

IN THE COURT OF COMMON PLEAS OF
FRANKLIN COUNTY, OHIO

AFF IV 88 E BROAD, LLC,
3565 Piedmont Road NE
Building 1, Suite 200
Atlanta, Georgia 30305

Plaintiff,

v.

BARUCH BROAD STREET, LLC,
c/o Zamir Equities LLC
551 Fifth Avenue, Suite 2500
New York, New York 10176

HARVARD MAINTENANCE, INC.,
59 Maiden Lane, 17th Floor
New York, New York 10038

**PSP OPERATIONS, INC. dba SERVPRO
OF NE COLUMBUS**
7440 Pingue Drive
Worthington, Ohio 43085

**JULIAN SPEER COMPANY dba SPEER
MECHANICAL**
5255 Sinclair Road
Columbus, Ohio 43229

Defendants.

CASE NO. _____

JUDGE _____

Case Type E

**COMPLAINT FOR MONEY,
FORECLOSURE AND JUDICIAL
SALE OF REAL ESTATE
PURSUANT TO O.R.C. § 2735 et
seq. AND RELATED RELIEF**

Franklin County Tax Parcel IDs:
010-011313-00
010-066864-00

PARTIES

1. Plaintiff, AFF IV 88 E Broad, LLC (“Lender”), is a Delaware limited liability company. Lender is the owner and holder of certain loans and related instruments which are the subject of this action.

2. Defendant, Baruch Broad Street, LLC (“Borrower”), is a Delaware limited liability company that is registered with the Ohio Secretary of State. Borrower was at all times relevant

hereto, and still is, the owner of the real property located in Columbus, Ohio, which is the subject of this action.

3. The other parties named as Defendants—Harvard Maintenance, Inc., PSP Operations, Inc. d/b/a SERVPRO of NE Columbus, and Julian Speer Company d/b/a Speer Mechanical—may claim an interest in the property that is the subject of this action.

JURISDICTION AND VENUE

4. Jurisdiction and venue are proper in Franklin County, Ohio, pursuant to Ohio Rule of Civil Procedure 3(C)(3) and (5).

BACKGROUND

5. Pursuant to a Loan and Security Agreement dated as of January 21, 2022 (the “Loan Agreement”), Lender made a loan to Borrower in the original principal amount of \$11,800,000.00 (the “Loan”). A true and accurate copy of the Loan Agreement is attached hereto as **Exhibit A** and is made an integral part hereof.

6. The Loan was (i) evidenced by a promissory note dated January 21, 2022, made by Borrower in favor of Lender (the “Note”), and (ii) secured by, among other things, the Mortgage (as defined below) on certain property owned by the Borrower located in Franklin County, Ohio (as described in greater detail in the Mortgage, the “Property”). A true and accurate copy of the Note is attached hereto as **Exhibit B** and is made an integral part hereof.

7. The monies loaned to Borrower in connection with the Note were for commercial and business purposes.

8. As security for the Note, Borrower executed and delivered to Lender an Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing with an effective date of January 21, 2022 (the “Mortgage”) and thereby granted to Lender a mortgage interest in certain real property located in Franklin County, Ohio, together with all improvements

thereto and fixtures thereon, the rents and profits resulting therefrom, and other interests, all as defined in the Mortgage. The Mortgage was recorded with the Office of Recorder of Franklin County, Ohio as Instrument No. 202201260016173. A true and accurate copy of the Mortgage is attached hereto as **Exhibit C** and is made an integral part hereof.

9. The street addresses of the Property are 88 E. Broad Street & 72 E. Broad Street, Columbus, Ohio 43215.

10. The Mortgage further granted to Lender an unconditional and absolute assignment of Borrower's right, title, and interest in all leases and rents affecting the Property (the "Assignment of Leases and Rents").

11. On February 24, 2022, Lender recorded a UCC-1 Financing Statement with the Franklin County Recorder as Instrument No. 202202240030619. A true and accurate copy of the UCC-1 Financing Statement is attached hereto as **Exhibit D** and is made an integral part hereof.

12. The collateral covered by the UCC-1 Financing Statement is "[a]ll assets of [Borrower], whether now owned or existing or hereafter acquired." (Ex. D, p. 2.)

13. The Loan was an interest only loan, with certain funds bearing interest at a fixed rate of 1.25% per annum, and other funds bearing interest at a variable rate. (Ex. A, Article 2, § 2.3.)

14. Pursuant to the Payment Terms, beginning in February 2022, Borrower agreed to repay the holder of the Note all accrued interest in arrears monthly, until all amounts due under the Loan are paid in full. (*Id.*, § 2.3(1).)

15. The final payment under the Note (the "Maturity Payment") was due on January 21, 2024 (the "Maturity Date"). (*Id.*, § 2.3(3).)

16. Borrower failed to make the Maturity Payment on the Maturity Date.

17. Under Section 9.1 of the Loan Agreement, “Borrower’s failure to pay the Loan and all amounts owing under the Loan Documents on the Maturity Date” constitutes an “Event of Default” not subject to a cure period. (Ex. B)

18. Borrower is in default under the terms of the Loan Agreement for its failure to pay the Maturity Payment by the Maturity Date.

19. Consequently, the entire Loan became “immediately due and payable” without “presentment, demand, protest...[or] notice of default of any kind” by/to Borrower, entitling Lender, “in its sole discretion, [to] exercise all rights and remedies therefor under the Loan Documents and at law or in equity, including, but not limited to, the right to foreclose on any mortgage(s) of real property securing the Loan.” (Ex. B (Loan Agreement), § 10.2.)

20. Likewise, the terms of the Mortgage entitle Lender to, “as a matter of strict right and without notice to [Borrower] or regard to the adequacy of the Mortgaged Property for the Obligations secured thereby” to apply for and obtain the appointment of a receiver of the Property, an appointment to which Borrower “irrevocably consents,” upon Borrower’s default. (Ex. C (Mortgage), § 4.1(e).)

21. The Mortgage further provides that Lender is entitled to enter the Property and invoke any legal remedies to dispossess Borrower, including the right to institute proceedings for the foreclosure and sale of the Property. (*Id.*, §§ 4.1(b)-(d).)

22. On April 8, 2024, one of the tenants located at 88 E. Broad Street, KeyBank National Association, informed Borrower of its intent to immediately discontinue rent payments due to Borrower’s failure to pay utility bills (the “Rent Abatement Letter”). A true and accurate copy of the Rent Abatement Letter, which was forwarded to Lender, is attached hereto as **Exhibit E** and is made an integral part hereof.

23. By letter dated April 12, 2024, (the “Notice of Default”), Lender advised Borrower that Borrower was in default under the Note and the Loan Documents and demanded immediate payment in full of the Loan and all amounts due under the Loan Documents. A true and accurate copy of the Notice of Default is attached hereto as **Exhibit F** and is made an integral part hereof.

24. To date, Lender has not received payment from Borrower in response to the Notice of Default.

25. In the Event of Default, the Loan Agreement requires Borrower to reimburse Lender for expenses incurred to enforce Lender’s rights under the Loan Documents on demand, together with interest at the Default Rate, with all such amounts constituting part of the Loan and secured by the Loan Documents. (Ex. B, § 10.3.)

26. Concurrently with the filing of this Complaint, Lender has filed a motion seeking the appointment of a receiver for the purposes of managing the Property, collecting its revenues, and selling the Property in accordance with Section 2735 of the Ohio Revised Code.

27. Lender has satisfied all conditions precedent to filing this action.

FIRST CLAIM FOR RELIEF
(MONEY JUDGMENT AGAINST BORROWER)

28. Lender incorporates the allegations of the preceding paragraphs as if fully set forth herein.

29. Lender is in possession of the Note and is the current holder and owner of the Note. Lender has collaterally assigned its interest in the Loan Documents to Ameris Bank, a Georgia banking company (“Ameris”), as security for Lender’s separate obligations to Ameris. Lender’s obligations to Ameris are not in default, so Lender is the proper party to enforce the Note.

30. The Maturity Date has passed and payment of the outstanding balance due under the Note has not been made.

31. The failure to make such payment constitutes a default, entitling Lender to the imposition of default interest from and after January 21, 2024.

32. Under and subject to the terms of the Note, Borrower owes Lender the following sums:

Outstanding principal	\$9,580,484.63
Accrued interest (ordinary)	\$212,388.70
Accrued interest (default)	\$94,186.81
Exit Fee	\$95,804.85
Late Fees and Other Charges	\$37,268.78
<i>Less Reserve Balance</i>	<i>(\$699,326.74)</i>
TOTAL	<u>\$9,320,807.02</u>
Plus loan interest at the default rate from and after April 19, 2024 (at a rate of \$4,790.24 per day) and fees and expenses provided for under the Loan Documents as such fees and expenses continue to be incurred or accrued (the "Indebtedness").	

SECOND CLAIM FOR RELIEF
(FORECLOSURE OF BORROWER PLEDGED REAL PROPERTY)

33. Lender incorporates the allegations of the preceding paragraphs as if fully set forth herein.

34. The Mortgage secures all Indebtedness due under the Note, including any renewals or extensions of the obligations thereunder. Except for any unpaid real estate taxes and assessments, by virtue of the perfected Mortgage, Lender now has a valid and enforceable first-priority lien on the Property.

35. As a result of the Default, the conveyance of the Mortgage has become absolute and, as a consequence, Lender is entitled to have the Mortgage foreclosed, to have the Property sold, and to have the proceeds applied to all Indebtedness due under the Note and the Collection Expenses.

THIRD CLAIM FOR RELIEF
(COLLECTION OF LEASES AND RENTS)

36. Lender incorporates the allegations of the preceding paragraphs as if fully set forth herein.

37. The Mortgage secures “[a]ll leases, subleases, licenses, concessions, occupancy agreements or other agreements...which grant a possessory interest in, or the right to use” the Property and “all rents, revenues, income, proceeds, profits, security and other types of deposits” derived from the Property. (Ex C., § 1.1 (7).)

38. The Assignment of Rents and Leases in the Mortgage further “unconditionally, presently and absolutely” assigns to Lender all of Borrower’s “right, title and interest in and to the Leases and Rents” for the Property. (*Id.*, § 5.1.)

39. The Assignment of Rents and Leases also states that upon the occurrence of a default, Lender is automatically entitled to “enter upon, take possession of and operate” the Mortgaged Property and is entitled to collect payments from all leases and rents related to the Mortgaged Property. (*Id.*, § 5.2.)

40. Pursuant to the Mortgage and Assignment of Rents and Leases, Lender is immediately entitled to take possession of, and to collect payments from, all leases and rents related to the Property.

FIFTH CLAIM FOR RELIEF
(COLLECTION EXPENSES)

41. Lender incorporates the allegations of the preceding paragraphs as if fully set forth herein.

42. Under and subject to the terms of the Loan Agreement and the Mortgage, Borrower owes Lender all costs of collection it has incurred and will continue to incur to collect the

Indebtedness and foreclose the Property including, without limitation, title exam costs, court costs, appraisal fees, and Lender's reasonable attorney fees and expenses (the "Collection Expenses"). (See Ex. A (Loan Agreement), § 12.5 and Ex. C (Mortgage), § 1.1.)

SIXTH CLAIM FOR RELIEF
(ADVANCES)

43. Lender incorporates the allegations of the preceding paragraphs as if fully set forth herein.

44. The Mortgage provides that, if the Borrower fails to perform the obligations thereunder, Lender may perform such obligations and make other protective advances for the preservation of the Property. The costs of such performance (for each instance, an "Advance"), together with interest as set forth in the Note, as applicable, shall be due from the Borrower and is an additional obligation secured by the Property and sums due from Borrower to Lender. (Exhibit C (Mortgage), § 4.9.)

45. Lender has or shall make Advances for the preservation of the Property in an amount to be determined at the conclusion of this action.

WHEREFORE, Plaintiff AFF IV 88 BROAD, LLC demands judgment in its favor and against Defendant Baruch Broad, LLC as follows:

1. On its First Claim for Relief, and against Defendant Baruch Broad, LLC, the sum of the Indebtedness plus pre-and post-judgment interest thereon;

2. On its Second Claim for Relief, for an order declaring that the Mortgage is a valid and subsisting lien as to the Property; that the Mortgage be foreclosed; that the Property be sold by a duly-appointed receiver therefor, free of all liens and interests of Borrower and the other Defendants herein; that Borrower and the other Defendants herein be required to set forth any

claim, lien or interest in or upon the Property that they may have or be forever barred; that all liens be marshaled; and that the proceeds of sale be applied to pay the sums due to Lender by virtue of the Collection Expenses, Advances, and Indebtedness, in the order of its priority;

3. On its Third Claim for Relief, for an order declaring Lender's immediate entitlement to take possession of, through a Court-appointed receiver or otherwise, and collect payments from, all leases and rents related to the Property;

4. On its Fourth Claim for Relief, and against Defendant Baruch Broad, LLC, the amount of any and all Collection Expenses that Lender has incurred or may hereafter incur, including its reasonable attorney fees and expenses;

5. On its Fifth Claim for Relief, and against Defendant Baruch Broad, LLC, the amount of any and all Advances that Lender has incurred or may hereafter incur, with interest;

6. For Lender's court costs; and

7. For such other and further relief as this Court finds just and equitable.

Dated: April 19, 2023

Respectfully submitted,

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EXHIBIT A

LOAN AND SECURITY AGREEMENT

between

BARUCH BROAD STREET, LLC,

as Borrower,

and

AFF IV 88 E BROAD, LLC,

as Lender

As of January 21, 2022

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS AND INTERPRETATIONS.....	1
Section 1.1 Defined Terms	1
Section 1.2 Singular and Plural.....	1
Section 1.3 Phrases	1
Section 1.4 Exhibits and Schedules	1
Section 1.5 Titles of Articles, Sections and Subsections	1
Section 1.6 Non-Business Days	1
ARTICLE 2 LOAN TERMS	2
Section 2.1 Loan and Note	2
Section 2.2 Interest Rate; Late Charge	2
Section 2.3 Terms of Payment	4
Section 2.4 Fees	7
Section 2.5 Security	7
Section 2.6 Payments; Etc.....	7
Section 2.7 Clearing Account; Deposit of Rents; Withdrawals from Operating Account	8
Section 2.8 Conditions of Closing	12
ARTICLE 3 RESERVES.....	14
Section 3.1 Reserves	14
Section 3.2 General Provisions Regarding Reserves	16
Section 3.3 Advances	16
ARTICLE 4 INSURANCE AND CONDEMNATION	21
Section 4.1 Insurance	21
Section 4.2 Application of Loss Proceeds	22
Section 4.3 Rights in Policies	22
Section 4.4 Condemnation Awards.....	23
Section 4.5 Loss Proceeds.....	23
ARTICLE 5 GENERAL REPRESENTATIONS AND WARRANTIES	23
Section 5.1 Organization and Power.....	23
Section 5.2 Validity of Loan Documents.....	23
Section 5.3 Financial Condition; Litigation; Other Secured Transactions	24
Section 5.4 Taxes and Assessments	24
Section 5.5 Other Agreements; Defaults	24
Section 5.6 Compliance with Law; Condition	24
Section 5.7 Location of Borrower.....	25

Section 5.8	ERISA	25
Section 5.9	Margin Stock.....	25
Section 5.10	Tax Filings	25
Section 5.11	Solvency.....	25
Section 5.12	Full and Accurate Disclosure.....	26
Section 5.13	Single Purpose Entity.....	26
Section 5.14	Property Management Agreement	26
Section 5.15	No Conflicts	26
Section 5.16	Title	27
Section 5.17	Use of Loan.....	27
Section 5.18	Flood Zone	27
Section 5.19	Insurance	27
Section 5.20	Filing and Recording Taxes	27
Section 5.21	Restricted Company.....	28
Section 5.22	Leases.....	28
Section 5.23	Purchase and Sale Agreement.....	28
Section 5.24	Leasing Agreement	28
ARTICLE 6 GENERAL COVENANTS.....		28
Section 6.1	Due on Sale or Encumbrance; Transfers of Interests.....	28
Section 6.2	Taxes; Charges.....	29
Section 6.3	Control	29
Section 6.4	Use; Maintenance; Inspection.....	29
Section 6.5	Taxes on Security.....	30
Section 6.6	Compliance with Law; Major Project Documents.....	30
Section 6.7	Legal Existence; Name, Status, Etc	30
Section 6.8	Affiliate Transactions.....	31
Section 6.9	Limitation on Financing; Other Debt.....	31
Section 6.10	Mechanics' Liens	32
Section 6.11	ERISA	32
Section 6.12	Further Assurances.....	32
Section 6.13	Estoppel Certificates	33
Section 6.14	Notice of Certain Events	33
Section 6.15	Indemnification	33
Section 6.16	Restriction of Distributions.....	34
Section 6.17	Other Agreements; Defaults	34
Section 6.18	Leases.....	34
Section 6.19	Approved Budget.	35
Section 6.20	Mandatory Principal Paydown.....	35
Section 6.21	Capital Improvements	36
ARTICLE 7 FINANCIAL REPORTING.....		36
Section 7.1	Financial Statements	36
Section 7.2	Accounting Principles	36
Section 7.3	Other Information	37

Section 7.4	Audits	37
ARTICLE 8 ANTI-MONEY LAUNDERING AND INTERNATIONAL TRADE CONTROLS		
Section 8.1	Compliance with International Trade Control Laws and OFAC Regulations; Borrower's Funds	37
ARTICLE 9 EVENTS OF DEFAULT AND CURE PERIODS		
Section 9.1	Events of Default Not Subject to Cure Periods	38
Section 9.2	Events of Default Subject to Specific Cure Periods	39
Section 9.3	Other Events of Defaults.....	39
ARTICLE 10 LENDER'S REMEDIES		
Section 10.1	Remedies - Insolvency Events	40
Section 10.2	Remedies - Other Events	40
Section 10.3	Lender's Right to Perform the Obligations.....	41
ARTICLE 11 LIMITATIONS ON LIABILITY		
Section 11.1	Limitation on Liability.....	41
Section 11.2	Limitation on Liability of Lender's and Lender's Officers, Employees, Etc	44
ARTICLE 12 MISCELLANEOUS		
Section 12.1	Notices	44
Section 12.2	Amendments, Waivers, References	45
Section 12.3	Limitation on Interest.....	45
Section 12.4	Invalid Provisions	46
Section 12.5	Reimbursement of Expenses.....	46
Section 12.6	Approvals; Third Parties; Conditions	47
Section 12.7	Lender Not in Control; No Partnership.....	47
Section 12.8	Time of the Essence	48
Section 12.9	Successors and Assigns.....	48
Section 12.10	Renewal, Extension or Rearrangement.....	48
Section 12.11	Waivers	48
Section 12.12	Cumulative Rights	48
Section 12.13	Promotional Material	48
Section 12.14	Survival	48
Section 12.15	WAIVER OF JURY TRIAL.....	48
Section 12.16	Punitive or Consequential Damages; Waiver	49
Section 12.17	Governing Law; Jurisdiction and Venue	49
Section 12.18	Entire Agreement	50
Section 12.19	Counterparts.....	51
Section 12.20	Brokers.....	51

Section 12.21	Claims Against Lender	51
Section 12.22	Assignments and Participations	51
Section 12.23	Joint and Several Liability	52

LIST OF EXHIBITS AND SCHEDULES

EXHIBIT A	-	LEGAL DESCRIPTION
EXHIBIT B	-	INITIAL APPROVED BUDGET
EXHIBIT C	-	CAPITAL IMPROVEMENT BUDGET
SCHEDULE 1.1	-	DEFINITIONS
SCHEDULE 2.1(2)	-	SOURCES AND USES
SCHEDULE 2.7	-	ACCOUNTS
SCHEDULE 4.1	-	INSURANCE REQUIREMENTS
SCHEDULE 5.1	-	ORGANIZATIONAL CHART
SCHEDULE 5.22	-	RENT ROLL/LEASES
SCHEDULE 6.6	-	MAJOR PROJECT DOCUMENTS
SCHEDULE 6.6(3)	-	FORM OF CERTIFICATE, CONSENT AND ACKNOWLEDGEMENT
SCHEDULE 6.8	-	APPROVED AFFILIATE AGREEMENTS
SCHEDULE 6.18	-	PRE-APPROVED LEASING CRITERIA

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this “**Agreement**”) is entered into as of January 21, 2022 (the “**Closing Date**”), by and between **BARUCH BROAD STREET, LLC**, a Delaware limited liability company (“**Borrower**”), and **AFF IV 88 E BROAD, LLC**, a Delaware limited liability company (together with its successors and assigns, “**Lender**”).

ARTICLE 1

DEFINITIONS AND INTERPRETATIONS

Section 1.1 **Defined Terms**. All capitalized terms used in this Agreement (and in all other Loan Documents, unless otherwise defined), shall have the meanings set forth for such terms in **Schedule 1.1**.

Section 1.2 **Singular and Plural**. Words used in this Agreement and the other Loan Documents in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Agreement and the other Loan Documents shall apply to such words when used in the plural where the context so permits and vice versa.

Section 1.3 **Phrases**. Except as otherwise expressly indicated, whenever Lender’s acceptance, approval, consent, determination or satisfaction is required with respect to any matter in any Loan Document, such acceptance, approval, consent, determination or satisfaction shall be in Lender’s sole discretion, unless otherwise specifically provided. When used in any Loan Document, the word “including” shall mean “including, but not limited to” and the words “hereof”, “herein”, “hereunder” and similar words refer to such Loan Document as a whole and not to any particular provision thereof; and subsection, Section, Schedule and Exhibit references are to the particular Loan Document unless otherwise specified. The use of the phrases “an Event of Default exists”, “no Event of Default has occurred and is continuing” or similar phrases in the Loan Documents shall not be deemed to grant Borrower any right to cure an Event of Default, and each Event of Default shall continue unless and until the same is waived by Lender in writing in its sole discretion.

Section 1.4 **Exhibits and Schedules**. The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein.

Section 1.5 **Titles of Articles, Sections and Subsections**. All titles or headings to articles, sections, subsections or other divisions of this Agreement and the other Loan Documents or the exhibits hereto and thereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

Section 1.6 **Non-Business Days**. Except as expressly set forth elsewhere in this Agreement, if any payment to be made or item to be delivered by Borrower under any Loan

Document shall come due on a day other than a Business Day, then such payment shall be made, or such item shall be delivered, on the immediately succeeding Business Day.

ARTICLE 2

LOAN TERMS

Section 2.1 Loan and Note.

(1) **Loan.** The Loan of up to ELEVEN MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$11,800,000.00) shall be funded by an initial disbursement on the Closing Date (the “**Initial Advance**”) and in subsequent Advances after the Closing Date, and shall be repaid as set forth in this Agreement. On the Closing Date, Lender shall (i) fund the Initial Advance in the amount of \$9,000,000.00, (ii) deposit \$1,700,000.00 into the Tenant Improvement Reserve, as set forth in **Article 3**, and (iii) deposit \$1,100,000.00 into the Capital Improvement Reserve, as set forth in **Article 3**. The Loan is not a revolving credit loan, and Borrower is not entitled to any re-advances of any portion of the Loan which it may (or is otherwise required to) prepay pursuant to the provisions of this Agreement.

(2) **Purpose.** The Advances of the Loan shall be used for the purposes set forth on the Sources and Uses attached hereto as **Schedule 2.1(2)**.

(3) **The Note.** The Loan shall be evidenced by a promissory note of Borrower (the “**Note**”), payable to Lender in the principal amount of \$11,800,000.00.

(4) **Loss, Theft, Destruction or Mutilation of Note.** In the event of the loss, theft or destruction of the Note, upon Borrower’s receipt of an indemnification agreement and lost note affidavit executed in favor of Borrower by the holder of such Note, or in the event of the mutilation of the Note, upon the surrender of such mutilated Note by the holder thereof to Borrower, Borrower shall execute and deliver to such holder a new replacement Note in lieu of the lost, stolen, destroyed or mutilated Note. Such replacement Note shall not be deemed a novation of the Loan and shall not disturb the then-existing priority of the Security Instrument or any other of the Loan Documents.

Section 2.2 Interest Rate; Late Charge.

