

Court File No. BK-24-00000230-0033

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP
(1451 WELLINGTON) INC.

Applicant

SUPPLEMENTARY AFFIDAVIT OF SAM MIZRAHI
(sworn September 27, 2025)

I, **SAM MIZRAHI**, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I have knowledge of Mizrahi Development Group (1451 Wellington) Inc. (the “**Applicant**”) and Mizrahi Inc. As such, I have personal knowledge of the Applicant and the General Contractor and the matters to which I depose in this Affidavit. To the extent I do not have direct, first-hand knowledge of particular facts or events, I obtained that information from other persons or from my review of documentation attached as exhibits, and have indicated the source of that information in my Affidavit. I verily believe the facts hereinafter deposed to be true.

2. I swear this Affidavit to address certain matters concerning the Applicant’s negotiations with Purchasers in connection with the Reset Model, the return of deposits and in response to the Affidavit of Naheed Israeli sworn September 25, 2025.

3. All capitalized terms not otherwise defined herein have the meaning ascribed to them in the affidavit that I swore on September 22, 2025 (the “**Mizrahi Affidavit**”) in support of the Applicant's motion for an order (the “**DIP Amendment and Fourth Stay Extension Order**”),

among other things: (a) approving Amendment No. 2 to the DIP Agreement dated September 22, 2025, which among other things, increases the Maximum Amount (as defined in the DIP Agreement) under the DIP Facility from \$25,000,000 to \$47,000,000; and (b) extending the Stay Period up to and including February 28, 2026.

I. NEGOTIATIONS WITH PURCHASERS

4. As noted in the Mizrahi Affidavit, the Applicant has worked towards the implementation of the Reset Model. As of the date of the Mizrahi Affidavit, the Applicant had met with approximately three-quarters of Purchasers to negotiate amendments to the Pre-Sale Agreements, namely an increase in the purchase price contemplated thereunder in accordance with the Court-approved Reset Model. The negotiations with Purchasers remain ongoing.

5. Approximately half of the Purchasers met with to date have verbally expressed a willingness to pay more for their respective Unit. The remaining Purchasers are still considering their options or have requested a return of their deposit.

6. As part of the negotiations, and in accordance with the Reset Model, the Applicant has been providing Purchasers with three (3) options in relation to their Units. These options are:

- (a) Purchasers may agree to sign an amended agreement of purchase and sale and pay an increased purchaser price for their Unit, as contemplated under the Reset Model that was approved by this Court;
- (b) the Applicant and Purchaser may sign a resale authorization agreement where the Applicant will go to the market to sell the Unit to another buyer. Once the Unit is sold and the funds are received from the resale, the Applicant would return the Purchaser's deposit along with any out of pocket amounts spent on upgrades to the Purchaser. The Applicant is setting up a presentation center at the Project site, with the goal of marketing and selling any Units that are currently unsold or for which Purchasers sign a resale authorization agreement for by February, 2026 and
- (c) the Purchaser may seek to terminate its agreement of purchase and sale after December 31, 2025. Under the Pre-Sale Agreements, the earliest Tarion outside

date is December 31, 2025 (the “**Outside Date**”), meaning that Purchasers cannot seek to terminate their agreement until after December 31, 2025.

7. As mentioned, approximately half of the Purchasers that have been approached have verbally expressed a willingness to increase the purchase price under their Pre-Sale Agreement and the others are still considering their options or have requested a return of their deposits.

8. With respect to the Purchasers that have requested a return of their deposits, as noted above, the earliest Outside Date is December 31, 2025. Only after this date, meaning January 1, 2026, may a Purchaser seek to terminate its Pre-Sale Agreement and request a return of their deposit. It is also of note that notwithstanding the lapse of the Outside Date, any termination of a Pre-Sale Agreement will still be subject to the Stay of Proceedings provided for under the ARIO and will require the written consent of the Applicant, the Monitor and the DIP Lender or further Order of the Court.

