEI) evidenced by their conduct on how the Partnership would operate and the partners would work together on the development of the Projects with a view to a profit.

INTENTIONAL OR TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS

137. Sam pleads that Hiscox intentionally interfered with his economic relations by unlawful means when he, as a director of 180 SAW GP, unreasonably refused to require 180 SAW to close on the HAM LOI or the Amended HAM LOI.
138. Hiscox owes a fiduciary and good faith duty to 180 SAW GP as a director. The unreasonable refusal to close on the HAM LOI or the Amended HAM LOI is a breach of the duties owed by Hiscox to 180 SAW GP and is actionable by 180 SAW GP against Hiscox. Hiscox breached these duties owed to 180 SAW GP with the express intention of harming Sam's economic interests. The result of Hiscox's unlawful conduct *vis a vis* 180 SAW with the intention of causing Sam economic harm caused Sam damages including, among other things, increased exposure to personal guarantees which would otherwise have had no exposure or reduced exposure, and the loss of his beneficial interest in the 180 SAW Project.
139. Sam pleads that Hiscox intentionally interfered with his economic relations by unlawful means when he, as a director of Mizrahi (128 Hazelton) Inc. unreasonably refused to close on the TEC financing, and when he engaged in the self-dealing alleged above in paragraph 64 above.
140. Hiscox owes a fiduciary and good faith duty to Mizrahi (128 Hazelton) Inc. as a director. Hiscox breached these duties to Mizrahi (128 Hazelton) Inc. as a director when he unreasonably refused to close on the TEC financing and engaged in the self-dealing with respect to 128 Hazelton Project units, which was contrary to the best interests of Mizrahi (128 Hazelton) Inc. These actions by Hiscox are actionable against him as a director by Mizrahi (128 Hazelton) Inc. for breach of fiduciary duty. Hiscox breached these duties owed to Mizrahi (128 Hazelton) Inc. with the express intention of harming Sam's economic interests. The result of Hiscox's unlawful conduct *vis a vis*

Mizrahi (128 Hazelton) Inc. with the intention of causing Sam economic harm caused Sam damages including, among other things, increased exposure to personal guarantees on the DUCA debt, and the Retail Loan, which would otherwise have had no exposure or reduced exposure, and the loss of his beneficial interest in the Retail Unit.

141. Sam pleads that CEI intentionally and unlawfully interfered with his economic relations by committing a breach of the Retail Term Sheet for the Retail Loan when on February 5, 2024 it required as a condition for the closing on the Retail Unit that the full purchase price for the Retail Unit and the full amount of the Retail Loan be paid. As pleaded above, this amounts to breach of contract of the terms of the Retail Term Sheet and is actionable by Retail Inc. against CEI. CEI breached the terms of the Retail Term Sheet with the express intention of harming Sam's economic interests. The result of CEI's unlawful conduct *vis a vis* Retail Inc. was that Sam suffered economic harm and damages, including, but not limited to, increased exposure on the personal guarantees Sam provided for the Retail Loan and the Duca debt, which would have otherwise been eliminated or substantially reduced absent CEI's breach of the term sheet for the Retail Loan. Furthermore, as a party to the Retail Term Sheet, Sam is entitled to a damages award for CEI's breach of contract with respect to the Retail Term Sheet.

THE OPPRESSIVE CONDUCT OF ROGERS AND HISCOX

142. The conduct, action and inaction of the Rogers and Hiscox with respect to the Mizrahi (128 Hazelton) Inc. and 180 SAW GP pleaded aforesaid amounts to oppressive conduct and breached Sam's reasonable expectations as an indirect shareholder, and director of these corporations and a guarantor to the loans which were an integral part of the development of the Projects. Sam reasonably expected that Rogers, Hiscox and CEI would agree to commercially reasonable steps

to protect Sam's interests in both the 128 Hazelton Project and the 180 SAW Project, including, but without limiting the generality of the foregoing, agreeing to commercially reasonable terms for the refinancing of the 128 Hazelton Project and the sale of the 180 SAW Project with HAM.

143. Both Sam and Mizrahi SPV are a complainant within the meaning of s. 245 of the *Business Corporations Act (Ontario)*, RSO 1990 c. B. 16. Sam was both a director of and an indirect shareholder of Mizrahi (128 Hazelton) Inc and 180 SAW GP. In addition, Sam was a guarantor of loans necessary for the development of the Projects, such as the Retail Loan, the 180 SAW Note, and as a debtor for the 180 SAW Loan.
144. Edward and Robert obtained a personal benefit by improperly preferring their own interests and the interests of CEI, from which they derive a direct personal benefit, over those of Sam and contrary to Sam's reasonable expectations by, among other things, refusing to sell the 180 SAW Project to HAM, refusing to refinance the 128 Hazelton Project to TEC, refusing to allow Sam to close on the Retail Unit and forcing both Projects into receivership when a receivership was not necessary and was not in the best interests of the projects, and, with respect to Hiscox, by self-dealing with respect to units at 128 Hazelton. Edward and Robert took a lead role in the oppressive conduct pleaded aforesaid.
145. As a result of the oppressive conduct of Edward and Robert, they have increased their control of the Partnership and the Project companies and increased the interest liabilities of Sam and his exposure to personal guarantees. In doing, as pleaded above, Edward and Robert acted in bad faith and in breach of their fiduciary duties and duties of good faith owed to Sam as partners.