(1) **Interest Rate.** Except as otherwise set forth in this Agreement, the Loan shall bear interest as follows:

(a) From the date advanced by Lender, other than funds in the Tenant Improvement Reserve, at a variable rate of interest (the “**Variable Rate**”) equal to the Applicable Spread over the greater of (i) the SOFR Floor or (ii) Compounded SOFR, and so long as funds remain in either of the Capital Improvement Reserve or the Tenant Improvement Reserve, such funds shall bear interest at a fixed rate of interest equal to one and twenty-five hundredths percent per annum (1.25%) (the “**Fixed Rate**”) (each such rate, as applicable, the “**Contract Rate**”). The Contract Rate will be reset by Lender, effective as of the first day of the first

month following the month during which the Closing Date occurs, and effective the first day of each successive one month period thereafter during the term of the Loan (individually a “**Rate Reset Date**” and collectively “**Rate Reset Dates**”). The Contract Rate will be reset as aforesaid to the annual rate equal to the greater of (i) the Floor Rate or (ii) the sum of the Spread plus Compounded SOFR. The Compounded SOFR applicable to each determination of the Contract Rate shall be the rate identified as 30-Day Average SOFR on the website of the Federal Reserve Bank of New York at 3:00 p.m. (New York time) on the U.S. Government Securities Business Day (as hereinafter defined) preceding the corresponding Rate Reset Date (the “**Rate Determination Date**”) (provided that, if such rate does not so appear by 3:00 p.m. (New York time) on such date, then such Rate Determination Date shall be the first preceding U.S. Government Securities Business Day on which such rate appears). In the event that Compounded SOFR is below zero, Compounded SOFR will be deemed to be zero. “U.S. Government Securities Business Day” means any day except for a Saturday, a Sunday or a day on which the Securities Industry and Financial Markets Association (or a successor organization) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in U.S. government securities

From and after sums are disbursed from the Capital Improvement Reserve or the Tenant Improvement Reserve, respectively, such sums shall bear interest at the Variable Rate.

(b) If for any reason Lender determines (which determination shall be conclusive and binding absent manifest error) that: (i) reasonable and adequate means do not exist for ascertaining Compounded SOFR for the applicable Interest Period, and that such circumstances are unlikely to be temporary; or (ii) Compounded SOFR is no longer a widely recognizable benchmark rate for newly originated commercial real estate loans in the United States; or (iii) the applicable supervisor or administrator (if any) of SOFR, or any governmental authority having or purporting to have jurisdiction over Lender, has made a public statement identifying a specific date after which SOFR shall no longer be used for determining interest rates for commercial real estate loans in the United States (any such determination being hereinafter referred to as a “**SOFR Rate Discontinued Determination**”), then Lender may designate a replacement rate (the “**Substitute Rate**”) that Lender may thereafter elect to implement in lieu of SOFR, and if so implemented, any reference to SOFR herein shall thereafter be deemed to refer to the Substitute Rate. Such Substitute Rate shall be a reference rate which is then generally being implemented by Lender across Lender’s commercial real estate loan portfolio (in its capacity as a lender) as a replacement for SOFR; provided, however, that if the Substitute Rate determined as provided above with respect to any Interest Period shall ever be less than the SOFR Floor, then the Substitute Rate for such Interest Period shall be deemed to be the SOFR Floor. If a Substitute Rate is so implemented, Lender shall designate (which designation shall be conclusive and binding absent manifest error), and implement concurrently with the Substitute Rate, a replacement spread (“**Substitute**

Spread”) which shall be equal to the Applicable Spread, adjusted by Lender to compensate for any differences between the Substitute Rate and SOFR. The Substitute Spread shall replace the Applicable Spread on the next Payment Date and shall thereafter remain constant notwithstanding that the Substitute Rate may fluctuate from time to time. When so implemented, any reference to the Applicable Spread herein shall thereafter be deemed to refer to the Substitute Spread. If a Substitute Rate is implemented in lieu of SOFR, and a Substitute Spread is implemented in lieu of the Applicable Spread, as set forth above, Borrower agrees to enter into such modifications and/or replacement promissory notes as Lender deems necessary in order to evidence such substitutions/replacements.

(2) **Actual/360**. Interest owing for each month shall be computed on the basis of a fraction, the denominator of which is three hundred sixty (360) and the numerator of which is the actual number of days elapsed from the first day of such month (or, for the month in which the Closing Date occurs, from the date of such advance).

(3) **Late Fees**. If Borrower fails to make any payment of interest or principal within ten (10) days of (and including) the date on which the same is due (including any payment due on the Maturity Date), Borrower shall pay to Lender a late charge on such past due amount, as liquidated damages and not as a penalty, equal to ten percent (10%) of such amount, but not in excess of the maximum amount of interest allowed by applicable law. The foregoing late charge is intended to compensate Lender for the expenses incident to handling any such delinquent payment and for the losses incurred by Lender as a result of such delinquent payment. Borrower agrees that, considering all of the circumstances existing on the date this Agreement is executed, the late charge represents a reasonable estimate of the costs and losses Lender will incur by reason of late payment. Borrower and Lender further agree that proof of actual losses would be costly, inconvenient, impracticable and extremely difficult to fix. Acceptance of the late charge shall not constitute a waiver of the default arising from the overdue installment, and shall not prevent Lender from exercising any other rights or remedies available to Lender.

(4) **Default Rate**. While any Event of Default exists, the Loan shall bear interest at the Default Rate.

Section 2.3 **Terms of Payment**. The Loan shall be payable as follows:

(1) **Interest**.

Interest-Only. On the Payment Date occurring in February, 2022, Borrower shall pay to Lender interest in arrears from the Closing Date through the end of the initial Interest Period, and on each Payment Date thereafter to and including the Maturity Date, Borrower shall pay interest in arrears for the prior Interest Period until all amounts due under the Loan Documents are paid in full; provided that while an Event of Default exists, interest shall be payable on demand. Borrower agrees that if Loan proceeds are wired into escrow for the

Loan closing, interest begins accruing from the date Loan proceeds are wired into escrow, regardless of whether the Closing Date occurs on the same date or a later date.

(2) **No Principal Amortization.** The Loan shall be an interest only loan and Borrower shall not be required to make any regularly scheduled principal amortization payments.

(3) **Maturity.** On the Maturity Date, Borrower shall pay to Lender all outstanding principal, accrued and unpaid interest, and any other amounts due under the Loan Documents, including the unpaid portion of the Exit Fee and any Minimum Interest Amount.

(4) **Extension.** Subject to the provisions of this **Section 2.3(4)**, Borrower, at its option, may extend the term of the Loan for one (1) additional twelve-month period. Borrower's right to extend the term of the Loan is subject to the satisfaction of each of the following conditions:

(a) Borrower shall deliver to Lender a written request to extend the term of the Loan (the "**Extension Request**") at least sixty (60) days, but not more than one hundred twenty (120) days, before the then existing Maturity Date;

(b) No Event of Default has occurred and is continuing on the date on which Borrower delivers the Extension Request to Lender, or on the date the extension period commences;

(c) Completion of the Capital Improvements shall have occurred on or before the Completion Date;

(d) Borrower shall have paid to Lender, in immediately available funds, together with the Extension Request, an extension fee equal to one percent (1.0%) of the outstanding principal balance of the Loan (as of the date of the commencement of the applicable extension period), which funds shall be held in escrow by Lender and returned to Borrower if an extension is not granted;

(e) Borrower shall have delivered to Lender an Appraisal acceptable to Lender in its sole discretion, which Appraisal demonstrates that the Loan to Value Ratio is not less than sixty-five percent (65.0%);

(f) Borrower shall provide evidence to Lender that all Property Taxes then due and payable have been paid, and insurance premiums have been paid so as to provide all required coverages through term of the Loan as extended;

(g) Borrower shall execute and deliver such other instruments, certificates, opinions of counsel and documentation as Lender shall reasonably request in order to preserve, confirm or secure the Liens and security granted to Lender by the Loan Documents, including any amendments, modifications or

supplements to any of the Loan Documents, endorsements to Lender's title insurance policy and, if required by Lender, estoppels and other certificates; and

(h) Borrower shall pay all reasonable out-of-pocket costs and expenses incurred by Lender in connection with such extension of the Loan, including Lender's reasonable out of pocket attorneys' fees and disbursements.

(5) **Prepayment.** Subject to **Sections 6(b) and (c)** below, Borrower may prepay the Loan, in whole or in part, at any time upon not less than thirty (30) days' prior written notice to Lender, provided any such prepayment shall include Interest at the Contract Rate through the next Payment Date.

Borrower agrees to indemnify Lender and to hold Lender harmless from any loss or expense (other than lost profits, lost opportunities and other consequential and punitive damages) which Lender sustains or incurs as a consequence of (i) any default by Borrower in payment of the principal of or interest on a SOFR Loan, including, without limitation, any such loss or expense arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain a SOFR Loan hereunder, (ii) any prepayment (whether voluntary or mandatory) of the SOFR Loan on a day that (A) is not a Payment Date or (B) is a Payment Date if Borrower did not give the prior written notice of such prepayment required pursuant to the terms of this Agreement, including, without limitation, such loss or expense arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain the SOFR Loan hereunder, and (iii) the conversion (for any reason whatsoever, whether voluntary or involuntary) of the SOFR Interest Rate to the Substitute Rate plus the Substitute Spread with respect to any portion of the outstanding principal amount of the Loan then bearing interest at a rate other than the Substitute Rate plus the Substitute Spread on a date other than the first day of an Interest Period, including, without limitation, such loss or expenses arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain a SOFR Loan hereunder (the amounts referred to in clauses (i), (ii) and (iii) are herein referred to collectively as the "**Breakage Costs**"). Whenever in this **Section 2.3** the term "interest or fees payable by Lender to lenders of funds obtained by it" is used and no such funds were actually obtained from such lenders, it shall include interest or fees which would have been payable by Lender if it had obtained funds from lenders in order to maintain a SOFR Loan hereunder. Lender will provide to Borrower a statement detailing such Breakage Costs and the calculation thereof.

(6) **Application of Payments.** So long as no Event of Default exists, except as otherwise expressly set forth herein, all payments received by Lender under the Loan Documents shall be applied in the following order: (a) to any fees and expenses due to Lender under the Loan Documents; (b) to any Default Rate interest or late charges; (c) to accrued and unpaid interest; (d) to amounts owed under any Reserves; and (e) to the principal sum and other amounts due under the Loan Documents. While any Event of Default exists, Lender may apply all payments to amounts then owing in any manner and in any order as determined by Lender.

Section 2.4 **Fees.** As partial consideration for Lender's agreement to make the Loan:

(1) **Origination Fee.** Borrower has paid to Lender an origination fee of One Hundred Seventy-Seven Thousand Dollars (\$177,000.00) (the "**Origination Fee**").

(2) **Minimum Interest Payment.** Upon the earliest date to occur ("**Minimum Interest Date**") of (i) the payment in full of all unpaid principal and interest on the Note, (ii) the Maturity Date (as the same may be extended pursuant to **Section 2.3(4)** of this Agreement), and (iii) acceleration of the Loan, Borrower shall pay to Lender, in immediately available funds, an amount ("**Minimum Interest Amount**") equal to the positive difference, if any, obtained by subtracting (x) the aggregate amount of Variable Rate interest (but, for the avoidance of doubt, excluding any Default Rate or Fixed Rate interest) actually received by Lender from Borrower on or before the Minimum Interest Date, from (y) Nine Hundred Thousand Dollars (\$900,000.00).

(3) **Exit Fee.** Borrower shall pay to Lender, in immediately available funds, an exit fee in the amount of one percent (1.0%) of the principal amount of the Loan being paid or prepaid at any time (the "**Exit Fee**"), which, to the extent not previously paid to Lender in accordance with this Agreement, shall be paid to Lender in full upon the earliest of (i) the payment in full of all unpaid principal and interest on the Note, (ii) the Maturity Date (as the same may be extended pursuant to **Section 2.3(4)** hereof), and (iii) acceleration of the Loan.

(4) **Servicing Fee.** Borrower shall pay to Lender on each Payment Date an amount equal to \$250.00.

Section 2.5 **Security.**

(1) **Security Instrument.** The Loan and all amounts due under the Loan Documents, including the Exit Fee and the Minimum Interest Amount, shall be secured by, among other things, the Security Instrument creating a first Lien on the Collateral.

(2) **General Assignment.** Borrower hereby grants to Lender, as security for the payment and performance of Borrower's obligations under the Loan, a first Lien on and security interest in the Collateral. Borrower hereby authorizes Lender to prepare and file such financing statements, financing statement amendments and continuation statements as Lender may require to perfect or to continue the perfection of the foregoing security interests.

Section 2.6 **Payments; Etc.**

(1) **Payments by Borrower.** Except to the extent otherwise provided herein, all payments to be made by Borrower under any Loan Document shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Lender at an account designated by Lender by notice to Borrower, not later than 5:00 p.m., New York City time, on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(2) **Extensions to Next Business Day.** If the due date of any payment under this Agreement or the Note would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day.

Section 2.7 **Clearing Account; Deposit of Rents; Withdrawals from Operating Account.**

(1) **Clearing Account.** Within ten (10) Business Days of the Closing Date, Borrower shall (i) execute and deliver to Lender a Clearing Bank Agreement in form reasonably satisfactory to Lender, and (ii) establish, and thereafter maintain, pursuant to the Clearing Bank Agreement, an account at the Clearing Bank (the “**Clearing Account**”). The Clearing Account shall be in the name of Borrower for the benefit of Lender, provided that Borrower shall be the owner of all funds on deposit in such accounts for federal and applicable state and local tax purposes and the Clearing Account shall be assigned the tax identification number of Borrower. Borrower acknowledges and agrees that, so long as any portion of the Liabilities remains outstanding, neither Borrower nor any other Person acting on behalf of, or claiming through, Borrower, shall have any right or authority to change the identity, name, location, account number, bank location or other feature or attribute of the Clearing Account without the prior written consent of Lender, which consent may be withheld by Lender in its sole and absolute discretion. At the election of Lender, exercised from time to time (i) after the occurrence and during the existence of an Event of Default, or (ii) at any time Lender reasonably believes that the Clearing Bank is not adequately performing its duties under the Clearing Bank Agreement, Borrower will establish a new Clearing Account at an Eligible Bank (and such Eligible Bank shall enter into a new Clearing Bank Agreement in form and substance satisfactory to Lender). Borrower hereby irrevocably appoints Lender as its attorney-in-fact (coupled with an interest) to execute a modification of the Clearing Bank Agreement approved by Lender or establish a new Clearing Account at an Eligible Bank upon Lender’s exercise of its rights under the preceding sentence, upon Borrower’s failure to do so within ten (10) days following Lender’s written demand. Upon Borrower’s establishment of the Clearing Account, Borrower shall notify Lender of same and **Schedule 2.7** of this Agreement shall be amended to identify the initial Clearing Account.

(a) The Clearing Account shall be under the sole and exclusive dominion and control of Lender and neither Borrower nor any other party claiming on behalf of, or through, Borrower, shall have any right to transfer, withdraw, access or otherwise direct the disposition of funds on deposit or deposited into the Clearing Account or have any other right or power with respect to the Clearing Account; provided, however, that Borrower shall have the right to access information regarding balances, deposits into and withdrawals from the Clearing Account, so long as such information access right does not permit Borrower or any party other than Lender or Servicer to transfer, withdraw, access or otherwise direct the disposition of funds on deposit in the Clearing Account.

(b) Borrower agrees to timely pay the customary fees and expenses of Clearing Bank in connection with the Clearing Account, as such fees and

expenses are established from time to time. In the event that Clearing Bank seeks reimbursement of any item deposited into the Clearing Account but returned or disallowed or reimbursement of any other monetary sum pursuant to the Clearing Bank Agreement, Borrower shall promptly and timely pay such sum. Failure of Borrower to pay any sum due and payable (by Borrower or Lender) to the Clearing Bank in connection with the Clearing Account within five (5) Business Days after written demand by Lender shall constitute an Event of Default under this Agreement.

(2) **Tenant Direction Letters.**

(a) Until the Loan is repaid in full, Borrower shall deposit (or cause to be deposited) all Gross Revenue into the Clearing Account, and in furtherance of the foregoing, notify and advise each tenant under each Lease (whether such lease is presently effective or executed after the date hereof) pursuant to an instruction letter in the form approved by Lender (a “**Tenant Direction Letter**”) to send directly to the Clearing Account via ACH transfer or wire transfer) all sums due and payable by such tenant under its lease as and when due and payable. Borrower hereby grants to Lender a power of attorney (which power of attorney shall be coupled with an interest and irrevocable so long as any portion of the Liabilities remains outstanding) to sign and deliver to any tenant, upon failure of Borrower to do so within five (5) Business Days following written demand from Lender, a Tenant Direction Letter. If notwithstanding the foregoing, Borrower or Manager should receive any payments on account of rent, Borrower shall deposit same with the Clearing Bank within three (3) Business Days after receipt.

(b) Without the prior written consent of Lender, so long as any portion of the Liabilities remain outstanding, Borrower shall not terminate, amend, revoke or modify any Tenant Direction Letter in any manner whatsoever or direct or cause any Tenant to pay any amount in any manner other than as provided in the related Direction Letter.

(c) So long as any portion of the Liabilities remain outstanding, Borrower shall not open or maintain any accounts into which any Gross Revenue is deposited other than the Clearing Account. The foregoing shall not prohibit Borrower from utilizing one or more separate accounts for the disbursement or retention of funds that have been transferred to Borrower pursuant to the express terms of this Agreement.

(3) **Intentionally Omitted.**

(4) **Order of Priority of Funds in Clearing Account.** On each Payment Date, provided no Event of Default then exists, Lender shall (or shall cause its Servicer to) direct the Clearing Bank to disburse funds deposited in the Clearing Account during the immediately preceding Interest Period in the following order of priority:

- (i) First, to Clearing Bank and Servicer, funds sufficient to pay any amounts owed to Clearing Bank and Servicer;
- (ii) Second, to the Tax Reserve to make the required payments of Tax Funds;
- (iii) Third, to the Insurance Reserve, to make the required payments of Insurance Funds;
- (iv) Fourth, to Lender, funds sufficient to pay the monthly debt service payment, applied to the payment of interest on the Note computed at the Contract Rate and the interest on the amounts in the Capital Improvement Reserve and the Tenant Improvement Reserve at the Contract Rate;
- (v) Fifth, to the Operating Account, funds sufficient to pay the current month's Monthly Operating Expense Budgeted Amount and any Extraordinary Operating Expenses reasonably approved by Lender;
- (vi) Sixth, to Lender, to pay any other amounts then due and payable under this Agreement or the other Loan Documents; and
- (vii) Lastly, (a) during the existence of any Key Tenant Termination Event, to the Excess Cash Reserve, and (b) provided no Event of Default or Key Tenant Termination Event exists, all amounts remaining after payment of the amounts set forth in clauses (i) through (vi) above, to the Operating Account.

Notwithstanding anything to the contrary contained herein, in addition to exercising any or all of its other rights and remedies under the Loan Documents or applicable law, upon the occurrence and during the continuance of an Event of Default, Lender may, at its option, (i) pay over to Lender all or any part of the funds in the Clearing Account, without demand or notice to Borrower, (ii) setoff or recoup or otherwise apply all or any part of the funds in the Clearing Account against all or any part of the Loan (whether matured, unmatured, due or not yet due), in such order and priority as Lender shall determine in its sole and absolute discretion, (iii) apply all or any part of the funds in the Clearing Account to satisfy any of the other obligations of Borrower under the Loan Documents, and/or (iv) hold all or any part of the funds as additional cash collateral for the Loan without applying the same.

(5) **Borrower's Operating Account.** Borrower confirms that Borrower has established an operating account maintained by and under the exclusive dominion and control of Borrower (the "**Operating Account**"). The initial Operating Account is identified on **Schedule 2.7** attached hereto. Provided that no Event of Default has occurred and is continuing, the Operating Account shall be under the sole and exclusive dominion and control of Borrower, and Borrower shall have any right to transfer, withdraw, access or otherwise direct the disposition of funds on deposit or deposited into

the Operating Account and have any other right or power with respect to the Operating Account; provided, however, that Lender shall have the right to access information regarding balances, deposits into and withdrawals from the Operating Account. During the existence of an Event of Default or a Key Tenant Termination Event, Borrower shall not take distributions from the Operating Account, and shall expend any amounts in the Operating Account for the operation, maintenance, improvement, renovation and leasing of the Project only and any other carry costs such as taxes, insurance and debt service.

(6) **Default.** Notwithstanding any other provision of this Agreement or of the other Loan Documents, during the continuation of an Event of Default, Lender reserves the right, exercisable at its sole option, to (x) take such enforcement actions (including, but not limited to, acceleration and foreclosure of the Project) as it deems appropriate under the Loan Documents or otherwise under law or in equity and/or (y) apply all sums on deposit in or deposited into the Clearing Account and the Reserves and any other sums deposited by Borrower with Lender to the payment of the Liabilities, in such order, manner, amounts and times as Lender in its sole discretion determines, and such reserved rights shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents. Nothing in this **Section 2.7(6)** shall limit, reduce or otherwise affect Borrower's obligations to make any and all payments due under this Agreement and under the other Loan Documents, whether or not rents are available to make such payments.

(7) **Security Interest.** Borrower hereby grants to Lender a first-priority security interest in the Clearing Account and the sums on deposit therein. Borrower acknowledges and agrees that, without limitation of any other provisions of this Agreement, the Security Instrument or the other Loan Documents, upon the occurrence and during the continuation of an Event of Default, Lender may use the Clearing Account and/or any sums on deposit therein for any or all of the following purposes: (i) repayment of the Loan, including, but not limited to, interest, principal and any prepayment premium or fee applicable to any such full or partial prepayment, (ii) reimbursement of Lender for all losses, fees, costs and expenses (including, without limitation, reasonable legal fees and disbursements) suffered or incurred by Lender as a result of such Event of Default, (iii) payment of any amount expended in exercising any or all rights and remedies available to Lender at law or in equity or under this Agreement or any of the other Loan Documents, (iv) payment of any item as required or permitted by this Agreement or any of the other Loan Documents, or (v) any other purpose permitted by applicable law, provided, however, that any such application of funds shall not cure or be deemed to cure any Event of Default. Without limiting any other provisions hereof, each of the remedial actions described in the immediately preceding sentence shall be deemed to be a commercially reasonable exercise of Lender's rights and remedies as a secured party with respect to the Clearing Account and any sums on deposit therein and shall not in any event be deemed to constitute a setoff or a foreclosure of a statutory banker's lien. Nothing in this Agreement shall obligate Lender to apply all or any portion of the Clearing Account to effect a cure of any Event of Default, or to pay the Loan in any specific order of priority. The exercise of any or all of Lender's rights and remedies under this Agreement with respect to the Clearing Account and/or the sums

on deposit therein shall not in any way prejudice or affect Lender's right to initiate and complete a foreclosure under the Security Instrument.

(8) **Indemnification by Borrower.** Lender shall be responsible for the performance only of such duties with respect to the Clearing Account as are specifically set forth herein, and no duty shall be implied from any provision hereof. Lender shall not be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Lender shall not be liable for any acts, omissions, errors in judgment or mistakes of fact or law, including, without limitation, with respect to proceeds on deposit in the Clearing Account. Borrower shall indemnify and hold the Lender, its successors, assigns, shareholders, directors, officers, employees, and agents (including, without limitation, any Servicers) harmless from and against any loss, reasonable out of pocket cost or damage, including, without limitation, reasonable attorneys' fees and disbursements, incurred by such parties in connection with the Clearing Account or the investment by Lender of amounts in Clearing Account, other than such as result from the negligence or willful misconduct of Lender or intentional nonperformance by Lender of its obligations under this Agreement.

Section 2.8 **Conditions of Closing.** Lender shall not be obligated to modify the Loan or make the Closing Advance unless all of the conditions precedent set forth in this **Section 2.8** have been satisfied or waived by Lender, on or before the Closing Date (it being understood that the funding of the Closing Advance on the Closing Date shall be deemed to be satisfaction or waiver of the conditions set forth in this **Section 2.8**):

(1) **Loan Documents.** The Loan Documents, in form and substance satisfactory to Lender, shall have been duly executed and delivered by the parties thereto and Lender shall have received the originals or fully executed counterparts thereof.