9. As of the date of this Supplementary Affidavit, the Applicant has not taken any steps to disclaim any of the Pre-Sale Agreements. The ARIO Amendment and Sealing Order confers the right to the Applicant, with the written consent of the DIP Lender and the Monitor, to disclaim, among other things, the Pre-Sale Agreements in accordance with Section 32 of the CCAA. Any disclaimer issued in connection with this authority ought to be subject to the business judgment of the Applicant. The authority conferred on the Applicant pursuant to the ARIO Amendment and Sealing Order is permissive and should be exercised in the spirit of facilitating the remedial purposes of the CCAA.

II. DEPOSIT RETURN FACILITY WITH WESTMOUNT GUARANTEE SERVICES INC.

10. Westmount Guarantee Services Inc. (“**Westmount**”) made available to the Applicant a surety facility in the amount of \$24,000,000 (the “**Surety Facility**”) pursuant to a Commitment Letter Agreement dated December 5, 2018 (the “**Deposit Insuring Agreement**”). The Deposit Insuring Agreement was entered into in connection with the insurance of deposits paid by the Purchasers.

11. In order to secure the Surety Facility, Westmount was granted certain security including, among other things, a mortgage in favor of Westmount which was registered against the Real Property on October 29, 2019.

12. As of the date of this Supplementary Affidavit, the Applicant, with the assistance and oversight of the Monitor, is working with Westmount to secure a deposit return facility (the “**DR Facility**”) for the purpose of repaying deposits for any Purchaser who terminates its Pre-Sale Agreement after the Outside Date (which termination, as previously noted in this Supplementary Affidavit, is subject to the ARIO). The Applicant is the view that the DR Facility will offer a more straightforward and efficient process.

13. The Applicant's intention is, once the DR Facility is secured, to return any deposits through a Court-approved deposit return facility administered by the Applicant’s real estate counsel’s (Harris Schaeffer LLP) using its trust account.

14. The DR Facility that is being negotiated would be subordinate to the DIP Lender and TCC's pre-filing security and would be supplemental to the existing Surety Facility such that, if for any reason deposit return proceeds were not available under the DR Facility, the Purchaser would still have recourse under the Surety Facility.

15. The Applicant is in active discussions with Westmount with respect to the DR Facility and expects it to be in place in January, 2026.

16. In my view, there is no prejudice to Purchasers since the Pre-Sale Agreements cannot be terminated until after the Outside Date in any event. When the Purchasers entered into their Pre-Sale Agreements, they knew, or ought to have known, that the deposits may not be returned until after the Outside Date.

17. Even if Purchasers could terminate their Pre-Sale Agreements today (which I do not believe would be appropriate), I understand that the timeline to receive recovery of their deposit money is very similar when comparing the Surety Facility and DR Facility. Specifically, if a Purchaser accessed the existing deposit insurance through the Surety Facility to receive its deposit from Westmount, I believe it would take approximately 60 to 90 days until any monies were paid. This

would mean that the Purchaser would not be paid until at least December, 2025 or January, 2026, which is consistent with the date that the deposit return facility is expected to be available. The Purchasers continue to have their rights under Tarion and the Surety Facility, the deposits continue to bear interest and timing of any recovery remains the same in all circumstances - there is no material prejudice.

18. The Monitor and the DIP Lender are aware that the Applicant is working with Westmount and are supportive of the Applicant's efforts to obtain the DR Facility. I swear this affidavit in support of the Applicant's motion for the DIP Amendment and Fourth Stay Extension Order, and for no other, or improper purpose.

SWORN remotely by Sam Mizrahi, before me, in the City of Toronto, on this 27th day of September, 2025, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Dilina Lallani

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Dilina Lallani (90453E)

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

DocuSigned by:

SAM MIZRAHI

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Sam Mizrahi

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PROCEEDING COMMENCED AT
OTTAWA

AFFIDAVIT OF SAM MIZRAHI
(Sworn September 27, 2025)

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