DAMAGES

A. 128 Hazelton Project

146. As a result of the actionable wrongs pleaded aforesaid, the Plaintiffs, Sam, and Mizrahi SPV have suffered damages and continue to suffer damages as follow:

- (i) Lost revenue due to the self-dealing of Hiscox and CEI, by the acquisition of units 201, 204, 401, 402, 403, 404 and 601, at less than market price and depriving Mizrahi (128 Hazelton) Inc. revenue on upgrades estimated in the sum of \$2,000,000.00;
- (ii) Interest payments to DUCA and CEI in the sum of \$2,000,000.00;
- (iii) TEC financing costs in the sum of \$250,000.00;
- (iv) The profit on the Retail Unit in the sum of \$1,000,000.00;
- (v) The costs of the receivership in the sum of \$1,000,000.00; and
- (vi) The legal costs of the receivership in the sum of \$250,000.00.

B. 180 SAW Project

147. As a result of the actionable wrongs pleaded aforesaid, Sam has suffered damages and continue to suffer damages as follows:

- (i) The fee entitlement on the HAM offer of \$220,000,000. in the sum of \$5,000,000.00;
- (ii) The profit going forward on the 180 SAW Project to be garnered on Sam's 15% interest to be retained in the sum of \$20,000,000.00;

- (iii) The legal and consulting costs and costs incurred to negotiate the HAM offer, the HAM revised offer, and the December 22 Agreement, in the sum of \$3,000,000.00;
- (iv) The costs of the receivership in the sum of \$1,000,000.00;
- (v) The legal costs of the receivership in the sum of \$250,000.00; and
- (vi) Aggravated damages due to harm to reputational interest in the sum of \$25,000.000.00.

148. The full measure of damages and additional expenses in respect of the Projects are not yet fully known but will be particularized in advance of trial.

149. The conduct of the Defendants demonstrates a high-handed, outrageous, wanton, and contumelious, disregard for the Plaintiffs' rights and interests, who have, as a result, suffered significant financial and reputational losses and a loss of dignity. Awards of exemplary or punitive damages and aggravated damages are necessary in the circumstances of this case to punish the Defendants, compensate the Plaintiff and to deter the like-minded.

The Plaintiffs propose that this action be tried in the City of Toronto.

October 14, 2025

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SCHEDULE A – DEFINED TERMS

THE PARTIES:

Sam Mizrahi: “Sam”

Edward S. Rogers III: “Rogers”

Robert Hiscox: “Hiscox”

1000041090 Ontario Inc. : “Mizrahi SPV”

Mizrahi 128 Hazelton Retail Inc.: “Retail Inc.”

Sam M (180 SAW) LP Inc.: “Sam M Inc.”

Mizrahi Constantine (180 SAW) Inc.: “180 SAW GP”

Constantine Enterprises Inc.: “CEI”

RELATED ENTITIES

Mizrahi Developments Inc.: “MDI”

Mizrahi Enterprises Inc.: “MEI”

Mizrahi Constantine (180 SAW) LP: “180 SAW LP”

THIRD PARTIES:

DUCA Financial Services Credit Union LTD.: “DUCA”

Aviva Insurance Company of Canada: “Aviva”

Third Eye Capital: “TEC”

CEC Mechanical Inc.: “CEC”

Hyundai Asset Management: “HAM”

Canadian Western Bank: “CWB”

Trez Capital Limited Partnership: “Trez”

AGREEMENTS:

June 19, 2015 Credit Agreement between Mizrahi (128 Hazelton) Inc., Mizrahi Enterprises Inc and CEI: the “Credit Agreement”

June 19, 2015 Shareholders’ Agreement between MEI, CEI and Mizrahi (128 Hazelton) Inc.: the “Shareholders’ Agreement”

Agreement re Direction and Waterfall dated December 3, 2021: “the Waterfall Agreement”

Hazelton Deficiency Agreement dated December 3, 2021: “Hazelton Deficiency Agreement”

Contribution Agreement dated December 3, 2021: “Contribution Agreement”

Fee Reimbursement Agreement dated December 3, 2021: “Fee Reimbursement Agreement”

Retail Loan Term Sheet dated October 25, 2020: “Retail Term Sheet”

June 30, 2023, HAM Letter of Intent: “HAM LOI”

Agreement with Sam and Rogers (or Sam and CEI) dated December 22, 2023: the
“December 22 Agreement”

SAM MIZRAHI et al
Plaintiffs

-and- EDWARD S. ROGERS III et al
Defendants

Court File No. CV-24-007 17915-0000CL

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

PROCEEDING COMMENCED AT
TORONTO

FRESH AS AMENDED STATEMENT OF CLAIM

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RETAIL INC., SAM M (180 SAW) LP INC., SAM
M (180 SAW) INC., and 1000041090 ONTARIO
INC.
Plaintiffs

and

EDWARD S. ROGERS III,
ROBERT HISCOX, and
CONSTANTINE ENTERPRISES INC.
Defendants

Court File No.: CV-24-00728675-00CL

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable March 3, 2026)**

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Robert Hiscox and
Constantine Enterprises Inc.

CONSTANTINE ENTERPRISES INC.

Applicant

and

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

Respondents

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

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

PROCEEDING COMMENCED AT
TORONTO

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