(2) **Payment of Fees and Expenses.** Borrower shall have paid all fees and expenses required by this Agreement, to the extent due and payable, including, without limitation, reasonable attorneys' fees and expenses of Lender's outside counsel, environmental and engineering evaluation fees, and other due diligence costs incurred by Lender.

(3) **Title Insurance Policy.** Borrower shall have delivered to Lender a paid title insurance policy (or the corresponding marked-up title commitment subject to an irrevocable commitment on the part of the Title Company to deliver the title insurance policy upon recordation of the Security Instrument) in all respects satisfactory to Lender and Lender's outside counsel (together with true and complete copies of all exceptions to the title insurance policy), showing the Security Instrument as a valid first Lien on the Project in the amount of the Loan, together with all endorsements as required by Lender and subject only to the Permitted Encumbrances, along with co-insurance or reinsurance, if required by the Title Company, in such forms and amounts as may be required by Lender. Any reinsurance agreements shall provide for direct access with the other title insurance companies reasonably satisfactory to Lender.

(4) **Other Insurance.** Borrower shall have delivered to Lender policies of all insurance (or certificates evidencing such insurance) meeting Lender's insurance requirements.

(5) **Environmental Reports.** Lender shall have obtained and reviewed an environmental assessment report or reports of one or more qualified environmental engineering or similar inspection firms approved by Lender in form, scope and substance satisfactory to Lender, which report or reports shall indicate a condition of the Project in all respects satisfactory to Lender for its intended use and upon which report or reports Lender is expressly entitled to rely.

(6) **Survey.** Borrower shall have delivered to Lender a survey prepared in accordance with Lender's survey requirements, certified by a land surveyor registered as such in the State, which survey shall be in form and substance satisfactory to Lender.

(7) **Government Approvals and Legal Requirements.** Borrower shall have delivered to Lender evidence that it has obtained all Government Approvals necessary for the operation of the Project.

(8) **Organizational Documents.** Borrower shall have delivered to Lender certified copies of the Organizational Documents of Borrower, those constituent members of Borrower requested by Lender, and any entity Guarantor, and the same shall be acceptable to Lender in all respects.

(9) **Legal Opinions.** Lender shall have received opinions in form, substance and scope satisfactory to Lender and Lender's outside counsel from counsel to Borrower and Guarantor as to such matters as Lender may reasonably require.

(10) **Searches Regarding Collateral.** Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrower's expense, upon request by Lender during the continuance of an Event of Default) that a search of the public records disclosed no judgment, UCC or tax liens affecting Borrower or Guarantor, the Project or the Collateral, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements or title retention agreements which affect the Collateral.

(11) **Financial Statements.** Borrower shall have delivered to Lender all financial statements, with respect to Borrower, Guarantor and/or the Project, required under this Agreement or any of the other Loan Documents.

(12) **Representations and Warranties.** The representations and warranties made by Borrower and Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith shall have been true and correct in all material respects on the date on which made and shall continue to be true and correct in all material respects on the Closing Date.

(13) **Deliveries and Documents.** All required deliveries in connection with the transactions contemplated by this Agreement and the other Loan Documents shall be satisfactory to Lender and Lender's outside counsel in form and substance, and Lender shall have received all such deliveries and such counterpart originals or certified copies of such documents and such other certificates, opinions or documents as Lender and Lender's outside counsel may reasonably require to consummate the transactions contemplated hereby.

(14) **Approved Budget.** Borrower shall have delivered to Lender a budget for the Project setting forth Borrower's projection of Gross Revenue, Operating Expenses and anticipated Capital Expenditure costs for the calendar year 2022, which budget has been approved by Lender and constitutes the "**Initial Approved Budget**", and which is attached to this Agreement as **Exhibit B.**

(15) **Capital Improvement Budget.** Borrower shall have delivered to Lender a budget for the Project setting forth the Capital Improvements to be performed by Borrower, which budget has been approved by Lender and constitutes the "**Capital Improvement Budget**", and which is attached to this Agreement as **Exhibit C.**

(16) **Other Documents.** Borrower shall have delivered to Lender such other documents and certificates as Lender or Lender's outside counsel may reasonably require, including, without limitation, estoppels and subordination, non-disturbance and attornment agreements from any tenants, licensees or other occupants at the Project.

ARTICLE 3

RESERVES

Section 3.1 **Reserves.** The following reserves shall be required in connection with the Loan:

(1) **Interest Reserve.** On the Closing Date, Loan proceeds in the amount of \$175,000 shall be deposited into a reserve to be held by Lender ("**Interest Reserve**"). So long as no Event of Default exists, Lender shall apply funds from the Interest Reserve (but never reducing the amount in the Interest Reserve below \$50,000.00) to the payment of any portion of the interest due and payable on the Loan in any month in which Net Cash Flow is insufficient to pay such amount in full. For avoidance of doubt, Borrower shall be obligated to pay interest on the Loan when due, whether or not the amount on deposit and available in the Interest Reserve is available or sufficient to pay such interest. If at any time the amount of funds on deposit in the Interest Reserve is less than \$50,000.00, Lender shall notify Borrower of such determination, and Borrower shall deposit with Lender the amount of such insufficiency within ten (10) Business Days after its receipt of such notice.

(2) **Tax Reserve.** On the Closing Date, Borrower shall deliver to Lender, to be deposited into a reserve to be held by Lender ("**Tax Reserve**"), funds in the amount of \$62,458.30. On each Payment Date, Borrower shall deposit into the Tax Reserve an

amount equal to one-twelfth (1/12th) of the Property Taxes that Lender estimates will be payable during the next ensuing twelve (12) months, in order to accumulate sufficient funds to pay all such Property Taxes at least thirty (30) days prior to their respective due dates. Amounts deposited from time to time into the Tax Reserve are referred to as “**Tax Funds**”. If at any time Lender reasonably determines that the Tax Funds will not be sufficient to pay the Property Taxes for the upcoming tax period, Lender shall notify Borrower of such determination and Borrower will deposit with Lender the amount of such insufficiency within ten (10) Business Days after its receipt of such notice; provided that if Borrower receives notice of any deficiency after the date that is ten (10) days prior to the date that such Property Taxes are due, Borrower will deposit such amount within one (1) Business Day after its receipt of such notice. Lender shall apply the Tax Funds to payments of Property Taxes. In making any payment relating to Property Taxes, Lender may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

(3) **Tenant Improvement Reserve**. On the Closing Date, Lender shall deposit Loan proceeds in an amount equal to \$1,700,000.00 into a reserve to be held by Lender (the “**Tenant Improvement Reserve**”). Other deposits by Borrower into the Tenant Improvement Reserve shall be made to the extent required by this Agreement, and so long as no Event of Default has occurred and is continuing, Lender will advance funds from the Tenant Improvement Reserve for the payment of Approved Leasing Expenses in accordance with the terms of **Section 3.3(1)** of this Agreement. Upon the occurrence of a Key Tenant Termination Event, Borrower shall promptly notify Lender in writing of same and shall deliver to Lender within ten (10) Business Days following the occurrence of such Key Tenant Termination Event, funds in an amount equal to (i) the number of square feet leased pursuant to the Lease that is the subject of the Key Tenant Termination Event, multiplied by (ii) forty dollars (\$40.00) (“**Key Tenant Replacement Funds**”), which funds shall be held by Lender in the Tenant Improvement Reserve and may be advanced only for the payment of Approved Leasing Expenses incurred by Borrower in connection with a new Lease of the premises that are the subject of the Key Tenant Termination Event, in accordance with the terms of **Section 3.3(1)** of this Agreement.

(4) **Insurance Reserve**. On the Closing Date, Borrower shall deliver to Lender funds in an amount equal to \$40,312.50 into a reserve to be held by Lender (“**Insurance Reserve**”). On each Payment Date, Borrower shall deposit into the Insurance Reserve an amount equal to one-twelfth (1/12th) of the insurance premiums that Lender estimates will be payable for the renewal of the coverages afforded by the insurance policies required pursuant to **Section 4.1** of this Agreement upon the expiration thereof, in order to accumulate sufficient funds to pay all such insurance premiums at least thirty (30) days prior to their respective due dates. Amounts deposited from time to time into the Insurance Reserve are referred to as “**Insurance Funds**”. If at any time Lender reasonably determines that the Insurance Funds will not be sufficient to pay the aforementioned insurance premiums, Lender shall notify Borrower of such determination and Borrower will deposit with Lender the amount of such insufficiency within ten (10) Business Days after its receipt of such notice; provided that if Borrower receives notice of any deficiency after the date that is ten (10) days prior to the date that such premiums

are due, Borrower will deposit such amount within one (1) Business Day after its receipt of such notice. Borrower shall furnish Lender with bills, invoices and statements for the insurance premiums for which Insurance Funds are required at least thirty (30) days prior to the date on which such insurance premiums become due, whereupon, so long as no Event of Default exists, Lender shall pay (or provide Borrower with funds from the Insurance Reserve to pay) such insurance premiums so long as the amount on deposit in the Insurance Reserve is sufficient to pay such Insurance Premiums and Lender has received a bill for such Insurance Premiums from Borrower. Borrower shall be required to pay insurance premiums in accordance with this Agreement regardless of whether amounts on deposit in the Insurance Reserve are sufficient or available to pay such insurance premiums.

(5) **Excess Cash Reserve.** On the Closing Date, Lender shall establish a reserve into which excess funds remaining in the Clearing Account on each Payment Date after application pursuant to **Section 2.7(4)(i)** through **Section 2.7(4)(vii)** shall be deposited (the “**Excess Cash Reserve**”).

(6) **Capital Improvement Reserve.** On the Closing Date, Lender shall deposit Loan proceeds in an amount equal to \$1,100,000.00 into a reserve to be held by Lender (“**Capital Improvement Reserve**”). So long as no Event of Default has occurred and is continuing, Lender will advance funds from the Capital Improvement Reserve for the payment of Approved Capital Expenditures in accordance with **Section 3.3(2)** of this Agreement.

Section 3.2 **General Provisions Regarding Reserves.** All funds deposited in the Tenant Improvement Reserve, the Tax Reserve, the Insurance Reserve, the Interest Reserve, the Capital Improvement Reserve, the Excess Cash Reserve or any other reserve established by this Agreement or other Loan Documents (together with any other reserves or escrows required by Lender under the Loan Documents, each a “**Reserve**” and collectively, the “**Reserves**”) shall be held by Lender without interest, and may be commingled with Lender’s general funds or held in separate accounts or subaccounts which may, at Lender’s election, be established on a ledger or book-entry basis. To secure the Loan, Borrower hereby grants to Lender a first-priority security interest in all funds deposited in the Reserves. While an Event of Default exists, Lender shall have no obligation to disburse any funds from the Reserves and while an Event of Default exists, Lender shall be entitled, without notice to Borrower, to apply any funds in the Reserves to satisfy Borrower’s obligations under the Loan Documents in such order and manner as Lender shall determine, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender.

Section 3.3 **Advances.** At such time as Borrower desires to obtain any advance of funds from the Tenant Improvement Reserve or the Capital Improvement Reserve (each, an “**Advance**”), the following provisions shall apply:

(1) **Tenant Improvement Reserve Advances.** At such time as Borrower desires to obtain an Advance from the Tenant Improvement Reserve, the following provisions shall apply:

(a) **Making the Advances.**

(i) At such time as Borrower desires to obtain an Advance from the Tenant Improvement Reserve for Approved Leasing Expenses, Borrower shall complete, execute and deliver to Lender a Requisition. Lender shall approve or object to any Requisition within ten (10) days of its submission and the submission of all additional information reasonably required in connection with such Advance.

(ii) Borrower shall have provided to Lender, at Borrower's sole cost and expense, a title search reflecting that a search of the public records disclosed no judgment, UCC, mechanic's or tax liens affecting Borrower or the Project.

(iii) Each Requisition shall be submitted to Lender at least ten (10) days prior to the date of the requested Advance, no more frequently than once each month and for no less than the minimum amount of \$20,000.00. Each Requisition shall be signed by an officer or other authorized Person of Borrower and shall state with respect to each disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed and a detailed, itemized description of the Approved Leasing Expenses for which the disbursement is requested; and (c) that each obligation described therein is an Approved Leasing Expense under a Lease approved by Lender, and in all cases has been properly incurred and has not been the basis for any previous disbursement. Lender shall deposit the proceeds of each Advance into Borrower's Operating Account or other account designated by Borrower within three (3) Business Days after the approval of the Requisition.

(iv) Lender shall withhold from each Advance retainage equal to five percent (5%) until the tenant improvement work is complete, at which time such retainage shall be advanced as part of the final Advance with respect to such contract. With respect to tenant allowances being paid by Borrower as landlord to tenants under any approved Lease, there will be no retainage.

(v) At its option, Lender may make any or all Advances: (a) for costs incurred under any contract directly to any consultant, design professional or service provider, or (b) to any other Person to whom Lender in good faith determines payment is due.

(vi) Borrower shall pay all reasonable third-party out-of-pocket costs and expenses actually incurred by Lender in connection with each requested Advance, including Lender's reasonable attorneys' fees and disbursements and reasonable and market fees of Lender's Construction Consultant which consultant shall be engaged as and if Lender reasonably

deems necessary or if upon an inspection of the work an issue arises with respect to a life safety matter at the Project;

(vii) Prior to making any Advance pursuant to a Requisition, Lender may, at its option, require the following: (a) an inspection conducted at Borrower's expense in order to verify the performance of any construction work associated with such Requisition; (b) copies of all permits, licenses and approvals required by any governmental authority with regard to any construction work associated with such Requisition, whether necessary for commencement, completion, use or otherwise; (c) lien waivers (conditioned only upon payment) or other evidence of payment reasonably satisfactory to Lender unless the requested disbursement shall be used to pay for such Approved Leasing Expense directly (and not reimburse Borrower for the Approved Leasing Expense previously paid for by Borrower), in which case Borrower shall be required to deliver such items with respect to the Approved Leasing Expense which was the subject of the previous disbursement and conditional lien waivers with respect to the requested items to the paid for from the requested disbursement; and (d) reasonably detailed supporting documentation (including, without limitation, invoices) for any requested disbursement.

(b) **No Default.** Lender shall have no obligation to make any Advance if at the time of such Advance there exists an Event of Default or a Potential Default.

(c) **Sufficiency of Reserve.** Lender shall not be obligated to make any Advance if, in its reasonable judgment, the amounts remaining for disbursement from the Tenant Improvement Reserve, either in the aggregate or for individual line items shown on the applicable Requisition, are not sufficient to pay all Approved Leasing Expenses remaining to be incurred with respect to the applicable Lease (including, without limitation, interest expenses payable under the Loan and all other soft costs), unless Borrower shall have deposited with Lender in cash, or deposited into an account in which Lender has a security interest, or otherwise expended such sums as shall be necessary, in Lender's reasonable discretion, to offset any such insufficiency.

(2) **Capital Improvement Reserve Advances.** At such time as Borrower desires to obtain an Advance from the Capital Improvement Reserve, the following provisions shall apply:

(a) **Making the Advances.**

(i) At such time as Borrower desires to obtain an Advance from the Capital Improvement Reserve for Approved Capital Expenditures, Borrower shall complete, execute and deliver to Lender a Requisition. Lender shall approve or object to any Requisition within ten

(10) days of its submission and the submission of all additional information reasonably required in connection with such Advance.

(ii) Borrower shall have provided to Lender, at Borrower's sole cost and expense, a title search reflecting that a search of the public records disclosed no judgment, UCC, mechanic's or tax liens affecting Borrower or the Project.

(iii) Each Requisition shall be submitted to Lender at least ten (10) days prior to the date of the requested Advance, no more frequently than once each month and for no less than the minimum amount of \$20,000.00. Each Requisition shall be signed on behalf of Borrower and shall state with respect to each disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed and a detailed, itemized description of the Approved Capital Expenditures for which the disbursement is requested; and (c) that each obligation described therein is an Approved Capital Expenditure, has been properly incurred and has not been the basis for any previous disbursement. Lender shall deposit the proceeds of each Advance into Borrower's Operating Account or other account designated by Borrower within three (3) Business Days after the approval of the Requisition.

(iv) Lender shall withhold from each Advance retainage equal to five percent (5%) of all amounts funded under any contract for the provision of labor, materials, equipment and fixtures until the Work is complete, at which time such retainage shall be advanced as part of the final Advance with respect to such contract.

(v) At its option, Lender may make any or all Advances: (a) for costs incurred under any contract directly to any consultant, design professional or service provider, or (b) to any other Person to whom Lender in good faith determines payment is due.

(vi) Borrower shall pay all reasonable third-party out-of-pocket costs and expenses actually incurred by Lender in connection with each requested Advance, including Lender's reasonable attorneys' fees and disbursements and reasonable and market fees of Lender's Construction Consultant which consultant shall be engaged as and if Lender reasonably deems necessary or if upon an inspection of the work an issue arises with respect to a life safety matter at the Project;

(vii) Prior to making any Advance pursuant to a Requisition, Lender may, at its option, require the following: (a) an inspection conducted at Borrower's expense in order to verify the performance of any construction work associated with such Requisition; (b) copies of all permits, licenses and approvals required by any governmental authority with regard to any construction work associated with such Requisition,

whether necessary for commencement, completion, use or otherwise; (c) lien waivers (conditioned only upon payment) or other evidence of payment reasonably satisfactory to Lender unless the requested disbursement shall be used to pay for such Approved Capital Expenditure directly (and not reimburse Borrower for the Approved Capital Expenditure previously paid for by Borrower), in which case Borrower shall be required to deliver such items with respect to the Approved Capital Expenditure which was the subject of the previous disbursement and conditional lien waivers with respect to the requested items to the paid for from the requested disbursement; and (d) reasonably detailed supporting documentation (including, without limitation, invoices) for any requested disbursement.

(b) **No Default.** Lender shall have no obligation to make any Advance if at the time of such Advance there exists an Event of Default or a Potential Default.

(c) **Sufficiency of Reserve.** Lender shall not be obligated to make any Advance if, in its reasonable judgment, the amounts remaining for disbursement from the Capital Improvement Reserve, either in the aggregate or for individual line items shown on the applicable Requisition, are not sufficient to pay all Approved Capital Expenditures remaining to be incurred in order to complete the Work (including, without limitation, interest expenses payable under the Loan and all other soft costs), unless Borrower shall have deposited with Lender in cash, or deposited into an account in which Lender has a security interest, or otherwise expended such sums as shall be necessary, in Lender's reasonable discretion, to offset any such insufficiency.

(d) **Conditions of Final Advance.** In addition to any applicable conditions set forth in (a)-(c) above, Lender's obligation to make the final Advance from the Capital Improvement Reserve shall be subject to the following conditions precedent (it being understood that the funding of the final Advance shall be deemed a satisfaction or waiver of the conditions set forth in this **Section 3.3(2)(d): Approval by the Construction Consultant.** Lender shall have received notification from the Construction Consultant that Completion of the Capital Improvements has occurred.

(ii) **Payments; Final Lien Waivers.** Borrower shall have delivered to Lender evidence reasonably satisfactory to Lender that all sums due in connection with the construction of the Capital Improvements have been paid in full (or will be paid out of the funds requested to be advanced) and that no party claims or has a right to claim any statutory or common law lien arising out of the construction of the Capital Improvements or the supplying of labor, material, and/or services in connection therewith. Borrower shall have delivered to Lender duly executed final unconditional lien waivers and final release and payment receipts in a form reasonably acceptable to Lender, and otherwise in

compliance with the State's lien laws, from any Person with mechanics' lien rights under the State's lien laws for the work performed, or for the labor or material supplied.

(iii) **Other Documents.** Lender shall have received such documents, letters, affidavits, reports and assurances, as Lender, Lender's counsel and the Construction Consultant may reasonably require.

(e) **Deferred Maintenance.** Notwithstanding Lender's approval of the Capital Improvement Budget, Lender shall have no obligation to Advance funds from the Capital Improvement Reserve in excess of \$175,000.00 in the aggregate for Deferred Maintenance Items.

ARTICLE 4

INSURANCE AND CONDEMNATION

Section 4.1 **Insurance.** Borrower shall maintain insurance as follows:

(1) **Types and Amounts of Insurance.** Until the Loan and all amounts due under the Loan Documents are paid in full, Borrower shall maintain such insurance coverages as Lender, in its reasonable discretion, may require from time to time. On the Closing Date, Borrower shall at a minimum have in place insurance policies with the coverages and in such amounts as set forth on **Schedule 4.1**. All such policies shall be in such form and shall contain provisions as are acceptable to Lender. On or before the Closing Date, such insurance shall be obtained and prepaid through at least May 22, 2022. Notwithstanding anything to the contrary contained in this Agreement, Borrower acknowledges and agrees that Lender's acceptance of any insurance provided by Borrower pursuant to this Agreement does not constitute, and shall not be deemed by Borrower to be, an affirmation by Lender of the validity or viability of any such policy maintained, or to be maintained, by Borrower.

(2) **No Separate Insurance.** Borrower shall not maintain any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise satisfactory to Lender in all respects.

(3) **Failure to Maintain Insurance.** If Borrower fails to maintain insurance in compliance with Lender's insurance requirements, Lender may, in its sole discretion, obtain such insurance and pay the premium therefor and Borrower shall, on demand, reimburse Lender for all expenses incurred in connection therewith. This insurance may, but need not, also protect Borrower's interest. If there is a loss or liability, the coverage Lender purchases may not pay any claim Borrower makes or any claim made against Borrower. Lender will cancel this coverage at such time as Borrower provides Lender with evidence satisfactory to Lender that Borrower has obtained the required policy or policies that satisfy Lender's insurance requirements. The effective date of coverage may be the date Borrower's prior coverage lapsed or the date Borrower failed to provide proof

of coverage. The coverage Lender purchases may be more expensive than insurance Borrower can obtain on its own.

(4) **Assignment.** Borrower shall assign the policies or proofs of insurance to Lender, in such manner and form that Lender and its successors and assigns shall at all times have and hold the same as security for the payment of the Loan. Borrower shall deliver to Lender copies of all required policies and all renewals thereof (which renewals shall be delivered at least ten (10) Business Days prior to the expiration of the existing policies), in each case certified to Lender by the insurance company or authorized agent as being true copies, together with the endorsements required hereunder and together with proof of payment of premiums. If Borrower elects to obtain any insurance which is not required under this Agreement, all related insurance policies shall be endorsed in compliance with Lender's insurance requirements, and such additional insurance shall be renewed during the term of the Loan unless Lender provides its prior written authorization. From time to time upon Lender's request, Borrower shall identify to Lender all insurance maintained by Borrower with respect to the Project. All Loss Proceeds shall be delivered directly to Lender, and shall be applied in accordance with **Section 4.2.** The Loss Proceeds coming into the possession of Lender shall not be deemed trust funds, and Lender shall be entitled to apply such proceeds as provided in this Agreement.

(5) **Adjustments.** Borrower shall give immediate written notice of any loss to the insurance carrier and for any loss in excess of \$50,000.00 to Lender. Borrower hereby irrevocably authorizes and empowers Lender, as attorney-in-fact for Borrower, coupled with an interest, to notify any of Borrower's insurance carriers to add Lender as a loss payee, mortgagee insured or additional insured, as the case may be, to any policy maintained by Borrower (regardless of whether such policy is required under this Agreement), to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive Loss Proceeds (and endorse, on Borrower's behalf, all checks, drafts and other negotiable demand instruments payable to Borrower, or to Borrower and Lender jointly), and to deduct therefrom Lender's expenses incurred in the collection of such Loss Proceeds. Nothing contained in this **Section 4.1(5)**, however, shall require Lender to incur any expense or take any action hereunder.

Section 4.2 **Application of Loss Proceeds.** Loss Proceeds shall be applied to the payment of amounts outstanding under the Loan Documents, unless Lender, in its sole discretion, agrees to make such Loss Proceeds available to Borrower for restoration. Borrower, upon request by Lender, shall execute all instruments requested to confirm the assignment of the Loss Proceeds to Lender, free and clear of all liens, charges or encumbrances.

Section 4.3 **Rights in Policies.** In the event of a foreclosure of the Security Instrument or other transfer of title to the Project in extinguishment in whole or in part of the Liabilities, all right, title and interest of Borrower in and to the policies then in force concerning the Project and all proceeds payable under such policies shall vest exclusively in Lender or the purchaser in foreclosure or other transferee in the event of such other transfer of title.

Section 4.4 **Condemnation Awards.** Borrower shall immediately notify Lender of the institution of any proceeding for the condemnation or other taking of the Project or any portion thereof (“**Taking**”). Lender may participate in any proceeding for a Taking where the portion of the Project subject to the Taking is valued in excess of \$50,000.00 and Borrower will deliver to Lender all instruments necessary or required by Lender to permit such participation. Without Lender’s prior consent, which consent shall not be unreasonably withheld, conditioned or delayed, Borrower (1) shall not agree to any compensation or award in excess of \$50,000.00, and (2) shall not take any action or fail to take any action which would cause the compensation to be determined. All awards and compensation for the Taking or purchase in lieu of such Taking are hereby assigned to and shall be paid to Lender. Borrower authorizes Lender to collect and receive such awards and compensation (and, if any such award or compensation is paid by check, draft or other negotiable demand instrument made payable to Borrower or to Borrower and Lender jointly, to endorse the same on Borrower’s behalf), to give proper receipts and acquittances therefor, and in Lender’s sole discretion to apply the same toward the payment of the Loan, notwithstanding that the Loan may not then be due and payable, or to the restoration of the Collateral. Borrower, upon request by Lender, shall execute all instruments requested to confirm the assignment of the awards and compensation to Lender, free and clear of all liens, charges or encumbrances.

Section 4.5 **Loss Proceeds.** If Loss Proceeds are to be utilized for the restoration of the Project, the Loss Proceeds, together with any other funds deposited with Lender for that purpose, must be deposited in an interest-bearing account with Lender, which account will be assigned to Lender as additional security for the Loan. The account will be opened, managed and be under the dominion and control of Lender. Disbursements of funds from the account will be made in a manner consistent with, and subject to, the requirements for the closing and funding of Advances and the terms of this Agreement regarding the disbursement of Loan proceeds, including those provisions permitting Lender to require Borrower to deposit funds in the event of a shortfall.

ARTICLE 5

GENERAL REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1 **Organization and Power.** Each Borrower Party (other than an individual Guarantor) is duly formed or organized, validly existing and in good standing under the laws of the state of its formation or existence, and each Borrower Party (other than an individual Borrower Party) is in compliance with all legal requirements applicable to doing business in the State. No Borrower Party is a “foreign person” within the meaning of Section 1445(f)(3) of the Code. Borrower has only one state of incorporation, formation or organization, which is the State of Delaware. The ownership structure of Borrower and its constituent entities reflected on in **Schedule 5.1** is true and correct as of the Closing Date.

Section 5.2 **Validity of Loan Documents.** The execution, delivery and performance by Borrower and each Borrower Party of the Loan Documents: (1) are duly authorized and do not require the consent or approval of any other party or governmental authority which has not

been obtained; and (2) will not violate any law or result in the imposition of any lien, charge or encumbrance upon the assets of any such party, except as contemplated by the Loan Documents. The Loan Documents constitute the legal, valid and binding obligations of Borrower and each Borrower Party, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights.

Section 5.3 **Financial Condition; Litigation; Other Secured Transactions.**

(1) **Financial Statements.** The most recent financial statements delivered to Lender by Borrower and each Borrower Party (a) are true and correct in all material respects, with no significant change since the date of preparation, and (b) fairly present the financial condition of Borrower and each Borrower Party as of the date thereof and the results of Borrower's and each Borrower Party's operations for the period covered thereby. Except as disclosed in such financial statements, there are no liabilities (fixed or contingent) affecting the Collateral, Borrower or any Borrower Party. Except as disclosed in such financial statements, there is no litigation, administrative proceeding, investigation or other legal action (including any proceeding under any state or federal bankruptcy or insolvency law) pending or, to Borrower's knowledge, threatened against the Collateral, Borrower or any Borrower Party which if adversely determined is reasonably likely to have a Material Adverse Effect on such party, the Collateral or the Loan.

(2) **Debtor Status.** Borrower is not, and has not been, bound (whether as a result of a merger or otherwise) as a debtor under a pledge or security agreement which has not been terminated either prior to the Closing Date or simultaneously with Closing.

Section 5.4 **Taxes and Assessments.** The Collateral is comprised of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot. There are no pending or, to Borrower's knowledge, proposed, special or other assessments for public improvements or otherwise affecting the Project, nor are there any contemplated improvements to the Project that may result in such special or other assessments.

Section 5.5 **Other Agreements; Defaults.** Neither Borrower nor any Guarantor is a party to any agreement or instrument or subject to any court order, injunction, permit, or restriction which is likely to adversely affect the Project or the business, operations, or condition (financial or otherwise) of Borrower or Guarantor. Neither Borrower nor Guarantor is in violation of any agreement which violation if adversely determined, would reasonably likely have a Material Adverse Effect on the Project, Borrower or Guarantor or Borrower's or Guarantor's business, properties, or assets, operations or condition, financial or otherwise. Borrower has provided Lender with a true, accurate and complete copy of each Major Project Document.

Section 5.6 **Compliance with Law; Condition.**

(1) **Licenses, Permits, etc.** To Borrower's knowledge, Borrower has all requisite licenses, permits, franchises, qualifications, certificates of occupancy or and other governmental authorizations to own, lease, occupy and operate the Project and

carry on its business. To Borrower's knowledge, each Borrower Party has all requisite licenses, permits, franchises, qualifications and governmental authorizations to carry on its business. To Borrower's knowledge, the Project is in compliance with all applicable zoning, subdivision, building and other legal requirements.

(2) **No Condemnation.** No condemnation has been commenced or, to Borrower's knowledge, is contemplated with respect to all or any portion of the Project or for the relocation of roadways providing access to the Project.

(3) **Access.** To Borrower's knowledge, the Project has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities. To Borrower's knowledge, all public utilities necessary or convenient to the full use and enjoyment of the Project are located in the public right-of-way abutting the Project, and all such utilities are connected so as to serve the Project without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefiting the Project. To Borrower's knowledge, all roads necessary for the full utilization of the Project for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities.

(4) **Use of Project.** To Borrower's knowledge, the Project and the present and contemplated use and occupancy thereof are in full compliance with all applicable zoning ordinances, building codes, land use laws, environmental laws and other similar legal requirements.

Section 5.7 **Location of Borrower.** Borrower's principal place of business and chief executive offices are located at the address stated in **Section 12.1** and Borrower maintains its books and records at such location. Borrower at all times has maintained its principal place of business and chief executive office at such location or the office of Manager.

Section 5.8 **ERISA.** Borrower is not (i) an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, and the assets of Borrower do not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA.; (ii) a "governmental plan" within the meaning of Section 3(32) of ERISA, and transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of, and fiduciary obligations with respect to, governmental plans; and (iii) Borrower has no employees.

Section 5.9 **Margin Stock.** No part of proceeds of the Loan will be used for purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

Section 5.10 **Tax Filings.** Borrower and Guarantor have filed (or have obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower and Guarantor, respectively.

Section 5.11 **Solvency.** Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total

liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its Debt as such Debt become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Debts as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed by or against Borrower or any Borrower Party in the last seven (7) years, and neither Borrower nor any Borrower Party in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrower nor any Borrower Party is contemplating either the filing of a petition by it under state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and neither Borrower nor any Borrower Party has knowledge of any Person contemplating the filing of any such petition against it.

Section 5.12 **Full and Accurate Disclosure.** No statement of fact made by or on behalf of Borrower or any Borrower Party in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrower which has not been disclosed to Lender in writing which materially adversely affects, nor as far as Borrower can foresee, might materially adversely affect, the Project or the business, operations or condition (financial or otherwise) of Borrower or any Borrower Party. All information supplied by Borrower regarding any other Collateral is accurate and complete in all material respects. All evidence of Borrower's and each Borrower Party's identity provided to Lender is genuine, and all related information is accurate.

Section 5.13 **Single Purpose Entity.** Borrower is and has at all times since its formation been a Single Purpose Entity. In addition, Borrower agrees that in no event during the term of the Loan shall Borrower modify Borrower's Operating Agreement with respect to such status as a Single Purpose Entity.

Section 5.14 **Property Management Agreement.** As of the Closing Date, Borrower has not entered into any property management agreement for the Project or any portion thereof, other than the Management Agreement, as defined in and attached to that certain Subordination of Property Management Agreement of even date herewith by and among Borrower, Manager and Lender.

Section 5.15 **No Conflicts.** The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, operating agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the

provisions of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such regulatory authority or other governmental agency or body required for the execution, delivery and performance by Borrower of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

Section 5.16 **Title**. Borrower has good, marketable and insurable title to the Project, free and clear of all Liens whatsoever, except for the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents and has rights and the power to transfer each item of Collateral upon which it purports to grant a Lien under the Security Instrument or any of the other Loan Documents. Upon recordation of the Security Instrument and any related financing statements, the Security Instrument creates a valid, perfected first-priority Lien on the Collateral, subject only to Permitted Encumbrances. There are no claims for payment for work, labor or materials affecting the Project which are or may become Liens prior to, or of equal priority with, the Liens created by the Loan Documents. None of the Permitted Encumbrances, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by the Security Instrument and this Agreement, materially and adversely affects the value of the Collateral, impairs the use or operations of the Collateral or impairs Borrower's ability to pay its obligations in a timely manner.

Section 5.17 **Use of Loan**. The Loan proceeds are being used exclusively for the purposes identified in the "Sources and Uses" set forth on **Schedule 2.1(2)** and not for any other purpose.

Section 5.18 **Flood Zone**. Except as previously disclosed on the survey provided to Lender, no portion of the improvements comprising the Collateral is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1994, as amended, or any successor law.

Section 5.19 **Insurance**. Borrower has obtained and has delivered to Lender copies of all of the insurance policies for the Collateral reflecting the insurance coverages, amounts and other insurance requirements set forth in this Agreement. No claims have been made under any such policy, and no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any such policy.

Section 5.20 **Filing and Recording Taxes**. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable legal requirements currently in effect in connection with the transfer of the Project to Borrower or any transfer of a controlling interest in Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable legal requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including the Security Instrument, have been paid and, under current legal requirements, the Security Instrument is enforceable in accordance with its terms by Lender or

any subsequent holder thereof, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights.

Section 5.21 **Restricted Company.** Borrower is not a Restricted Company.

Section 5.22 **Leases.** With respect to the Leases: (1) the rent roll delivered to Lender is true and correct and attached hereto as **Schedule 5.22** (the "**Rent Roll**"), and the Leases are valid and in full force and effect; (2) the Leases are in writing, and there are no oral agreements with respect thereto; (3) the copies of the Leases delivered to Lender are true and complete; (4) neither the landlord nor any tenant is in default beyond applicable notice and cure periods under any of the Leases; (5) Borrower has not received any notice of termination or default with respect to any Lease; (6) the Leases, the rents or any interests therein are not subject to any assignment or pledge, except Loan Documents; (7) no tenant or other party has an option to purchase all or any portion of the Project; (8) no tenant has the right to terminate its Lease prior to expiration of the stated term, except as set forth in the Leases; and (9) no tenant has prepaid more than one month's rent in advance (except for bona fide security deposits identified in the Rent Roll).

Section 5.23 **Purchase and Sale Agreement.** A true, correct and complete copy of the purchase and sale agreement with respect to the Property, together with any amendments thereto and any ancillary agreements or side letters related thereto, have been delivered to Lender.

Section 5.24 **Leasing Agreement.** As of the Closing Date, Borrower has not entered into any leasing agreement, listing agreement or brokerage agreement for the Project or any portion thereof, other than the Leasing Agreement, as defined in and attached to that certain Subordination of Leasing and Brokerage Agreement of even date herewith by and among Borrower, Adena Commercial, LLC, an Ohio limited liability company, d/b/a Colliers Greater Columbus Region, and Lender.

ARTICLE 6

GENERAL COVENANTS

Borrower covenants and agrees with Lender as follows:

Section 6.1 **Due on Sale or Encumbrance; Transfers of Interests.** Without the prior written consent of Lender in Lender's sole discretion, no Transfer shall occur other than a Permitted Transfer. Prior to any Permitted Transfer which would result in (i) a Person who has less than ten percent (10%) of the legal or beneficial ownership interests in Borrower having a ten percent (10%) or more legal or beneficial ownership interest in Borrower, or (ii) a Person who does not have day-to-day Control and management of Borrower or Borrower's general partner, managing member or non-member manager, and for whom Lender did not perform Patriot Act, money laundering and background checks prior to the Closing Date, having day-to-day Control and management of Borrower or Borrower's general partner, managing member or non-member manager, Borrower shall provide Lender with such information as shall be required by Lender to perform Patriot Act, money laundering and background checks regarding such proposed transferees and their source of funds. FOR AVOIDANCE OF DOUBT, THE

PROHIBITION SET FORTH IN THIS **SECTION 6.1** RESTRICTS NOT ONLY THE DIRECT TRANSFER OF THE COLLATERAL, BUT ALSO THE TRANSFER OF ANY DIRECT OR INDIRECT LEGAL, BENEFICIAL, ECONOMIC OR OTHER DIRECT OR INDIRECT OWNERSHIP INTEREST IN BORROWER ON EVERY TIER OR LEVEL (OTHER THAN PERMITTED TRANSFERS).

Section 6.2 **Taxes; Charges.** Subject to the last sentence of this **Section 6.2**, Borrower shall pay before any fine, penalty, interest or cost may be added thereto, and shall not enter into any agreement to defer, any Property Taxes, franchise taxes and charges, and other governmental charges that may become a Lien upon the Collateral or become payable during the term of the Loan, and will promptly furnish Lender with evidence of such payment. Borrower shall not suffer or permit the joint assessment of the Collateral with any other real property constituting a separate tax lot or with any other real or personal property. Borrower may in good faith contest, by proper legal actions or proceedings, the validity or amount of any Property Tax assessed upon the Collateral provided that at the time of commencement of any such action or proceeding, and during the pendency thereof, (1) no Event of Default shall be continuing; (2) Borrower maintains and prosecutes such contest continuously with diligence; (3) the Collateral shall not be subject to forfeiture or loss or any Lien by reason of the institution or prosecution of such contest; and (4) Borrower shall promptly pay or discharge the unpaid portion of such contested Property Tax and all additional charges, interest, penalties and expenses, if any, and shall deliver to Lender evidence acceptable to Lender of such compliance, payment or discharge, if such contest is terminated or discontinued adversely to Borrower.

Section 6.3 **Control.** Without the prior written consent of Lender in Lender's sole discretion, there shall be no change in the day-to-day Control and management of Borrower by Asher Roshanzamir or of any entity through which Asher Roshanzamir exercises Control over Borrower as shown on **Schedule 5.1**, and there shall be no change in the Organizational Documents of Borrower or any such entity relating to such Control and management.

Section 6.4 **Use; Maintenance; Inspection.** At all times during the term of the Loan, Borrower shall cause (1) the Project to have adequate rights of access to public ways and to be served by adequate water, sewer, sanitary sewer and storm drain facilities and (2) all public utilities necessary or convenient to the full use and enjoyment of the Project to be located in the public right of way abutting the Project, and to be connected so as to serve the Project without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefiting the Project. Borrower shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements, water, sewer, storm and drain facilities, public utilities and franchises necessary for the use of the Project. Borrower shall not, without the prior written consent of Lender, undertake any material alteration of the Project (other than restoration work following casualty or condemnation and tenant improvement work, in each case as contemplated by this Agreement) or permit any of the fixtures or personalty owned by Borrower to be removed at any time from the Project, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Borrower and free and clear of any Liens except those in favor of Lender. Borrower shall permit Lender, Servicer and any of their respective agents, representatives and employees, upon reasonable prior notice to Borrower, to inspect the Project and conduct such environmental and engineering studies and

appraisals as Lender may require, provided such inspections and studies do not materially interfere with the use and operation of the Project or any rights of tenants and provided that any environmental inspections and studies shall be limited as set forth in Section 4.3 of the Hazardous Materials Indemnity Agreement.

Section 6.5 **Taxes on Security.** Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Lender, prior to delinquency of such taxes, charges, filing, registration and recording fees, excises and levies payable. If there shall be enacted any law (1) deducting the Loan from the value of the Collateral for the purpose of taxation, (2) affecting any Lien on the Collateral, or (3) changing existing laws of taxation of mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, Borrower shall promptly pay to Lender, on demand, all taxes, costs and charges for which Lender is or may be liable as a result thereof; however, if such payment would be prohibited by law or would render the Loan usurious, then instead of collecting such payment, Lender may declare all amounts owing under the Loan Documents to be due and payable within ninety (90) days following notice thereof.

Section 6.6 **Compliance with Law; Major Project Documents.**

(1) **Legal Requirements.** Borrower shall observe and comply with (or cause the observation and compliance with) all legal requirements applicable to its existence and to the ownership, use and operation of the Project.

(2) **Major Project Documents.** Borrower shall comply with and perform, and cause any Person under common Control with Borrower to comply with and perform, all of its and their respective material obligations under each Major Project Document when and as the same becomes due, and Borrower shall not, and shall cause any Person under common Control with Borrower to not, enter into, amend, modify or terminate any Major Project Document (or any schedule, exhibit, or addendum thereto) thereto without the prior written consent of Lender, not to be unreasonably withheld, conditioned or delayed. Without limiting the foregoing hereof, Lender's approval of a Major Project Document may be conditioned upon Borrower's demonstration that it has sufficient funds to cover the cost of performing Borrower's obligations under such proposed Major Project Document. As of the Closing Date, **Schedule 6.6** sets forth all Major Project Documents to which Borrower and/or Persons who Control Borrower are a party.

(3) **Certificates, Consent and Acknowledgement.** At the request of Lender, Borrower shall cause any contractor and each design professional with whom Borrower contracts under a Major Project Document to deliver a Certificate, Consent and Acknowledgement to Lender in substantially the form attached hereto as **Schedule 6.6(3)** and shall enter into and cause each service provider or fee recipient to enter into a collateral assignment agreement in a form reasonably acceptable to Lender.

Section 6.7 **Legal Existence; Name, Status, Etc.**

(1) **Single Purpose Entity.** Borrower shall preserve and keep in full force and effect its existence as, and at all times operate as, a Single Purpose Entity.

(2) **Continued Existence.** Borrower and each Borrower Party shall preserve and keep in full force and effect its entity status, franchises, rights and privileges under the laws of the state of its formation, and all qualifications, licenses and permits required to be obtained or maintained by Borrower applicable to the ownership, use and operation of the Collateral. Borrower shall not become a Restricted Company. Neither Borrower nor any Borrower Party shall wind up, liquidate, dissolve, reorganize, merge, or consolidate with or into any Person. Without limiting the foregoing, neither Borrower nor any Borrower Party shall reincorporate or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the Closing Date. Borrower and each Borrower Party shall conduct business only in its own name and shall not change its name, identity, organizational structure, state of formation or the location of its chief executive office or principal place of business unless Borrower (1) shall have obtained the prior written consent of Lender to such change, and (2) shall have taken all actions necessary or requested by Lender to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of security interests under the Loan Documents. If Borrower does not have an organizational identification number and later obtains one, Borrower shall promptly notify Lender of its organizational identification number. Without the prior written consent of Lender, Borrower shall not modify in any material respect the limited liability company agreement of Borrower.

Section 6.8 **Affiliate Transactions.** Without the prior written consent of Lender, Borrower shall not engage in any transaction with an Affiliate of Borrower or of any Borrower Party, nor shall Borrower pay any fees to any Affiliate of Borrower or of any Borrower Party; provided, however, Lender's consent to such transaction or payment of fees shall not be unreasonably withheld, conditioned or delayed so long as (i) such transaction relates to the Collateral and is on an arm's-length basis with terms that are intrinsically fair and no less favorable than would be available for any unaffiliated third parties of Borrower or any Borrower Party, (ii) Borrower's demonstrates that it has sufficient funds to cover the cost of performing Borrower's obligations under such transaction or to pay such fees and (iii) such Affiliate enters into a subordination agreement with Lender reasonably acceptable to Lender. Notwithstanding anything to the contrary provided in this Agreement, those agreements affecting the Collateral that are with an Affiliate of Borrower or of any Borrower Party set forth on **Schedule 6.8** hereof are hereby approved by Lender, subject to such Affiliate entering into a subordination agreement with Lender reasonably acceptable to Lender.

Section 6.9 **Limitation on Financing; Other Debt.** Borrower shall not, without the prior written consent of Lender, (i) obtain any financing other than the Loan, (ii) permit or suffer to exist any mezzanine financing involving the Collateral, or any portion thereof, or any direct or indirect interest in Borrower, or (iii) incur any Debt other than the (1) Loan, (2) the obligations of Borrower under any Major Project Document approved by Lender, (3) any Affiliate transaction approved by Lender, and (4) other customary trade payables which are payable, and paid, within ninety (90) days of when incurred and do not exceed in the aggregate under this clause (4) \$150,000.00.

Section 6.10 **Mechanics' Liens.** Subject to the immediately following sentence, Borrower shall pay (or cause to be paid) when due all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in a mechanic's or materialman's or similar Lien and/or notice of pendency of action (each, a "**Mechanic's Lien**") being filed or recorded against the Collateral, and shall defend, indemnify and hold Lender harmless from all Mechanics' Liens, including all proceedings to foreclose on any Mechanic's Lien. If any Mechanic's Lien is served, filed, recorded or otherwise asserted against any portion of the Collateral, Borrower shall, within thirty (30) days of knowledge thereof, either (i) pay such Mechanic's Lien in full and cause the same to be released of record or (ii) obtain a statutory bond which removes such Mechanic's Lien from attaching to the Collateral and each portion thereof. For avoidance of doubt, Borrower shall be required to take the actions required by this **Section 6.10** with respect to any Mechanic's Lien which attaches to or is filed against the Collateral regardless of source.

Section 6.11 **ERISA.** Throughout the term of the Loan:

(1) Borrower will not be (i) an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, and the assets of Borrower will not constitute "plan assets" of one or more such employee benefit plans for purposes of Title I of ERISA;

(2) Borrower will not be a "governmental plan" within the meaning of Section 3(32) of ERISA, and transactions by or with Borrower will not be subject to state statutes applicable to Borrower regulating investments of, and fiduciary obligations with respect to, such governmental plans; and

(3) Borrower shall have no employees.

Section 6.12 **Further Assurances.** Borrower shall promptly (1) cure any defects in the execution and delivery of the Loan Documents, (2) provide, and cause each Borrower Party to provide, Lender such additional information and documentation on Borrower's and each Borrower Party's legal or beneficial ownership, policies, procedures and sources of funds as Lender deems necessary or prudent to enable Lender to comply with Anti-Money Laundering Laws as now in existence or hereafter amended, and (3) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as Lender may request to further evidence and more fully describe the collateral for the Loan, to correct any omissions in the Loan Documents, to perfect, protect or preserve any Liens created under any of the Loan Documents, or to make any recordings, file any notices, or obtain any consents, as may be necessary or appropriate in connection therewith. Borrower shall preserve and protect the first lien and security interest status of the Security Instrument and the other Loan Documents. If any Lien other than the Permitted Encumbrances is asserted against the Collateral, Borrower shall promptly, and at its expense, (a) give Lender a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in the same manner that Mechanic's Liens may be contested under **Section 6.10**. From time to time upon the written request of Lender, Borrower shall deliver to Lender a schedule of the name, legal

domicile address and jurisdiction of organization, if applicable, for each Borrower Party and each holder of a legal interest in Borrower.

Section 6.13 **Estoppel Certificates**. Borrower, within fifteen (15) days after written request, shall furnish to Lender a written statement, duly acknowledged, setting forth the amount due on the Loan, the terms of payment of the Loan, the date to which interest has been paid, whether any offsets or defenses exist against the Loan and, if any are alleged to exist, the nature thereof in detail, and such other matters as Lender may reasonably request.

Section 6.14 **Notice of Certain Events**. Borrower shall promptly notify Lender of (1) any notice of default received by Borrower or any Borrower Party under other obligations relating to the Project or otherwise material to Borrower's business; and (2) any threatened in writing or pending legal, judicial or regulatory proceedings, including any dispute between Borrower and any governmental authority, affecting Borrower or the Project.

Section 6.15 **Indemnification**. Borrower shall indemnify, defend and hold Lender and Servicer harmless from and against any and all out-of-pocket losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs and disbursements (including the reasonable fees and actual expenses of Lender and Lender's outside counsel) actually incurred and of any kind or nature whatsoever, including those arising from the joint, concurrent, or comparative negligence of Lender, in connection with (1) Lender's or Servicer's exercise of its rights and remedies under the Security Instrument and other Loan Documents, (2) any lessor obligations or liabilities under any of the leases of the Collateral arising prior to Lender taking title to the Collateral, including any claim against Lender by reason of any alleged obligation, undertaking, action or inaction on its part to perform or discharge any terms, covenants or conditions of such leases or with respect to the rents and other sums payable thereunder, (3) any inspection, review or testing of or with respect to the Project, (4) any investigative, administrative, mediation, arbitration, or judicial proceeding, whether or not Lender is designated a party thereto, commenced or threatened at any time (including after the repayment of the Loan) in any way related to (a) the execution, delivery or performance of any Loan Document by a Borrower Party, (b) the Project, (c) Borrower or its owners, (d) the entire course of dealing prior to the Closing Date between Lender and Borrower or any Borrower Party with respect to the Loan or the transactions contemplated by the Loan Documents, or (e) any dealings between Borrower or its owners and any third parties (including any and all reasonable costs and expenses actually incurred by Lender or Servicer in responding to any third-party subpoenas or other third-party discovery requests and defending any depositions of their respective directors, officers, employees, agents or attorneys), (5) any proceeding instituted by any Person claiming a Lien, and (6) any brokerage commissions or finder's fees claimed by any broker or other party in connection with the Loan, the Project, or any of the transactions contemplated in the Loan Documents, except to the extent any of the foregoing is caused by (A) Lender's or Lender's agent's negligence or willful misconduct or illegal acts, or (B) any occurrence or non-occurrence that initially occurs after final completion of foreclosure or other taking of title to or possession of the Collateral by Lender or other third party. Any amount covered by this indemnity shall be payable within thirty (30) days after written demand, and shall bear interest from thirty (30) days after the date of demand until the same is paid by Borrower to Lender at the Default Rate.

Section 6.16 **Restriction of Distributions.** Borrower shall not make any dividend, distribution or disbursement to any of its direct or indirect owners or Affiliates, other than, so long as no Event of Default or Key Tenant Termination Event exists, amounts due under any Affiliate Agreement with Borrower which has been approved by Lender in writing. Furthermore, during the existence of an Event of Default or a Key Tenant Termination Event, Borrower shall not take distributions from the Operating Account, and shall expend any amounts in the Operating Account for the operation, maintenance, improvement, renovation, leasing, and of the Project only and any other carry costs such as taxes, insurance and debt service.

Section 6.17 **Other Agreements; Defaults.** Neither Borrower nor any Borrower Party shall become party to any agreement or instrument, or subject to any court order, injunction, permit or restriction, which has a Material Adverse Effect on the Collateral or the business, operations, or condition (financial or otherwise) of Borrower or any Borrower Party. Neither Borrower nor any Borrower Party shall violate any agreement in a manner which would have a Material Adverse Effect on the Collateral, Borrower or any Borrower Party, or on Borrower's or any Borrower Party's business, properties, or assets, operations or condition, financial or otherwise.

Section 6.18 **Leases.**

(a) Borrower shall not enter into, amend, modify, assign, cancel or terminate any Lease that is not a Major Lease without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed; provided, however, that Borrower may enter into a Lease that is not a Major Lease without the prior written consent of Lender if such Lease satisfies the Pre-Approved Leasing Criteria.

(b) Borrower shall not enter into, amend, modify, assign, cancel or terminate any Major Lease without the prior written consent of Lender, in Lender's sole discretion.

(c) Borrower shall not permit or consent to any assignment or sublease of any Major Lease (other than assignments or subleases expressly permitted under the Major Lease pursuant to a unilateral right of the Tenant thereunder not requiring the consent of Borrower) without Lender's prior written consent, in Lender's sole discretion.

(d) Borrower shall have the right to terminate or accept a surrender of any Lease that is not a Major Lease so long as such termination or surrender is by reason of a tenant default and in a commercially reasonable manner to preserve and protect the Project.

(e) Borrower shall observe and perform the obligations imposed upon the landlord under the Leases in a commercially reasonable manner. Borrower shall not collect more than one month of rent in advance nor materially reduce the obligations of any tenant or increase the obligations of the lessor thereunder. Borrower shall promptly send Lender copies of all written notices of material

default which Borrower receives under any Lease. All security deposits of tenants shall be held in compliance with all applicable law.

Section 6.19 **Approved Budget.**

(a) Borrower shall submit to Lender for its approval a proposed annual budget no later than January 1st of each calendar year (except the calendar year 2022) in form reasonably satisfactory to Lender setting forth in reasonable detail the Operating Expenses and capital budget for the Project on a month by month basis, and each line item of Borrower's good faith estimate of anticipated Gross Revenue, Operating Expenses and Capital Expenditures for the applicable calendar year. The annual budget shall be subject to Lender's approval not to be unreasonably withheld, conditioned or delayed (each such annual budget, an "**Approved Budget**"), and Borrower shall provide Lender with such information and documentation as may be reasonably required by Lender in connection therewith.

(b) Borrower shall use commercially reasonable efforts to operate the Project in accordance with the Approved Budget for the applicable calendar year (or portion thereof). Notwithstanding the foregoing, Borrower is permitted to deviate from the Approved Budget (as applicable) to the extent necessary for Extraordinary Operating Expenses, non-discretionary expenses, or if not for Extraordinary Operating Expenses and non-discretionary expenses, then as otherwise approved by Lender in its reasonable discretion (such permitted deviations referred to as the "**Permitted Operating Expense Deviations**"). Nothing herein shall prevent Borrower from making any payment with respect to the Project as determined by Borrower to be necessary or appropriate to protect the Project or Borrower's interest therein, whether or not Lender shall approve of the same.

Section 6.20 **Mandatory Principal Paydown.** Lender shall have the right, until the date that is one hundred eighty (180) days following the Closing Date, to order an Appraisal (a "**Margin Test Appraisal**"), and Borrower shall fully cooperate with any appraiser performing such Margin Test Appraisal, including, without limitation, providing access to the Project during normal business hours and providing any documentation or information reasonably requested by such appraiser in connection therewith. Following such Margin Test Appraisal, Borrower shall be required to satisfy the following requirements (collectively, the "**Margin Test Requirements**"): (i) a Loan to Value Ratio no less than seventy-five percent (75%), (ii) a Debt Yield no less than eight and eighty hundredths percent (8.80%), (iii) a Stabilized Loan to Value Ratio no less than sixty-five percent (65%), and (iv) a Stabilized Debt Yield no less than eleven and eighty hundredths percent (11.80%). In the event any of the Margin Test Requirements are not satisfied in Lender's reasonable discretion, Borrower shall, within fifteen (15) Business Days following Lender's request therefor, make a payment of principal to Lender in an amount which shall be sufficient, when applied to the outstanding principal balance of the Loan, to cause all of the Margin Test Requirements to be satisfied in Lender's reasonable discretion.

Section 6.21 **Capital Improvements.** Borrower shall diligently perform the Work and shall achieve Completion of the Capital Improvements in a good and workmanlike manner no later than the Completion Date.

ARTICLE 7

FINANCIAL REPORTING

Section 7.1 Financial Statements.

(1) **Quarterly Reports.** Within forty-five (45) days after the end of each calendar quarter (including the calendar quarter ending December 31), Borrower shall furnish to Lender, as applicable, a current (as of the calendar quarter just ended) balance sheet, a detailed operating statement stating operating revenues, operating expenses and net cash flow for such calendar quarter, an updated rent roll, and, if requested by Lender, a written statement setting forth any variance from the annual budget, a general ledger, copies of bank statements and bank reconciliations and other documentation supporting the information disclosed in the most recent financial statements.

(2) **Annual Reports.** Within ninety (90) days after the end of each calendar year, Borrower shall furnish to Lender a current (as of the end of such year) balance sheet, a detailed operating statement stating operating revenues, operating expenses and net cash flow for each of Borrower and the Collateral.

(3) **Certification; Supporting Documentation.** Each such financial statement shall be in scope and detail satisfactory to Lender and certified by an officer of Borrower.

(4) **Tax Returns.** Borrower shall furnish to Lender copies of Borrower's filed federal, state and local income tax returns for each taxable year (with all forms and supporting schedules attached) within thirty (30) days after filing. By executing this Agreement, Borrower authorizes Lender to obtain for information and verification purposes from the U.S. Internal Revenue Service (IRS) a transcript of any Form 1040, Form 1120, Form 1120S, Form 1165, Form W-2, Form 1099, and other income tax forms actually filed with the IRS with respect to such tax years. Borrower agrees to provide to Lender fully executed IRS Forms 4506-T for such purposes at any time upon request of Lender.

(5) **Failure to Provide.** In the event that Borrower or any Guarantor fails to provide to Lender the financial statements required under this **Section 7.1** or under the Guaranty when due and such failure continues for a period of thirty (30) days after notice from Lender, Borrower shall pay to Lender the sum of \$1,000.00 per day until such failure is cured. Nothing herein, however, shall waive Lender's right to declare an Event of Default if such failure continues for a period of thirty (30) days after notice from Lender and to charge Borrower interest at the Default Rate.

Section 7.2 **Accounting Principles.** All financial statements shall be prepared in accordance with sound accounting principles (or such other accounting basis reasonably

acceptable to Lender) consistently applied from year to year. If the financial statements are prepared on an accrual basis, such statements shall be accompanied by a reconciliation to cash basis accounting principles.

Section 7.3 **Other Information.** Borrower shall deliver to Lender such additional information regarding Borrower, its subsidiaries, its business, any Borrower Party, and the Project within thirty (30) days after Lender's reasonable request therefor.

Section 7.4 **Audits.** Lender and its agents and third-party consultants shall be entitled at any time and from time to time to perform such financial investigations and audits of Borrower's books and records as such party shall deem necessary, but not more often than once per calendar year unless an Event of Default has occurred, provided, however, that any such financial investigations and audits shall be at Lender's expense unless an Event of Default shall then be in existence. Borrower shall permit such parties to examine such records, books and papers of Borrower which reflect upon its financial condition, the income and expenses relative to the Project and the representations set forth in **Article 8.** Borrower authorizes Lender to communicate directly with Borrower's accountants, and authorizes such accountants to disclose to Lender any and all financial statements and other supporting financial documents and schedules, including copies of any management letter, with respect to the business, financial condition and other affairs of Borrower.

ARTICLE 8

ANTI-MONEY LAUNDERING AND INTERNATIONAL TRADE CONTROLS

Section 8.1 **Compliance with International Trade Control Laws and OFAC Regulations; Borrower's Funds.** Borrower represents, warrants and covenants to Lender that:

(1) **Borrower Not a Prohibited Person.** Neither Borrower, nor any Borrower Party, nor, to Borrower's knowledge, any Person who owns a direct interest in Borrower, is now nor shall be at any time until after the Loan is fully repaid a Person with whom a U.S. Person, including a Financial Institution, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under U.S. law, regulation, executive orders and lists published by the OFAC (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons) or otherwise.

(2) **Verification of Funds.** It has taken, and shall continue to take until after the Loan is fully repaid, such measures as are required by law to verify that the funds invested in Borrower and funds used to make payments on the Loan (including operating revenues and funds used to repay the Loan, whether from a refinancing, asset sale or otherwise) are derived (a) from transactions that do not violate U.S. law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (b) from permissible sources under U.S. law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated.

(3) **No Investigations or Penalties.** Neither Borrower nor any Borrower Party, nor any holder of a direct interest in Borrower, nor any Person providing funds to Borrower (a) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws; (b) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; and (c) has had any of its/his/her funds seized or forfeited in any action under any Anti-Money Laundering Laws.

(4) **Payments.** Borrower shall make payments on the Loan solely from funds invested in Borrower, operating revenues or insurance proceeds unless otherwise agreed to by Lender.

ARTICLE 9

EVENTS OF DEFAULT AND CURE PERIODS

Each of the following shall constitute an “**Event of Default**”:

Section 9.1 Events of Default Not Subject to Cure Periods.

(1) **Payment of Principal and/or Interest.** Borrower’s failure to pay any regularly scheduled installment of principal or interest on the Loan within ten (10) days of (and including) the date on which the same is due, except in the case of Borrower’s failure to pay any regularly scheduled installment of interest when due, if the amount on deposit in the Interest Reserve is sufficient to make such payment and Borrower’s failure to make such payment results from the failure of Lender to apply such available funds in the Interest Reserve as set forth in **Section 3.1(2)**.

(2) **Payment at Maturity.** Borrower’s failure to pay the Loan and all amounts owing under the Loan Documents on the Maturity Date.

(3) **Insurance.** Borrower’s failure to maintain insurance as required under **Section 4.1** of this Agreement.

(4) **Transfer.** Any Transfer occurs in violation of **Section 6.1** of this Agreement or any breach under **Section 6.3** of this Agreement.

(5) **Article 8 Compliance.** Borrower’s failure to perform, observe or comply with any of the agreements, covenants or provisions contained in **Article 8**.

(6) **Voluntary Petitions, Etc.** Commencement by Borrower or any Borrower Party (each, a “**Bankruptcy Party**”) of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debts or other liabilities, or seeking to consolidate its assets with the assets of any other Person, under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any of its property, or

consent by a Bankruptcy Party to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it or its assets, or the making by a Bankruptcy Party of a general assignment for the benefit of creditors, or the failure by a Bankruptcy Party, or the admission by a Bankruptcy Party in writing of its inability, to pay its debts generally as they become due, or any action by a Bankruptcy Party to authorize or effect any of the foregoing.

(7) **Major Project Documents.** The default by Borrower under any Major Project Document and Borrower's failure to cure such default (or obtain a written waiver of such default) prior to the end of any applicable cure period set forth in such Major Project Document.

(8) **Single Purpose Entity Covenants.** Borrower's failure to perform, observe or comply with any of the agreements, covenants or provisions contained in **Section 6.7.**

(9) **Completion of Capital Improvements.** Completion of the Capital Improvements has not occurred on or prior to the Completion Date.

Section 9.2 **Events of Default Subject to Specific Cure Periods.**

(1) **Payments Prior to Maturity.** Borrower's failure to pay any amount (other than as described in **Section 9.1(1) or (2)**) owing under the Loan Documents, within ten (10) days of (and including) the date when due.

(2) **Involuntary Bankruptcy or Other Proceeding.** Commencement of an involuntary case or other proceeding against any Bankruptcy Party, or against the assets of any Bankruptcy Party, which seeks liquidation, reorganization or other relief with respect to such Bankruptcy Party or its Debts or other liabilities, or seeks to consolidate the assets of such Bankruptcy Party with the assets of any other Person, under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any of its property; and such involuntary case or other proceeding shall remain undismissed or un-stayed for a period of sixty (60) days; or an order for relief against a Bankruptcy Party or its assets shall be entered in any such case under the Federal Bankruptcy Code.

(3) **Representations and Warranties.** If any representation or warranty made in any Loan Document proves to be untrue in any material respect as of the date the representation or warranty was made.

Section 9.3 **Other Events of Defaults.**

(1) **Specified Events of Default.** The occurrence of any specified "Event of Default" under this Agreement (not otherwise described in this **Article 9**) or under any other Loan Document.

(2) **Specified Defaults Under Other Loan Documents.** If any term, covenant or provision set forth in the Loan Documents under which Borrower or Guarantor is obligated expressly contains a specific grace or notice period, then Borrower's or Guarantor's failure to perform, observe or comply with such term, covenant or condition after the expiration of such grace or notice period, as applicable.

(3) **Covenants Without Specific Grace Periods.** Borrower or Guarantor shall continue to be in default under any of the other terms, covenants or provisions of this Agreement not specified in **Section 9.1**, **Section 9.2** or **Section 9.3(1) or (2)**, or under any of the terms, covenants or provisions contained in the other Loan Documents, for fifteen (15) days after receipt of written notice of such default from Lender, in the case of any default which can be cured by the payment of a sum of money, or for thirty (30) days after receipt of notice of such default from Lender in the case of any other default; provided, however, that if (a) such non-monetary default is susceptible of cure but cannot reasonably be cured within such 30-day period, (b) the defaulting party shall have commenced to cure such default within such 30-day period and thereafter is diligently and expeditiously proceeding to cure such default, and (c) the defaulting party has provided Lender with security satisfactory to Lender against any interruption of payment or impairment of collateral as a result of such continuing default, then such 30-day period shall be extended for such additional time as is reasonably necessary for the defaulting party, exercising due diligence, to cure such default, provided further that in no event shall such additional period exceed thirty (30) days.

ARTICLE 10

LENDER'S REMEDIES

Section 10.1 **Remedies - Insolvency Events.** Upon the occurrence of any Event of Default described in **Section 9.1(6)** or **Section 9.2(2)**, the obligations of Lender to advance amounts hereunder shall immediately terminate, and all amounts due under the Loan Documents immediately shall become due and payable, all without written notice and without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or any other notice of default of any kind, all of which are hereby expressly waived by Borrower; however, if the Bankruptcy Party under **Section 9.1(6)** or **Section 9.2(2)** is other than Borrower, then all amounts due under the Loan Documents shall become immediately due and payable at Lender's election, in Lender's sole discretion.

Section 10.2 **Remedies - Other Events.** Except as set forth in **Section 10.1** above, while any Event of Default exists, Lender may (1) by written notice to Borrower, declare the entire Loan to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or other notice of default of any kind, all of which are hereby expressly waived by Borrower, (2) terminate the obligation, if any, of Lender to advance amounts hereunder, and (3) in any order as Lender may desire, in its sole discretion, exercise all rights and remedies therefor under the Loan Documents and at law or in equity including, but not limited to, the right to foreclose on any mortgage(s) of real property securing the Loan.

Section 10.3 **Lender's Right to Perform the Obligations.** If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then while any Event of Default exists, and without notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Lender may have because of such Event of Default, Lender may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrower, and shall have the right to enter upon the Collateral (or the Project to the extent of Borrower's rights) for such purpose and to take all such action thereon and with respect to the Collateral (or the Project to the extent of Borrower's rights) as it may deem necessary or appropriate. If Lender shall elect to pay any sum due from Borrower with reference to the Collateral (or the Project to the extent of Borrower's rights), Lender may do so in reliance on any bill, statement or assessment procured from the appropriate governmental authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, Lien, claim or charge before making an advance for the purpose of preventing or removing the same. Borrower shall indemnify, defend and hold Lender harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees and disbursements, incurred or accruing by reason of any acts performed by Lender pursuant to the provisions of this **Section 10.3**, including those arising from the joint, concurrent, or comparative negligence of Lender, except to the extent caused by (i) Lender's or Lender's agent's negligence or willful misconduct or any illegal act of Lender, or (ii) any such occurrence or non-occurrence that initially occurs after final completion of foreclosure or other taking of title to or possession of the Collateral by Lender or other third party. All sums paid by Lender pursuant to this **Section 10.3** and all other sums expended by Lender to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date that is thirty (30) days after written demand for payment until paid, shall constitute additions to the Loan, shall be secured by the Loan Documents and shall be paid by Borrower to Lender upon demand.

ARTICLE 11

LIMITATIONS ON LIABILITY

Section 11.1 **Limitation on Liability.**

(1) **No Personal Liability.** Except as provided below in this **Section 11.1**, Borrower shall not be personally liable for amounts due under the Loan Documents.

(2) **Liability or Breach.** Borrower shall be personally liable to Lender for Borrower's breach of any representation, warranty, covenant, or Borrower's failure to perform any of its obligations, under the Hazardous Materials Indemnity Agreement.

(3) **Recourse Events.** Borrower shall be personally liable to Lender for any loss, cost, damage or expense (including reasonable attorneys' fees) actually suffered or incurred by Lender due to Borrower's or any Borrower Party's:

- (a) misappropriation, misapplication or conversion of funds derived from the Collateral, including, without limitation, Loss Proceeds, including the transfer of funds to any Affiliate of Borrower or Borrower Party or any direct or indirect owner of any of them, in violation of this Agreement or any other Loan Document; or
- (b) fraud or material misrepresentation made in or in connection with the Loan Documents, the Collateral or the Loan; or
- (c) any gross negligence or willful misconduct by Borrower or Guarantor; or
- (d) criminal acts which result in the actual forfeiture of the Project; or
- (e) entering into any lease, license or occupancy agreement (or amending, modifying, canceling or terminating any lease, license or occupancy agreement or monetary obligation of any tenant under a Lease) in violation of this Agreement; or
- (f) failure to maintain insurance as required by this Agreement to the extent that the revenue from the Project is sufficient to pay the insurance premiums relating thereto; or
- (g) failure to pay any brokerage commission or finder's fees of any party claiming by or through Borrower or any Borrower Party or any Affiliate of Borrower or any Borrower Party or any direct or indirect owner of any of them in connection with the transactions contemplated by the Loan Documents, to the extent that the revenue from the Project is sufficient to pay the same; or
- (h) failure to remove any judgment lien affecting the Project to the extent that the revenue from the Project is sufficient to pay for such removal; or
- (i) incurring any Debt in violation of this Agreement; or
- (j) breach of its obligations under **Section 4.2** or **Section 4.3** of this Agreement; or
- (k) breach of **Section 5.13** of this Agreement; or
- (l) failure to perform, observe or comply with any of the agreements, covenants or provisions contained in **Section 6.7** of this Agreement; or
- (m) breach of its obligations under **Section 6.10** of this Agreement with respect to any Mechanic's Lien to the extent caused by the voluntary acts or omissions of Borrower; or
- (n) failure to deliver Key Tenant Replacement Funds to Lender as and when required by **Section 3.1(3)** of this Agreement.

(4) **Full Recourse Events.** Notwithstanding anything to the contrary contained in the Loan Documents, the limitation on Borrower's liability contained in **Section 11.1(1)** SHALL BECOME NULL AND VOID and shall be of no further force and effect, and Borrower shall be personally liable for all amounts due under the Loan Documents, if any of the following occurs:

(a) any Transfer in violation of **Section 6.1** of this Agreement occurs other than (i) any judgment lien, (ii) any Mechanic's Lien, (iii) any other involuntary lien or involuntary encumbrance or (iv) any Taking; or

(b) Any breach of **Section 6.3** of this Agreement occurs (unless caused by the death or legal disability of any natural person); or

(c) Borrower files a petition under the United States Bankruptcy Code or similar state insolvency laws; or

(d) Borrower's or Guarantor's assets are substantively consolidated with the assets of an Affiliate of Borrower or Guarantor in any proceeding commenced under the United States Bankruptcy Code or similar state insolvency laws; or

(e) Borrower becomes the subject of an involuntary proceeding under the United States Bankruptcy Code or similar state insolvency laws, and either (i) Borrower, Guarantor or any Affiliate of Borrower or Guarantor conspired or cooperated with, or solicited, one or more creditors to commence such involuntary proceeding, or (ii) the claims of one or more of the creditors of Borrower that commenced such involuntary proceeding arise from Debts intentionally incurred by Borrower in violation of this Agreement; or

(f) Borrower, Guarantor or any Affiliate of Borrower or Guarantor interferes with Lender's exercise of remedies under the Loan Documents, other than Borrower's good faith challenge to the existence of the Event of Default which gave rise to Lender's exercise of such remedies or good faith counterclaims in a proceeding brought by Lender which if not raised in such proceeding would be barred as a matter of law; or

(g) any claim or allegation made by Borrower or any Borrower Party that this Agreement or the transactions contemplated by the Loan Documents establish a joint venture, partnership or other similar arrangement between Borrower and Lender.

(5) **No Waiver.** Nothing in this **Section 11.1** shall be deemed to be a waiver of any right which Lender may have under **Sections 506(a), 506(b), 1111(b)** or any other provision of the United States Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim for the full amount due to Lender under the Loan Documents or to require that all Collateral shall continue to secure the amounts due under the Loan Documents.

(6) **Fees and Costs.** Borrower also shall be personally liable to Lender for any and all reasonable out of pocket attorneys' fees and expenses and court costs actually incurred by Lender in enforcing this **Section 11.1** or otherwise actually incurred by Lender in connection with enforcement of the foregoing matters, regardless of whether such matters are legal or equitable in nature or arise under tort or contract law.

Section 11.2 **Limitation on Liability of Lender's and Lender's Officers, Employees, Etc.** Any obligation or liability whatsoever of Lender which may arise at any time under this Agreement or any other Loan Document shall be satisfied, if at all, out of Lender's or Lender's assets only, as applicable. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of Lender's or Lender's respective shareholders, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

ARTICLE 12

MISCELLANEOUS

Section 12.1 **Notices.** All notices required or permitted to be given hereunder (each, a "**Notice**") shall be in writing addressed to the party to be so notified at its address set forth below, or at such other address as such party may specify by giving at least ten (10) days' prior written notice of such change of address, and (1) sent by electronic mail, in each case with a copy of the Notice sent concurrently by one of the means described in clauses (2), (3) or (4) below (provided that for electronic mail delivery, the beginning of the subject line in such electronic mail shall state, in capitalized letters: "NOTICE PURSUANT TO LOAN AGREEMENT SECTION 12.1"), (2) sent by registered or certified mail, postage prepaid, return receipt requested, (3) delivered by hand, or (4) delivered by reputable overnight commercial courier. Notices shall be deemed to have been received: (a) if sent by electronic mail, upon the earlier of (i) the date that the sender receives an electronic mail response from an employee or representative of the party receiving notice on behalf of such party, acknowledging receipt (which response shall not be a computer generated response) and (ii) the date of delivery on a Business Day (or the first attempted delivery if refused) of the copy of such Notice delivered in accordance with clause (2), (3) or (4) above, and (b) if delivered by hand, sent by registered or certified mail, or sent by overnight commercial courier, on the date of delivery on a Business Day (or the first attempted delivery if refused).

Addresses for Notices:

If to Borrower:

Baruch Broad Street, LLC
 c/o Zamir Equities LLC
 551 Fifth Avenue, Suite 2500
 New York, New York 10176
 Attn: Asher Roshanzamir
 Email: asher@zamirequities.com

with a copy to:

Morrison Cohen LLP
909 Third Avenue
New York, New York 10022
Attention: Stephen Soleymani, Esq.
Email: ssoleymani@morrisoncohen.com

If to Lender:

AFF IV 88 E Broad, LLC
c/o The Ardent Companies
3565 Piedmont Road NE
One Piedmont Center, Suite 200
Atlanta, Georgia 30305
Attention: Dror Bezalel
Email: dbezalel@theardentcompanies.com

with a Copy to:

Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Attention: Michael Baum
Email: baumm@gtlaw.com

Section 12.2 **Amendments, Waivers, References.** This Agreement and any other Loan Document may be amended, modified or supplemented only by a written instrument signed by Borrower and Lender. No waiver of any provision of the Loan Documents shall be effective unless in writing and signed by the party against whom enforcement is sought provided that copies of original signature pages to the amendment, modification or supplement, including copies delivered by PDF or other electronic means, shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Agreement. This Agreement and the other Loan Documents shall not be executed, entered into, altered, amended, or modified by electronic means. Without limiting the generality of the foregoing, Borrower and Lender hereby agree that no exchange of electronic correspondence between the parties shall operate to amend, modify or waive any term or provision of any Loan Document. Any reference to a Loan Document, whether in this Agreement or in any other Loan Document, shall be deemed to be a reference to such Loan Document as it may hereafter from time to time be amended, modified, consolidated, replaced, severed, supplemented, extended and restated.

Section 12.3 **Limitation on Interest.** It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements between Borrower, Lender with

respect to the Loan are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Lender or charged by Lender for the use, forbearance or detention of the money to be lent hereunder or otherwise, exceed the maximum amount allowed by law. If the Loan would be usurious under applicable law, then, notwithstanding anything to the contrary in the Loan Documents: (1) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, taken, reserved, charged or received under the Loan Documents shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on the Note by the holder thereof (or, if the Note has been paid in full, refunded to Borrower); and (2) if maturity is accelerated by reason of an election by Lender, or in the event of any prepayment, then any consideration which constitutes interest may never include more than the maximum amount allowed by applicable law. In such case, excess interest, if any, provided for in the Loan Documents or otherwise, to the extent permitted by applicable law, shall be amortized, prorated, allocated and spread from the date of advance until payment in full so that the actual rate of interest is uniform through the term hereof. If such amortization, proration, allocation and spreading is not permitted under applicable law, then such excess interest shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on the Note (or, if the Note has been paid in full, refunded to Borrower). The terms and provisions of this **Section 12.3** shall control and supersede every other provision of the Loan Documents.

Section 12.4 **Invalid Provisions.** If any provision of any Loan Document is held to be illegal, invalid or unenforceable, such provision shall be fully severable; the Loan Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; the remaining provisions thereof shall remain in full effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of such Loan Document a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

Section 12.5 **Reimbursement of Expenses.** Borrower shall pay or reimburse Lender or Servicer, as applicable, on demand for (1) all reasonable and actual out-of-pocket costs and expenses actually incurred by Lender in connection with the negotiation, documentation, closing, disbursement and administration of the Loan, including reasonable fees and expenses of Lender's or Servicer's outside attorneys and Lender's or Servicer's environmental, engineering, accounting, appraisal and other consultants; fees, charges and taxes for the recording or filing of Loan Documents; financial investigation, audit and inspection fees and costs; settlement of condemnation and casualty awards; title search costs, premiums for title insurance and endorsements thereto; fees and costs for lien and litigation searches and background checks; and costs and expenses of responding to third-party subpoenas; and (2) all amounts actually expended, advanced or incurred by Lender or Servicer to collect under the Note, or to enforce the rights of Lender under this Agreement or any other Loan Document, to protect, defend or assert the rights, claims and actions of Lender under the Loan Documents or with respect to the Collateral (by litigation or other proceedings) or to defend any claims asserted against Lender by Borrower or any Borrower Party with respect to the Loan, the Loan Documents, the Collateral or the transactions contemplated hereby, which amounts will include all transfer taxes payable upon foreclosure of any Collateral, court costs, reasonable attorneys' fees and expenses, fees of

auditors and accountants, and investigation expenses as may be incurred by Lender in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the date that is thirty (30) days after written demand for payment until the date of reimbursement to Lender. All amounts payable by Borrower to Lender under this **Section 12.5** shall constitute part of the Loan and shall be secured by the Loan Documents.

Section 12.6 **Approvals; Third Parties; Conditions.** All rights retained or exercised by Lender to review or approve leases, contracts, plans, studies and other matters, including Borrower's and any other Person's compliance with the provisions of **Article 8** and compliance with laws applicable to Borrower, the Project or any other Person, are solely to facilitate Lender's credit underwriting and administration of the Loan, and shall not be deemed or construed as a determination that Lender has passed on the adequacy thereof for any other purpose and may not be relied upon by Borrower or any other Person. This Agreement is for the sole and exclusive use of Lender and Borrower and may not be enforced, nor relied upon, by any Person other than Lender and Borrower. All conditions of the obligations of Lender hereunder, including the obligation to make advances, are imposed solely and exclusively for the benefit of Lender, its successors and assigns, and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all of such conditions, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Lender at any time in their sole discretion.

Section 12.7 **Lender Not in Control; No Partnership.**

(1) **Lender's Status.** None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Lender the right or power to exercise control over the affairs or management of Borrower. The power of Lender is limited to the right to exercise the rights and remedies under the Loan Documents.

(2) **Relationship of Parties.** Borrower and Lender agree that the relationship between Borrower and Lender is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Loan Documents is intended, nor shall be deemed or construed, to create, and Lender and Borrower disclaim any intention to create, a partnership, joint venture, agency or common interest in profits or income among Lender and Borrower, or to create an equity in the Collateral in Lender, or any sharing of liabilities, losses, costs or expenses. Lender neither undertakes nor assumes any responsibility or duty to Borrower, to any direct or indirect constituent partners, members, stockholders or investors in Borrower (each, a "**Borrower Investor**") or to any other Person with respect to the Collateral or the Loan, except as expressly provided in the Loan Documents. Notwithstanding any other provision of the Loan Documents: (a) Lender shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind in Borrower or any Borrower Investor or Borrower Party, and neither Lender nor Lender intends to ever assume such status; (b) Lender shall in no event be liable for any debts, expenses or losses incurred or sustained by Borrower or any Borrower Investor or Borrower Party; and (c) Lender shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower or any Borrower Investor or Borrower Party.

Section 12.8 **Time of the Essence.** Time is of the essence with respect to this Agreement and the other Loan Documents.

Section 12.9 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Lender and Borrower and their respective successors and permitted assigns, provided that neither Borrower nor any Borrower Party shall, without the prior written consent of Lender, assign any rights, duties or obligations hereunder.

Section 12.10 **Renewal, Extension or Rearrangement.** Subject to **Section 12.9**, all provisions of the Loan Documents shall apply with equal effect to each and all promissory notes and amendments thereof hereinafter executed which in whole or in part represent a renewal, extension, increase or rearrangement of the Loan.

Section 12.11 **Waivers.** No course of dealing on the part of Lender, its respective officers, employees, consultants or agents, nor any failure or delay by Lender with respect to exercising any right, power or privilege of Lender under any of the Loan Documents, shall operate as a waiver thereof. Any waiver of a Potential Default or an Event of Default shall not be construed to be a waiver of any subsequent occurrence of the same or any other Potential Default or Event of Default.

Section 12.12 **Cumulative Rights.** The rights, powers and remedies of Lender under the Loan Documents shall be cumulative and not exclusive of any right, power or remedy available at law or in equity or otherwise. The exercise or partial exercise of any such right, power or remedy shall not preclude the exercise of any other right, power or remedy, each of which may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in its sole discretion.

Section 12.13 **Promotional Material.** Borrower authorizes Lender to issue press releases, advertisements and other promotional materials in connection with Lender's or Lender's own promotional and marketing activities, and describing the Loan in general terms or in detail and Lender's or Lender's participation in the Loan, provided that all references to Borrower, any Borrower Party and/or the Collateral contained in any such press releases, advertisements or promotional materials shall be approved in writing by Borrower in advance of issuance. All references to Lender contained in any press release, advertisement or promotional material issued by Borrower shall be approved in writing by Lender in advance of issuance.

Section 12.14 **Survival.** All of the indemnities of Borrower hereunder, and under the indemnification provisions of the other Loan Documents, shall survive the repayment in full of the Loan and the release of the Liens evidencing or securing the Loan, and shall survive the transfer (by sale, foreclosure, conveyance in lieu of foreclosure or otherwise) of any or all right, title and interest in and to the Collateral to any party, whether or not an Affiliate of Borrower.

Section 12.15 **WAIVER OF JURY TRIAL.** **TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN**

DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS OR IN ANY WAY RELATING TO THE LOAN OR THE COLLATERAL (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE LENDER TO ENTER INTO THIS AGREEMENT.

Section 12.16 **Punitive or Consequential Damages; Waiver.** Lender shall not be responsible or liable to Borrower, any Borrower Party or any Affiliate of any of them for any punitive, exemplary or consequential damages which may be alleged by Borrower, any Borrower Party or any Affiliate of any of them as a result of the Loan or the transactions contemplated hereby, including any breach or other default by any party hereto. Borrower represents and warrants to Lender that as of the Closing Date neither Borrower nor any Borrower Party has any claims against Lender in connection with the Loan.

Section 12.17 **Governing Law; Jurisdiction and Venue.**

(1) **Governing Law.** THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS (EXCEPT FOR THE SECURITY INSTRUMENT, WHICH SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS (EXCEPT THE SECURITY INSTRUMENT), AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS (EXCEPT THE SECURITY INSTRUMENT) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(2) **Jurisdiction and Venue.** BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THE LOAN SHALL BE LITIGATED IN THE FEDERAL OR STATE COURTS LOCATED IN NEW YORK COUNTY, NEW YORK PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS

OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. Borrower waives any claim that such court is an inconvenient forum or an improper forum based on lack of venue. Should Borrower, after being so served, fail to appear or answer to any summons, complaint, process or papers so served within the number of days prescribed by law after the mailing thereof, Borrower shall be deemed in default and an order and/or judgment may be entered by Lender against Borrower as demanded or prayed for in such summons, complaint, process or papers. The exclusive choice of forum for Borrower set forth in this section shall not be deemed to preclude the enforcement by Lender of any judgment obtained in any other forum or the taking by Lender of any action to enforce the same in any other jurisdiction, and Borrower hereby waives the right, if any, to collaterally attack any such judgment or action.

BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Morrison Cohen LLP
 909 Third Avenue
 New York, New York 10022
 Attention: Stephen Soleymani, Esq.
 Email: ssoleymani@morrisoncohen.com

AS ITS AUTHORIZED AGENT TO TAKE, RECEIVE AND FORWARD PROCESS ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER, IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 12.18 **Entire Agreement.** This Agreement and the other Loan Documents embody the entire agreement and understanding between Lender, on the one hand, and Borrower, on the other hand, and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof, including any commitment letter (if

any) issued by Lender with respect to the Loan and any confidentiality agreements previously executed by the parties with respect to the Loan. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. If any conflict or inconsistency exists between this Agreement and any of the other Loan Documents (other than the Hazardous Materials Indemnity Agreement), the terms of this Agreement shall control.

Section 12.19 **Counterparts.** This Agreement may be executed in multiple counterparts, any or all of which may contain the signatures of fewer than all of the parties, but all of which taken together shall constitute a single instrument. Copies of originals, including copies delivered by PDF or other electronic means, shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Agreement.

Section 12.20 **Brokers.** Borrower hereby represents to Lender that Borrower has not dealt with any broker, underwriters, placement agent, or finder in connection with the transactions contemplated by this Agreement and the other Loan Documents. Borrower hereby agrees to indemnify and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower in connection with the transactions contemplated herein.

Section 12.21 **Claims Against Lender.** Lender shall not be in default under this Agreement, or under any other Loan Documents, unless a written notice specifically setting forth the default claimed by Borrower shall have been given to Lender within six (6) months after Borrower first had knowledge of the occurrence of the event which Borrower alleges gave rise to such claimed default and Lender does not remedy or cure the default, if any default actually exists, promptly thereafter. Borrower waives any claim, set-off or defense against Lender arising by reason of any alleged default by Lender as to which Borrower does not give such notice timely as required by this **Section 12.21** and, in any event, within six (6) months after the Maturity Date or earlier repayment of the Loan. Borrower acknowledges that such waiver is or may be essential to Lender's ability to enforce its remedies without delay and that such waiver therefore constitutes a substantial part of the bargain between Lender and Borrower with regard to the Loan. No Borrower Party or tenant of the Project is intended to have any rights as a third-party beneficiary of the provisions of this **Section 12.21**.

Section 12.22 **Assignments and Participations.**

(1) **Assignments by Borrower.** Borrower may not assign any of its rights or obligations hereunder or under the Note without the prior written consent of Lender in its sole discretion.

(2) **Assignments by Lender.** Lender may assign any or all of its portion of the Loan and the Note without the prior written consent of Borrower.

(3) **Participations.** Lender may, at its sole cost and expense, sell or agree to sell to one or more other Persons (each a “**Participant**”) a participation in all or any part of the Loan without the prior written consent of Borrower.

(4) **Pledges.** Lender may, at its sole cost and expense, pledge all or any portion of its portion of the Loan and Note to any Person without the prior written consent of Borrower.

(5) **Provision of Information to Assignees, Participants and Pledgees.** Lender may furnish any information concerning Borrower or any of its Affiliates in the possession of Lender from time to time to assignees and Participants (including prospective assignees and Participants).

Section 12.23 **Joint and Several Liability.** The liability of all persons and entities obligated in any manner under this Agreement or any of the Loan Documents, other than Lender, shall be joint and several.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the undersigned have executed this Loan and Security Agreement as of the date first above written.

LENDER:

AFF IV 88 E BROAD, LLC,
a Delaware limited liability company

By:_____

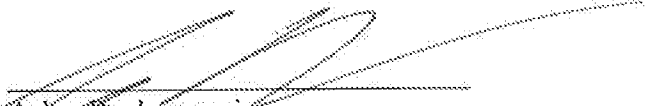
Name: Dror Bezalel

Title: Vice President

[Signatures continued on following page.]

BORROWER:

BARUCH BROAD STREET, LLC,
a Delaware limited liability company

By: 

Name: Asher Koshanzamir

Title: Authorized Signatory

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the of Columbus, County of Franklin, State of Ohio.

Tract I

Situated in the City of Columbus, County of Franklin, State of Ohio, and being all of Inlot No. 445 and 62.5 feet of the rear (North) end of Inlot No. 446 in the City of Columbus as the same are numbered and delineated upon the recorded plat thereof, recorded in Deed Book F, Page 332 (record burned); and re-recorded in Plat Book 3, Pages 247, 248 and 249 and also in Plat Book 14, Page 27 of Franklin County Records.

And also described as shown as follows:

Situated in the City of Columbus, County of Franklin, State of Ohio, and being all of Inlot No. 445 and a part of Inlot No. 446 as the same are numbered and delineated upon the recorded plat thereof, recorded in Deed Book F, Page 332 (record burned); and re-recorded in Plat Book 3, Pages 247, 248 and 249 and also in Plat Book 14, Page 27 of Franklin County Records, and being more particularly described as follows:

Beginning at the Northwestern intersection of the right of way lines of East Broad Street (120 feet wide) and Third Street (82.5 feet wide), and being the Southeasterly corner of said Inlot No. 445; thence North 90 deg. 00' 00" West, a distance of 62.80 feet, along the Southerly line of said Inlot 445 and the Northerly line of East Broad Street, to a point at the Southwesterly corner of said Inlot 445 and being the Southeasterly corner of said Inlot No. 446 as conveyed to the City National Bank & Trust Company by deed recorded in Deed Book 1648, Page 71 of Franklin County Records; thence North 00 deg. 00' 00" West, a distance of 125 feet, along the line common to said Inlots 445 and 446, to a point; thence North 90 deg. 00' 00" West, a distance of 62.50 feet, across said Inlot 446, to a point on the Westerly line of said Inlot; thence North 00 deg. 00' 00" West, a distance of 62.50 feet, along the Westerly line of said Inlot 446, to a point on the Northerly line of said Inlot 446 and being on the Southerly right of way of Lynn Street (33 feet wide); thence North 89 deg. 56' 45" East, a distance of 125.30 feet, along the Northerly line of said Inlots 445 and 446 and the Southerly right of way line of Lynn Street, to a point, said point being on the Westerly right of way line of Third Street, and being the Northeasterly corner of Inlot 445; thence South 00 deg. 00' 00" East, a distance of 187.50 feet, along the Easterly line of said Inlot 445, being the Westerly right of way line of said Third Street, to the point of beginning, containing 0.359 acres of land. Bearings shown hereon are based on an assumed bearing of North 90 deg. 00' 00" East for the centerline of East Broad Street.

Tract II

Being One Hundred Twenty-five (125) feet off the south end of Inlot Number Four Hundred Forty-six (446) and a part of Inlot Number Four Hundred Forty-seven (447) to the City of Columbus, as the same are numbered and delineated upon the recorded plat of said City, of

record in D.B. "F", Page 332, Recorder's Office, Franklin County, Ohio, which part of said Inlot No. 447 is bounded and described as follows:

Beginning at the southeast corner of said Inlot No. 447; thence northerly along the east line of said Inlot to the north line thereof; thence westerly along the north line of said Inlot, forty-one and five tenths (41.5) feet more or less to a point in the said north line; thence southerly on a line parallel with the east line of said Inlot, eighty (80) feet to a point; thence easterly parallel with the north line of said Inlot, eighteen (18) feet to a point; thence southerly parallel with the east line of said Inlot to the south line of said Inlot; thence easterly along the south line of said Inlot, twenty-three and five tenths (23.5) feet more or less to the place of beginning.

NOTE FOR INFORMATION: Being Parcel No. 010-011313 (Tract I) and 010-066864 (Tract II), of the City of Columbus, County of Franklin

EXHIBIT B
INITIAL APPROVED BUDGET

Database:22 Budget

ENTITY:Z88EB

Accounting Basis:Accrual

ACCT													
NO. ACCT DESCRIPTION	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
OPERATING INCOME													
In-Place Base Rent	262,975	263,270	259,159	259,828	263,414	263,414	260,151	260,199	264,313	281,420	281,531	281,531	3,201,205
Free Rent	-4,413	-4,413	-4,413	0	-6,146	-2,555	-2,555	0	-3,240	-17,057	-17,057	-17,057	-78,906
Reimbursements	11,591	11,591	11,171	11,171	11,149	11,149	10,591	10,591	10,591	10,591	10,591	10,591	131,368
Parking Income	5,150	5,150	5,150	5,150	5,150	5,150	5,150	5,150	5,150	5,150	5,150	5,150	61,800
Other Income	959	959	959	959	959	959	959	959	959	959	959	959	11,506
TOTAL OPERATING INCOME	276,262	276,557	272,026	277,108	274,526	278,117	274,296	276,899	277,773	281,063	281,174	281,174	3,326,973
OPERATING EXPENSES													
ADMINISTRATIVE													
TOTAL ADMINISTRATIVE	3,851	3,851	3,851	3,851	3,851	3,851	3,851	3,851	3,851	3,851	3,851	3,851	46,212
CLEANING/SERVICE													
TOTAL CLEANING/SERVICE	36,108	36,108	36,108	36,108	36,108	36,108	36,108	36,108	36,108	36,108	36,108	36,108	433,290
INSURANCE													
TOTAL INSURANCE	5,577	5,577	5,577	5,577	5,577	5,577	5,577	5,577	5,577	5,577	5,577	5,577	66,929
LANDSCAPING													
TOTAL LANDSCAPING	1,368	1,368	1,368	1,368	1,368	1,368	1,368	1,368	1,368	1,368	1,368	1,368	16,411
MANAGEMENT FEES													
TOTAL MANAGEMENT FEES	8,213	8,213	8,213	8,213	8,213	8,213	8,213	8,213	8,213	8,213	8,213	8,213	98,558
PARKING EXPENSE													
TOTAL PARKING EXPENSE	5,150	5,150	5,150	5,150	5,150	5,150	5,150	5,150	5,150	5,150	5,150	5,150	61,800
R&M NON CAM													
TOTAL R&M NON CAM	2,658	2,658	2,658	2,658	2,658	2,658	2,658	2,658	2,658	2,658	2,658	2,658	31,997
TAXES													
TOTAL TAXES	32,078	32,078	32,078	32,078	32,078	32,078	32,078	32,078	32,078	32,078	32,078	32,078	384,930
REPAIRS & MAINTENANCE													
TOTAL REPAIRS & MAINTENANCE	39,565	39,565	39,565	39,565	39,565	39,565	39,565	39,565	39,565	39,565	39,565	39,565	474,780
SALARIES/FIELD SUPERVISION													
TOTAL SALARIES/FIELD SUPERVISION	17,500	17,500	17,500	17,500	17,500	17,500	17,500	17,500	17,500	17,500	17,500	17,500	210,000
SECURITY													
TOTAL SECURITY	16,667	16,667	16,667	16,667	16,667	16,667	16,667	16,667	16,667	16,667	16,667	16,667	200,000
UTILITIES													
TOTAL UTILITIES	35,471	35,471	35,471	35,471	35,471	35,471	35,471	35,471	35,471	35,471	35,471	35,471	425,657
TOTAL OPERATING EXPENSES	204,205	204,205	204,205	204,205	204,205	204,205	204,205	204,205	204,205	204,205	204,205	204,205	2,450,464
NET OPERATING INCOME	72,056	72,351	67,820	72,902	70,320	73,911	70,090	72,693	73,567	76,857	76,968	76,968	876,509

EXHIBIT C
CAPITAL IMPROVEMENT BUDGET

Cages Schedule					
Item	Month Start	Start Date	Duration	Month End	End Date
Lobby Renovation	Month 4	April-21	15 Months	Month 18	June-22
Air Handler	Month 4	April-21	15 Months	Month 18	June-22
Galvanized Piping	Month 4	April-21	6 Months	Month 9	September-21
Other Deferred Repairs	Month 4	April-21	3 Months	Month 6	June-21
Other Misc. Repairs	Month 4	April-21	15 Months	Month 18	June-22
Total CapEx					

\$4.3

\$1,100,000

Cages Schedule											
Item	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
Lobby Renovation	-	-	-	\$6,667	\$6,667	\$6,667	\$6,667	\$6,667	\$6,667	\$6,667	\$6,667
Air Handler	-	-	-	\$46,667	\$46,667	\$46,667	\$46,667	\$46,667	\$46,667	\$46,667	\$46,667
Galvanized Piping	-	-	-	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	-	-
Other Deferred Repairs	-	-	-	\$10,667	\$10,667	\$10,667	-	-	-	-	-
Other Misc. Repairs	-	-	-	\$5,867	\$5,867	\$5,867	\$5,867	\$5,867	\$5,867	\$5,867	\$5,867
Total CapEx	-	-	-	\$99,867	\$99,867	\$99,867	\$99,867	\$99,867	\$99,867	\$99,867	\$99,867

\$1,100,000

\$59,200

\$59,200

\$59,200

\$59,200

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\$59,200

SCHEDULE 1.1

DEFINITIONS

As used in this Agreement, the following terms have the meanings indicated:

“Advance” means any disbursement of proceeds of the Loan from the Reserve.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, (a) is in Control of, is Controlled by or is under common Control with such Person, (b) is a director or officer of such Person or of an Affiliate of such Person, or (c) owns 10% or more of the equity interests in such Person. For purposes hereof, a Person shall be deemed to Control another Person if the Controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, membership interests, by contract, or otherwise.

“Agreement” means this Loan Agreement.

“Anti-Money Laundering Laws” means those laws, regulations and sanctions, state and federal, criminal and civil, that (a) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (b) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (c) require identification and documentation of the parties with whom a Financial Institution conducts business; or (d) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the Patriot Act, the Bank Secrecy Act, the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

“Applicable Spread” means seven and fifteen hundredths percent (7.15%).

“Appraisal” shall mean an appraisal of the Project prepared in accordance with the requirements of FIRREA and USPAP, prepared by an independent third-party appraiser, who is state licensed or state certified if required under the laws of the state where the Project is located, who meets the requirements of FIRREA and USPAP and who is otherwise reasonably satisfactory to Lender.

“Approved Capital Expenditures” means actual out-of-pocket expenses incurred by Borrower and payable to third parties that are not Affiliates of any Borrower Party (or, to the extent payable to an Affiliate of any Borrower Party, such expense is payable pursuant to an Affiliate Agreement approved by Lender) in making Capital Improvements to the Project pursuant to contracts entered into in accordance with the Loan Documents, which expenses are (i) specifically set forth on the Capital Improvement Budget, or (ii) otherwise approved in writing by Lender. Approved Capital Expenditures shall be substantiated by executed documents and contracts evidencing the same, including any construction documents and plans and specifications.

“**Approved Budget**” shall initially mean the Initial Approved Budget, and thereafter, any subsequent Approved Budget.

“**Approved Leasing Expenses**” means actual out-of-pocket expenses incurred by Borrower and payable to third parties (including reasonable legal fees payable to Borrower’s legal counsel incurred in the preparation and negotiation of leases) that are not Affiliates of any Borrower Party (or, to the extent payable to an Affiliate of any Borrower Party, such expense is payable pursuant to an Affiliate Agreement approved by Lender) relating to Leases entered into in accordance with the Loan Documents, including brokerage commissions and costs of Tenant Improvements, which expenses are (i) specifically approved by Lender in connection with Lender’s approval of such Lease(s), or (ii) otherwise approved by Lender in writing. Approved Leasing Expenses shall be substantiated by executed documents and contracts evidencing the same, including any Lease documents and brokerage agreements.

“**Bankruptcy Party**” has the meaning assigned in **Section 9.1(6)**.

“**Bank Secrecy Act**” means the Bank Secrecy Act, 31 U.S.C. Sections 5311 et seq.

“**Borrower**” has the meaning assigned in the first paragraph of this Agreement.

“**Borrower Investor**” has the meaning assigned in **Section 12.7(2)**.

“**Borrower’s Knowledge**” shall mean the actual knowledge of Asher Roshanzamir.

“**Borrower’s Operating Agreement**” means that certain Limited Liability Company Agreement of Baruch Broad Street, LLC, dated as of the date hereof.

“**Borrower Parties**” means Borrower and Guarantor.

“**Breakage Costs**” shall have the meaning set forth in **Section 2.3**.

“**Budgeted Operating Expenses**” means, for any period, the Operating Expenses budgeted for such period as set forth in the Approved Budget.

“**Business Day**” means a day other than a Saturday, a Sunday, or a legal holiday on which national banks located in the State of New York are not open for general banking business.

“**Capital Improvement Budget**” shall have the meaning set forth in **Section 2.8(15)**.

“**Capital Improvements**” means the capital improvements set forth on the Capital Improvement Budget.

“**Capital Improvement Reserve**” shall have the meaning set forth in **Section 3.1(6)**.

“**Clearing Account**” shall have the meaning set forth in **Section 2.7(2)**.

“**Clearing Bank**” shall mean Cadence Bank, or any successor Eligible Bank approved or appointed by Lender.

“Clearing Bank Agreement” shall mean that certain Deposit Account Control Agreement to be entered into by and among Borrower, Lender and Clearing Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, relating to the operation and maintenance of the Clearing Account.

“Closing Advance” has the meaning assigned in **Section 2.1(1)**.

“Closing Date” means the date on which Lender makes the Advance.

“Collateral” means the Project and all other **“Mortgaged Property”** described in the Security Instrument, and any other property that at any time secures the Loan or any portion thereof. Without limiting the foregoing, “Collateral” shall mean and include all of the following personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of Borrower, and regardless of where located (all capitalized terms having the meanings given to them in the Uniform Commercial Code of the State: Accounts; Chattel Paper (including, without limitation, all Tangible Chattel Paper and all Electronic Chattel Paper); Intellectual Property Collateral; Documents; Equipment; Fixtures; General Intangibles; Goods; Instruments; Inventory; letters of credit and Letter-of-Credit Rights; Commercial Tort Claims; Software and all recorded data of any kind or nature, regardless of the medium of recording; Contracts, together with all Contract Rights arising thereunder; other personal property not otherwise described above; Supporting Obligations; and accessions to, substitutions and replacements for and Proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

“Completion” means:

- (i) with respect to the Capital Improvements, completion of the construction of the Capital Improvements in accordance with all applicable laws and the Loan Documents; together with (a) satisfaction of all conditions set forth in **Section 3.3(2)(d)**, and (b) evidence that all governmental approvals, licenses, permits or certificates required in connection with the construction of the Capital Improvements have been issued or received; and
- (ii) with respect to the Tenant Improvements, Lender has received commercially reasonable estoppels executed by all tenants under Leases existing as of the Closing Date which Leases required Tenant Improvements, which estoppels may be relied on by Lender and confirm, among other things, (A) that Borrower has fully performed all of its obligations with respect to the applicable Tenant Improvements and that no additional improvements to the applicable premises or payments to the applicable tenant are required pursuant to the applicable Lease or other agreement with Borrower, and (B) that the applicable tenant has unconditionally accepted and is in actual physical possession of the applicable premises, and there are no remaining conditions to such tenant’s obligations under the Lease.

“Completion Date” shall mean September 21, 2023, subject to the occurrence of a Force Majeure Event; provided, however, in no event shall the Completion Date be later than November 21, 2023.

“Compounded SOFR” means the compounded average of SOFR over a rolling 30-calendar day period, rounded upwards, if necessary, to the nearest one one-hundredth (1/100th) of one percent. In the event that Compounded SOFR is below zero, Compounded SOFR will be deemed to be zero.

“Construction Consultant” shall mean such Person as Lender may designate and engage from time to time to inspect the Capital Improvements and the Tenant Improvements as construction progresses and consult with and to provide advice to and to render reports to Lender, which Person may be, at Lender’s option upon notice to, and reasonable approval of, Borrower, either an Affiliate of Lender or an officer or employee of Lender or of such Affiliate, or consulting architects, engineers or inspectors appointed by Lender.

“Contract Rate” has the meaning assigned in **Section 2.2(1)**.

“Control” shall mean the power to direct the management and policies of an entity, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise (including, but not limited to, the terms of any investment advisory agreement).

“Debt” means, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or any of its assets is liable or subject, (b) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person or any of its assets would be liable or subject, if such amounts were advanced under the credit facility, (c) all amounts required to be paid by such Person as a guaranteed payment to partners, members or other equity holders, or as a preferred or special dividend, including any mandatory redemption of shares or interests, (d) all indebtedness guaranteed by such Person, directly or indirectly, (e) all obligations under leases that constitute capital leases for which such Person or any of its assets is liable or subject, and (f) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person or any of its assets is liable or subject, contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures “a creditor against loss.

“Debt Yield” means, as of any date of determination, the percentage obtained by dividing (i) the net operating income as of such date of determination as determined by an Appraisal dated no more than sixty (60) days prior to such date and acceptable to Lender in its reasonable discretion, by (ii) the outstanding principal balance of the Note as of such date of determination.

“Default Rate” means the lesser of (x) eighteen percent (18%) per annum and (y) the highest interest rate permitted by applicable law.

“Deferred Maintenance Items” means the Capital Improvements described on the Capital Improvement Budget as: (1) “Galvanized Piping”, and (2) “Other Deferred Repairs”.

“Dollars” and **“\$”** means lawful money of the United States of America.

“Eligible Bank” shall mean a bank that insures the deposits hereunder through the Federal Deposit Insurance Corporation.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and all rules and regulations promulgated thereunder.

“Event of Default” has the meaning assigned in **Article 9**.

“Exit Fee” has the meaning assigned in **Section 2.4 (3)**.

“Extraordinary Operating Expense” means any expenditures for non-discretionary items and expenditures that are not budgeted Operating Expenses in the Approved Budget and that are required to be made by reason of the occurrence of any emergency (*i.e.*, an unexpected event that threatens imminent harm to persons or property at the Project).

“Fixed Rate” has the meaning assigned in **Section 2.2(1)**.

“Financial Institution” means a United States Financial Institution as defined in 31 U.S.C. Section 5312, as periodically amended.

“Force Majeure Event” means an event that is beyond the control of Borrower or Guarantor and is of the kind and/or nature of a riot, war, insurrection or civil commotion, act of enemies (including terrorism within the continental United States), national emergency, fire, flood, act of God, severe weather conditions, material shortages of supplies or labor or area, industry wide strike, or any government-mandated shutdowns of general applicability (and not applicable only to Borrower, Guarantor, any of their Affiliates, or the Project), in any case that renders it substantially impossible for Borrower to pursue Completion of the Project; provided, however, in no event shall events or conditions relating to the current Covid-19 pandemic be deemed a Force Majeure Event.

“Gross Revenue” means all revenue or other proceeds derived from the ownership, operation, financing or sale of the Project (or any portion thereof) from whatever source, (including, without limitation, Rents, lease termination payments, and any revenue or proceeds received by Borrower relating to the Project), any revenue received in connection with any tax certiorari proceeding and any amounts received by Borrower as a result of any litigation or other legal, administrative or other proceeding (net of reasonable costs and expenses incurred by Borrower in accordance herewith in recovering such amounts); provided, however, Gross Revenue shall not include any awards or Insurance Proceeds (other than business interruption and/or rental loss insurance proceeds) or disbursements of any Reserve Funds from the Accounts to the extent that such revenue was already included in Gross Revenue.

“Guarantor” means Asher Roshanzamir, an individual, and each Person(s) executing a Guaranty at any time.

“**Guaranty**” means, collectively, the Guaranty of Non-Recourse Carve-Outs and Guaranty of Completion and each other guaranty now or hereafter delivered in respect of the Liabilities or any portion thereof.

“**Guaranty of Completion**” means that certain Completion Guaranty from Guarantor in favor of Lender dated as of the date hereof.

“**Guaranty of Non-Recourse Carve-Outs**” means that certain Guaranty of Non-Recourse Carve-Outs from Guarantor in favor of Lender dated as of the date hereof.

“**Hazardous Materials Indemnity Agreement**” means the Hazardous Materials Indemnity Agreement executed by Borrower and Guarantor in favor of Lender with respect to the Project.

“**Initial Approved Budget**” has the meaning assigned in **Section 2.7(14)**.

“**Insurance Reserve**” has the meaning assigned in **Section 3.1(4)**.

“**Interest Period**” means (a) for the first interest period hereunder, the period commencing on the Closing Date and ending on (and including) the fourteenth (14th) day of the following calendar month, and (b) for each interest period thereafter commencing on February 15, 2022, the period commencing on the fifteenth (15th) day of each calendar month and ending on (and including) the fourteenth (14th) day of the following calendar month. Each Interest Period as set forth in clause (b) above shall be a full month and shall not be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period; provided however, (i) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day (except that where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (ii) no Interest Period shall extend beyond the Maturity Date, and (iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month at the end of such Interest Period.

“**Key Tenant**” means each of The State of Ohio, acting by and through the Ohio Department of Administrative Services, Keybank National Association, a national banking association, and Ohio Capital Corporation for Housing, an Ohio not for profit corporation.

“**Key Tenant Replacement Funds**” has the meaning assigned in **Section 3.1(3)**.

“**Key Tenant Termination Event**” means the occurrence of: (i) a Key Tenant provides oral or written notice to Landlord or Manager of its intention not to renew its Lease, or (ii) a Key Tenant terminates its Lease or surrenders or vacates the premises prior to the expiration of the term of the Lease, or provides oral or written notice to Landlord or Manager of its intention to do so. A Key Tenant Termination Event shall cease to exist upon (i) Borrower’s execution of a Lease with a Replacement Tenant in accordance with the terms of this Agreement, (ii) Borrower’s payment in full of any and all costs of Tenant Improvements and brokerage commissions for which Borrower is obligated to pay pursuant to such Lease or any other agreement related thereto, which payment(s) shall be made using Borrower’s own equity (which

may include Key Tenant Replacement Funds), and (iii) Lender's receipt of a commercially reasonable estoppel executed by such Replacement Tenant for the benefit of Lender and confirming, among other things, Borrower's satisfaction of (ii) above.

"Land" means the real property legally described in **Exhibit A** hereto, together with the appurtenances and tenements thereof.

"Leases" means (i) those certain existing Lease Agreements set forth on **Schedule 5.22** hereto, as the same may be hereinafter modified, amended or assigned in accordance with **Section 6.18**, and (ii) any future lease, license or other agreement to occupy any part of the Project which is approved (or does not require the approval of, as the case may be) by Lender in accordance with **Section 6.18**.

"Lender" has the meaning assigned in the first paragraph of this Agreement. Any action that may be taken by Lender pursuant to this Agreement or any other Loan Document (other than the obligation to advance on the Closing Date), and any right or remedy granted to Lender pursuant to this Agreement or any other Loan Documents may be exercised by Servicer on behalf of Lender.

"Liabilities" means all principal, interest, cost, expenses and fees (including the Exit Fee and any Minimum Interest Amount) and all other amounts due and payable or to become due and payable to Lender under the Loan Documents, together with all other obligations of Borrower under the Loan Documents.

"Lien" means any interest, or claim thereof, in the Collateral securing an obligation owed to, or a claim by, any Person other than the owner of the Collateral, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, deed to secure debt, assignment, encumbrance, pledge, hypothecation, preference, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term **"Lien"** shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Collateral.

"Loan" means the loan to be made by Lender to Borrower under this Agreement and all other amounts evidenced or secured by the Loan Documents.

"Loan Documents" means (a) this Agreement, (b) the Note, (c) the Security Instrument, (d) the Hazardous Materials Indemnity Agreement, (e) each Guaranty, (f) such assignments of contracts and other rights as may be required by Lender, and (g) all other agreements, documents, certificates and instruments executed and delivered by a Borrower Party to Lender evidencing, securing, governing or otherwise pertaining to the Loan.

"Loan to Value Ratio" means, as of any date of determination, the percentage obtained by dividing (i) the maximum principal amount of the Note, by (ii) the "as is" appraised value of the Project as determined by an Appraisal dated no more than sixty (60) days prior to such date and acceptable to Lender in its sole discretion.

“Loss Proceeds” means amounts, awards or payments payable to Borrower or Lender in respect of all or any portion of the Collateral in connection with a casualty or condemnation thereof (after the deduction therefrom and payment to Borrower and Lender, respectively, of any and all reasonable out-of-pocket expenses incurred by Borrower, Lender in the recovery thereof, including all reasonable attorneys’ fees and disbursements, the fees of insurance experts and adjusters and the costs incurred in any litigation or arbitration with respect to such casualty or condemnation) including proceeds from rental or business interruption insurance.

“Major Lease” shall mean any Lease or other agreement which, either individually or when taken together with any other Lease with the same Tenant or its Affiliates, and assuming the exercise of all expansion rights and all preferential rights to lease additional space contained in such Lease, (i) covers more than 10,000 square feet of space in the aggregate at the Project, (ii) contains an option or other preferential right to purchase all or portion of the Project, (iii) is with an Affiliate of Borrower Parties, as tenant, (iv) is entered into during the existence of an Event of Default, or (v) is with a Key Tenant or a Replacement Tenant.

“Major Project Document” shall mean and include (i) any property management, asset management, construction management, development management or brokerage agreement relating to the Project, and (ii) any other agreement which now exists or is hereafter entered into by Borrower the aggregate consideration for which is in excess of One Hundred Fifty Thousand Dollars (\$150,000.00).

“Manager” means Diversified Management Plus, L.L.C., a New Jersey limited liability company, or any replacement property manager approved by Lender in its sole discretion.

“Material Adverse Effect” shall mean a material adverse effect on (a) the ability of Borrower to perform its payment obligations under the Loan Documents to which it is a party, or to perform its obligations thereunder in respect of the maintenance or operation of the Project, (b) the validity or enforceability of (i) the material terms of the Loan Documents, (ii) the lien of the Security Instrument or (iii) the material rights and remedies of Lender under any of the Loan Documents, including, without limitation, the rights and remedies set forth in **Section 10**, or (c) the ability of Guarantor to perform its obligations under the respective Guaranties other than a material adverse effect on the Project (or such other Collateral for the Loan) resulting from changes in general economic, financial market and/or real estate market conditions.

“Maturity Date” means the earlier of (a) January 21, 2024, as the same may be extended in accordance with the terms of this Agreement, or (b) any earlier date on which the entire Loan is required to be paid in full, by acceleration or otherwise, under this Agreement or any of the other Loan Documents.

“Mechanic’s Lien” has the meaning assigned in **Section 6.10**.

“Monthly Operating Expense Budgeted Amount” means the monthly amount set forth in the Approved Budget for Operating Expenses for the calendar month in which such Payment Date occurs.

“Net Cash Flow” means for any month, the actual Gross Revenue of the Project less the aggregate amount of money expended in such month by Borrower in connection with the

Project, on a cash basis, for ordinary and necessary expenses of Project operations, maintenance and preservation, made pursuant to arms-length transactions.

“Note” means the promissory note of even date herewith as provided for in **Section 2.1(3)**, and all promissory notes delivered in substitution or exchange therefor, in each case as the same may be consolidated, replaced, severed, modified, amended or extended from time to time.

“OFAC” means the Office of Foreign Assets Control, Department of the Treasury, and any successor governmental authority.

“Operating Account” shall have the meaning set forth in **Section 2.7(3)**.

“Operating Expenses” means, in the aggregate with respect to the Project during any period, without duplication, all operating costs and expenses actually incurred by Borrower and due and payable during such period in respect of the Project, including, without limitation, property management fees payable pursuant to any property management agreement, but only to the extent approved by Lender, and refunds or credits actually paid by Borrower to Tenants for overpayment of taxes and expenses pursuant to the Leases, and legal fees attributable to the operation of the Project but only to the extent approved by Lender, provided that Operating Expenses *shall not* include (i) capital improvement costs, (ii) depreciation and other income tax related bookkeeping entries which do not result in the payment of monies, (iii) debt service payments on the Loan and other amounts due under the Loan Documents, and (iv) any expenses related to operations of Borrower and not the Project, including, without limitation, legal or accounting fees, asset management and similar fees, and any item of expense which would otherwise be considered within Operating Expenses but is paid directly by any Tenant.

“Organizational Documents” means, with respect to any entity, such entity’s filed document of formation, partnership agreement, operating agreement, resolutions and good standing certificate.

“Participant” has the meaning assigned in **Section 12.22(3)**.

“Patriot Act” means the USA PATRIOT Act of 2001, Pub. L. No. 107-56, and any successor statute.

“Payment Date” shall mean the fifteenth (15th) calendar day of each calendar month during the term of the Loan, and if such day is not a Business Day, then the Business Day immediately succeeding such day.

“Permitted Encumbrances” means the outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the Security Instrument, together with the liens and security interests in favor of Lender created by the Loan Documents and any liens for any unpaid taxes not yet delinquent, and any other matters reasonably approved by Lender in writing after the date hereof.

“Permitted Transfer” means any of the following:

(i) So long as no breach of **Section 6.3** occurs, a Transfer by a natural Person who is a direct or indirect legal, beneficial, economic or other direct or indirect ownership interest in Borrower or any tier or level to a revocable inter vivos trust having such natural Person as both trustor and trustee of such trust and one or more immediate family members of such natural Person as the sole beneficiaries of such trust;

(ii) So long as no breach of **Section 6.3** occurs, a Transfer by devise or descent or by operation of law upon the death of a natural Person who is a direct or indirect legal, beneficial, economic or other direct or indirect ownership interest in Borrower or any tier or level; or

(iii) if any such conveyance or transfer results in any Person and its Affiliates that did not own in the aggregate 10% or more of the direct or indirect interests in Borrower prior to such transfer owning 10% or more of the direct or indirect ownership interest in Borrower, then Lender shall have received at least 20 Business Days' prior written notice of such conveyance or transfer, and as a condition precedent to such conveyance or transfer such transferee must satisfy Lender's then current "know your customer" standards as determined by Lender; or

(iv) One or more Transfers of up to 49% in the aggregate of all equity interests (direct or indirect) of Borrower, provided, if, after giving effect to such Transfers, Guarantor shall continue to Control Borrower.

Each such Transfer above shall be conditioned upon Borrower's ability to, after giving effect to the equity transfer in question, (A) remake the representations contained in this Agreement relating to ERISA matters and the Patriot Act, OFAC and matters concerning Embargoed Persons, and (B) continue to comply with the covenants contained herein relating to ERISA matters, the Patriot Act, OFAC and matters concerning Embargoed Persons, and in each circumstance, to the extent such Transfer would cause the transferee, together with its Affiliates, to increase its direct or indirect interest in Borrower to an amount which equals or exceeds ten percent (10%), Borrower shall deliver a duly executed certificate certifying to the same.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

"Potential Default" means the occurrence of any event or condition which, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

"Pre-Approved Leasing Criteria" means the criteria set forth on **Schedule 6.18** attached hereto.

"Project" means all related facilities, amenities, fixtures, and personal property and improvements now or hereafter located on the Land, including the office building containing approximately 253,119 square feet of leasable space and any other improvements located at 88 & 72 E. Broad Street, Columbus, Ohio.

“Property Taxes” means real estate taxes, assessments and similar charges related to the Collateral or which if unpaid could result in a lien on the Collateral.

“Replacement Tenant” means a tenant that (i) is acceptable to Lender in its reasonable discretion, (ii) enters into a Lease with Borrower on materially similar terms to the Lease entered into by the Key Tenant that the tenant is replacing, in Lender’s reasonable discretion, and (iii) is required pursuant to the Lease to occupy the leased premises within six (6) months of execution of the Lease.

“Requisition” means a requisition in the form of a spreadsheet containing the information set forth in **Section 3.3(1)** or **Section 3.3(2)**, as applicable, together with all invoices, bills of sale, schedules and other submissions reasonably required by Lender.

“Reserve” or **Reserves** has the meaning assigned in **Section 3.2**.

“Restricted Company” means (a) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; (b) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) any entity that is subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

“Security Instrument” means the Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by Borrower in favor of Lender, covering the **“Mortgaged Property”** described therein.

“Servicer” means Ardent Loan Servicing, LLC or any other entity or entities appointed by Lender from time to time to serve as servicer and/or special servicer of the Loan. If at any time no entity shall be so appointed, the term “Servicer” shall be deemed to refer to Lender.

“Single Purpose Entity” means a Person (other than an individual, a government, or any agency or political subdivision thereof), which (a) is formed or organized solely for the purpose of owning the Collateral; (b) does not engage in any business other than the ownership, management and operation of the Collateral; (c) does not have any assets other than those related to its interest in the Collateral; (d) does not incur, create or assume any Debt other than the Loan and Debt permitted under **Section 6.9**; (e) does not guarantee, hold itself out to be responsible for, or otherwise become liable on or in connection with any Debt or other obligation of any other Person, and does not pledge its assets for the benefit of any other Person, (f) does not enter into any contract or agreement with any stockholder, partner, principal, member or Affiliate of such Person or any Affiliate of any such stockholder, partner, principal, member or Affiliate except as may be permitted pursuant to **Section 6.8**, (g) does not make any loans or advances to any other Person (including any Affiliate), (h) conducts and operates its business in all material respects as presently conducted and operated, (i) maintains its books and records and bank accounts separately from those of its Affiliates, including its general partners or members, as may be applicable, (j) at all times holds itself out to the public as a legal entity separate and apart from any other Person (including any Affiliate), and promptly corrects any known

misunderstandings regarding its separate identity, (k) files its own tax returns to the extent required by applicable law, (l) intends to maintain adequate capital for its normal obligations, reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (provided, however, that an entity shall not be required to make any capital calls or require any capital contributions to satisfy this requirement), (m) maintains its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or any other Person, (n) complies with all of the limitations on powers set forth in its organizational documentation as in effect on the Closing Date, (o) holds title to its assets in its own name, (p) utilizes its own letterhead, invoices and checks, (q) allocates fairly and reasonably any overhead expenses that are shared with any Affiliate including paying for office space and services performed by any employee of any Affiliate, and (r) maintains a segregated operating account for the Collateral from which all operating expenses and debt service on the Loan is paid.

“**SOFR**” means the daily Secured Overnight Financing Rate provided by the Federal Reserve Bank of New York, as the administrator of the benchmark, or a successor administrator.

“**SOFR Adjustment Conforming Changes**” shall mean, with respect to Compounded SOFR or Term SOFR, as applicable, any technical, administrative or operational changes (including, without limitation, changes to the timing and frequency of determining rates and making payments of interest, rounding of amounts or tenors, selecting an alternative source and other administrative matters) that Lender determines are appropriate to incorporate and use Compounded SOFR or Term SOFR, as applicable; provided that, for the avoidance of doubt, SOFR Adjustment Conforming Changes shall not include adjustment of the Spread, except as provided for in this Agreement.

“**SOFR Transition**” shall mean the transition from Compounded SOFR to Term SOFR pursuant to the terms of this Agreement.

“**SOFR Transition Event**” shall mean (i) Lender has determined that Term SOFR is available and is an industry-standard benchmark rate for floating rate loans secured by commercial real estate and (ii) Lender has elected to effect the SOFR Transition.

“**SOFR Floor**” shall mean fifty hundredths of one percent (0.50).

“**SOFR Loan**” shall mean the Loan at any time in which the Contract Rate is calculated at SOFR plus the Applicable Spread.

“**Specially Designated National and Blocked Persons**” means those Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC.

“**Stabilized Debt Yield**” means, as of any date of determination, the percentage obtained by dividing (i) the “as stabilized” net operating income as determined by an Appraisal dated no more than sixty (60) days prior to such date and acceptable to Lender in its reasonable discretion, by (ii) the outstanding principal balance of the Note as of such date.

“Stabilized Loan to Value Ratio” means, as of any date of determination, the percentage obtained by dividing (i) the maximum principal amount of the Note, by (ii) the “as stabilized” appraised value of the Project as determined by an Appraisal dated no more than sixty (60) days prior to such date and acceptable to Lender in its reasonable discretion.

“State” means the State of Ohio.

“Taking” has the meaning assigned in **Section 4.3**.

“Tenant Direction Letter” has the meaning set forth in **Section 2.7(2)**.

“Tenant Improvements” means all tenant improvements to be performed pursuant to a Lease, whether required to be performed by Borrower or the applicable tenant, for which Borrower is obligated to pay for pursuant to such Lease, whether by direct payment to third parties other than tenant or direct payment, reimbursement, allowances or other inducements to such tenant.

“Tenant Improvement Reserve” has the meaning assigned in **Section 3.1**.

“Term SOFR” shall mean a published or reported forward-looking term rate with a tenor of approximately one (1) month based on SOFR and selected by Lender.

“Title Company” means Stewart Title Guaranty Company.

“Transfer” means any sale (including any installment sale), conveyance, assignment, mortgage, pledge, lease (including any ground lease but excluding any Lease), encumbrance, alienation or grant of Lien (other than Permitted Encumbrances) on, grant of any option with respect to or grant of any other interest in the Collateral, any part thereof or any interest therein (including any direct or indirect legal, beneficial, economic or other direct or indirect ownership interest in Borrower on every tier or level), directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record. For avoidance of doubt, Transfer shall also include the granting of any rights in, or restricting the use or development or zoning of, the Collateral.

“U.S. Person” means any United States citizen, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories.

“Variable Rate” has the meaning assigned in **Section 2.2(1)(a)**.

“Work” means the performance of all work in connection with the construction of the Capital Improvements.

SCHEDULE 2.1(2)

SOURCES AND USES

Sources & Uses Table		
Sources	\$ Amount	% of Total
Debt	\$ 11,800,000	72.93%
Equity	\$ 4,379,771	27.07%
Total	\$ 16,179,771	100.00%
Uses	\$ Amount	% of Total
Purchase Price	\$ 12,025,000	74.32%
Acquisition Fee	\$ 500,000	3.09%
Origination Fee	\$ 177,000	1.09%
Interest Reserve	\$ 175,000	1.08%
Cap Ex Reserve	\$ 1,100,000	6.80%
TI/LC Reserve	\$ 1,700,000	10.51%
Tax Reserve	\$ 62,438	0.39%
Insurance Reserve	\$ 40,313	0.25%
Closing Costs	\$ 300,000	1.85%
Seller Credit	\$ 100,000	0.62%
Total	\$ 16,179,771	100.00%

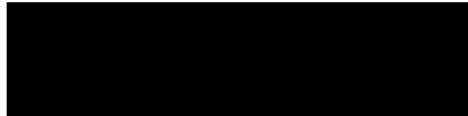
SCHEDULE 2.7

ACCOUNTS

Clearing Account: [To be inserted post-closing]

Operating Account:

BANK:



ACCOUNT: Baruch Broad Street, LLC

ABA #:



ACCOUNT #:

SCHEDULE 4.1

INSURANCE REQUIREMENTS

All insurance policies shall be endorsed in form and substance acceptable to Lender to name Lender as an additional insured on all liability policies, and on all property insurance, as loss payee, without contribution, under a standard New York (or local equivalent) mortgagee clause. Each policy shall provide that no act of or omission by Borrower shall invalidate such policy as against Lender.

All insurance policies and endorsements shall be fully paid for, shall be issued by appropriately licensed insurance companies acceptable to Lender with a rating of "A-:IX" or better as established by A.M. Best's Rating Guide and a claims-paying ability of A- or better as established by Standard & Poor's.

Each policy shall provide that such policy may not be canceled or materially changed except upon thirty (30) days' prior written notice to Lender of intention of non-renewal, cancellation or material change.

Blanket policies shall not be permitted unless the terms and conditions of the coverage afforded under such policies are acceptable to Lender.

A. Property Insurance. The Project must be covered by a "causes of loss-special form" policy (formerly known as an "all risk policy"), including coverage for, without limitation, fire, lightning, windstorm, hurricane, hail, terrorism and similar acts of sabotage, explosion, riot, civil commotion, vandalism, aircraft, vehicles and smoke). The policy must include an agreed value clause which must be updated annually. The policy must include replacement cost coverage, i.e. an endorsement or clause that provides for all claims to be made on a replacement cost basis (not on an actual cash value basis) and without any deduction being made for depreciation. The policy must be an amount equal to the greater of:

- (1) 100% of the full replacement cost of the Improvements (without any deduction being made for depreciation); or
- (2) the amount specified in the agreed value clause (i.e. the amount specified by the insurer to suspend any co-insurance clause).

The policy must include a deductible of not more than \$10,000 per occurrence. Further, the policy must include inflation guard coverage or equivalent coverage that ensures that the policy limit will be increased over time to reflect the effect of inflation.

♦ **Ordinance or Law Coverage.** This coverage is required for properties that represent "non-conforming" structures under current building, zoning, or land use laws or ordinances and should contain the following three coverages:

- (1) Demolition coverage must be sufficient to cover the cost to demolish and clear the site under undamaged parts of the Project caused by enforcement of any building, zoning or land use law or ordinance in an amount of coverage no less than the full demolition expense of the single largest structure at the Project, but in no event shall such coverage be less than 10% of replacement value;
- (2) Loss to the undamaged portion of the building coverage should cover the cost of replacing any undamaged portion of the Project that is required to be demolished and should automatically be provided when demolition coverage is provided in an amount not less than 100% of the replacement value; and

(3) Increased cost of construction coverage is required for protection for structures that would fail to comply with building code if they were rebuilt to the same specifications in an amount of coverage sufficient to cover the increased cost over and above replacement cost to bring the single largest structure of the Project up to code, but in no event shall such coverage be less than 10% of replacement cost.

♦ **Flood Insurance.** If the Project is located within a special flood hazard area, Borrower will be required to maintain flood insurance throughout the term of the Loan, in an amount equal to the maximum amount available under the National Flood Insurance program, or such greater amount as Lender may require, and with a deductible acceptable to lender.. It is also possible that Project will be determined not to be located within a special flood hazard area on the Closing Date, but then later determined to be located within such an area. In such case, at any time during the term of the Loan, Borrower, at its own expense, shall immediately obtain such insurance for such amount determined by Lender.

♦ **Business Income Coverage.** Business income (rent loss) insurance is required, with loss payable to Lender, covering all risks required to be covered in the "Property Insurance" section of these requirements. Coverage for eighteen months' business income/projected gross revenues is required, with an agreed value clause (i.e. the amount specified by the insurer to suspend any co-insurance clause). The amount of insurance must be adjusted annually. A 365 day extended period of indemnity is also required.

♦ **Earthquake Insurance.** If required by Lender, earthquake coverage with a limit and a deductible acceptable to Lender.

♦ **Equipment Breakdown Coverage.** If required by Lender, coverage for loss due to mechanical or electrical breakdown of equipment, covering risks described in the "Property Insurance" section of these Requirements, in an amount equal to the replacement cost for the equipment and any other property damaged by the equipment breakdown or such other amount as may be required by Lender.

B. Liability Insurance. Borrower shall maintain the following liability insurance with respect to the Project, and such other liability insurance as required by Lender:

(1) Commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Project, on the so-called "occurrence" form.

(2) No deductible or self-insured retention.

(3) Minimum of a combined single limit of not less than \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate (and, if on a blanket policy, containing a per location aggregate) is required.

(4) Terrorism coverage not excluded and domestic acts of terrorism not excluded.

(5) Covering at least the following hazards: (a) premises and operations; (b) products and completed operations on an "if any" basis; (c) independent contractors; (d) blanket contractual liability for all written contracts; and (e) contractual liability covering the Indemnities contained in Section 6.15 of the Security Instrument.

♦ **Automobile Liability.** Borrower shall maintain automobile liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of \$1,000,000.

♦ **Workers' Compensation.** Borrower shall maintain workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 for disease aggregate in respect of any work or or operation on or about the Property or in connection with the Property or its operations.

♦ **Liquor Liability.** If required, on terms consistent with the liability policy in this schedule.

♦ **Crime/Fidelity Bond.** If required by Lender, in amounts and with a deductible acceptable to Lender.

♦ **D&O.** If required by Lender, in amounts and with a deductible acceptable to Lender.

♦ **Umbrella and Excess Liability.** Borrower shall maintain umbrella and excess liability insurance in an amount not less than \$10,000,000 per occurrence on terms consistent with the general liability insurance policy required above, including, but not limited to, supplemental coverage for employer liability and automobile liability.

C. Environmental Insurance. If required by Lender, Borrower shall maintain environmental insurance in an amount to be determined in form satisfactory to Lender.

D. Insurance During Construction. At all times during which structural construction, repairs, or alterations are being made with respect to the Project (including demolition), Borrower's insurance shall include:

(1) Property insurance (i) against all risks insured against in the "Property Insurance" section of these Requirements (i) written on a so-called builder's risk completed value form, (2) written on a non-reporting basis, (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions.

(2) Coverage in accordance with above mentioned commercial general liability insurance policy; and (i) provide XCU coverage with regard to the contemplated demolition; (ii) include three (3) years extended completed operations coverage, after completion of the contemplated demolition.

(3) Borrower shall cause its construction manager (CM) or General Contractor (GC) and shall have the CM/GC cause its contractors and sub-contractors (TRADES) to maintain similar coverage to that which is required by Borrower. Such policies shall (i) maintain limits of liability as follows: (a) \$10,000,000 commercial liability and automobile liability for CM/GC and \$5,000,000 for Trades (b) \$500,000 employers' liability and GC will maintain pollution liability coverage in the amount of \$10,000,000 each occurrence and \$10,000,000 aggregate.

E. Other Coverage. Such other insurance and in such amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for properties similar in type, size, value, geographic local or exposure to the Property.

F. Insurance Certificates. Evidence of insurance shall be provided on the Acord 25 form (as to liability insurance) and on the Acord 28 form (as to property insurance). All certificates of insurance shall include the following information (in addition to the applicable insurance described above):

- (1) Borrower as named insured
- (2) [LENDER], 3565 Piedmont Road NE, One Piedmont Center, Suite 2500, Atlanta, Georgia 30305 (Lender Name and Address), as Mortgagee and Loss Payee for Property or Builders Risk Insurance and Additional Insured for all Liability, Automobile, Umbrella, and Environmental Insurance
- (3) Certificate Holder: [LENDER], 3565 Piedmont Road NE, One Piedmont Center, Suite 2500, Atlanta, Georgia 30305 (Lender Name and Address)
- (4) Project address(es)
- (5) Current policy term (must be effective through the initial Maturity Date)
- (6) Policy number
- (7) Reported building value(s)
- (8) Replacement cost
- (9) Certificate must be signed by an authorized agent (signature required; no stamps)
- (10) Please attach to the certificates the mortgagee/loss payee (property), additional insured (liability), and cancellation (both property and liability) provisions from each policy (thirty (30) day notice of cancellation required)

G. Additional Provisions. All policies of required insurance shall contain clauses or endorsements to the effect that:

- (1) Neither the following shall in any way affect the validity or enforceability of the policy insofar as Lender is concerned: (a) any act or negligence of Borrower, of anyone acting for Borrower, of any tenant under any lease or other occupant of the Property, of Lender or of any other party named as an insured, additional insured and/or loss payee and (b) the failure to comply with the provisions of the policy which might otherwise result in a forfeiture of the insurance or any part thereof;
- (2) The policy shall not be materially changed (other than to increase the coverage provided thereby), terminated or cancelled without at least 30 days' written notice (via certified mail, postage prepaid, return receipt requested) to Lender and any other party named therein as an insured;

(3) The issuer(s) of the policy shall give written notice to Lender (via certified mail, postage prepaid, return receipt requested) if the policy has not been renewed thirty (30) days prior to its expiration;

(4) Lender shall not be liable for any insurance premiums or subject to any assessments or commissions and that the related issuer(s) waive any related claims to the contrary;

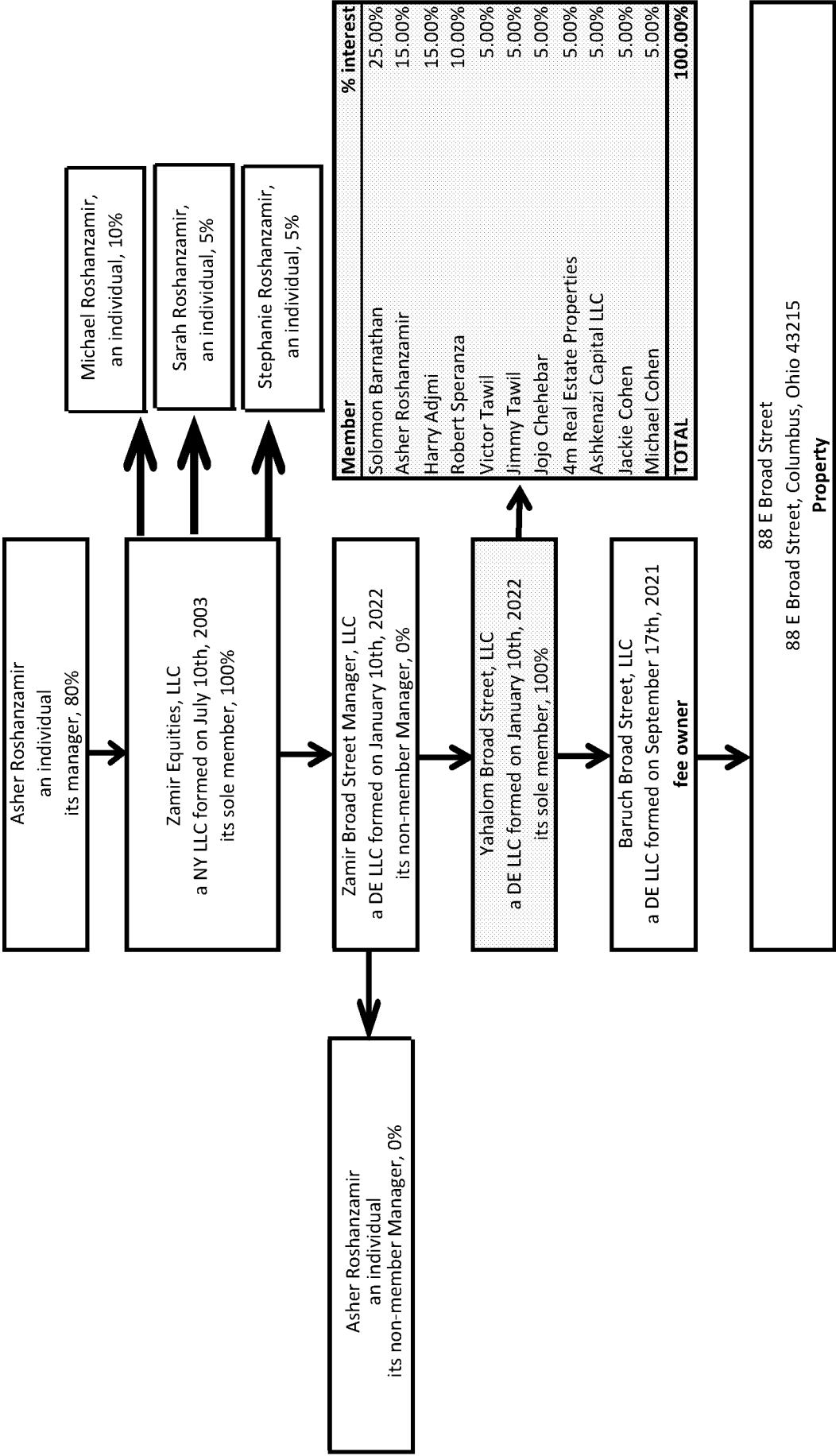
(5) Lender shall, at its option and with no obligation to do so, have the right to directly pay insurance premiums in order to avoid cancellation, expiration and/or termination of the policy due to non-payment of insurance premiums; and

(6) The policy shall not exclude coverage for acts of terror or similar acts of sabotage.

SCHEDULE 5.1
ORGANIZATIONAL CHART

[Attached]

88 E Broad Street - Organizational Structure
88 E Broad Street, Columbus, Ohio 43215



* There is no other person or entity that owns, directly or indirectly, 10% or greater ultimate beneficial interest in the property

SCHEDULE 5.22
LEASES/RENT ROLL

Database: SMCPROD		Reporting Rent Roll				Page: 1						
Bldg Status: Active only		Broad Third Partners LLC				Date: 1/10/2022						
		Columbus, OH				Time: 05:05 PM						
Sq Foot Type: GLA		1/10/2022										
Bldg Id-Suit Id	Occupant Name/DBA	Generation 1 Occupy Date	Expir.	Sqft	Monthly Base Rent	Annual Base Rent Rate	Annual PSF	Cat	Date	Future Rent Increases		PSF
2688-00200	LEASE KeyBank DBA: KeyBank	4/1/15	3/31/25	24,943	34,604.38	415,252.56	16.65	CMR	4/1/2022	35,093.54	16.88	
										CMR	4/1/2023	35,582.71
										CMR	4/1/2024	36,071.88
												17.35
2688-00300	LEASE	State of Ohio		9/1/19	6/30/23	57,455	69,424.79	833,097.48	14.50			
DBA: State of Ohio Department of Administrative Services												
2688-00600	Vacant			10,899	0	0	0.00					
2688-00620	LEASE	Ohio Right to Life Society, Inc.		10/1/11	4/30/22	2,329	3,396.46	40,757.52	17.50			
DBA: Ohio Right to Life Society												
Options:		Option Date	Exp. Date	Monthly Rent	PSF Notes							
		5/1/2022	4/30/2027	0.00	Base Rental based on FMV.							
		5/1/2027	4/30/2032	0.00	Base Rental based on FMV.							
2688-00640	Vacant			2,808	0	0	0.00					
2688-00800	Vacant			5,533	0	0	0.00					
2688-00870	Vacant			1,635	0	0	0.00					
2688-00875	Vacant			2,502	0	0	0.00					

Database: SMCPROD		Reporting Rent Roll				Page: 2					
Bldg Status: Active only		Broad Third Partners LLC				Date: 1/10/2022					
		Columbus, OH				Time: 05:05 PM					
Sq Foot Type: GLA		1/10/2022									
Bldg Id-Suit Id	Occupant Name/DBA	Generation 1 Occupy Date	Expir.	Sqft	Monthly Base Rent	Annual Base Rent Rate	Annual PSF	Cat	Date	Future Rent Increases Monthly Amount	PSF
2688-00880	LEASE DBA: Environmental Design Group LLC Environmental Design Group LLC	1/25/18	4/30/23	1,514	2,428.71	29,144.52	19.25	CMR	5/1/2022	2,460.25	19.50
2688-00900	Vacant			11,064	0	0					
2688-01100	LEASE DBA: Aspen Careers, LLC Aspen Careers LLC	3/15/17	6/30/22	1,240	1,911.67	22,940.04	18.50				
2688-01105	LEASE DBA: BCFS Health and Human Services BCFS Health and Human Services	6/1/14	10/31/24	1,250	2,005.21	24,062.52	19.25	CMR CMR	11/1/2022 11/1/2023	2,031.25 2,057.29	19.50 19.75
2688-01120	LEASE DBA: CHW Advisors, LLC CHW Advisors, LLC	4/2/20	7/31/26	2,293	4,112.11	49,345.32	21.52	CMR CMR CMR CMR	8/1/2022 8/1/2023 8/1/2024 8/1/2025	4,159.88 4,207.66 4,255.42 4,303.20	21.77 22.02 22.27 22.52
2688-01130	Vacant			2,293	0	0	0.00				

Database: SMCPROD		Reporting Rent Roll				Page: 3						
Bldg Status: Active only		Broad Third Partners LLC				Date: 1/10/2022						
Sq Foot Type: GLA		Columbus, OH				Time: 05:05 PM						
		1/10/2022										
Bldg Id-Suit Id	Occupant Name/DBA	Generation 1 Occupy Date	Expir.	Sqft	Monthly Base Rent	Annual Base Rent Rate	Annual PSF	Cat	Date	Future Rent Increases	Monthly Amount	PSF
2688-01150	LEASE DBA: Americans for Prosperity	2/15/17	2/28/22	2,530	4,111.25	49,335.00	19.50					
2688-01175	Vacant			1,060	0	0	0.00					
2688-01180	Vacant			1,375	0	0	0.00					
2688-01190	LEASE DBA: High Bridge Consulting, LLC High Bridge Consulting	6/21/19	6/30/24	1,150	1,868.75	22,425.00	19.50	CMR CMR CMR	7/1/2022 7/1/2023 9/1/2023	1,916.67 1,964.58 2,012.50	20.00 20.50 21.00	
2688-01200	Vacant			2,347	0	0	0.00					
2688-01220	Vacant			2,193	0	0	0.00					
2688-01230	LEASE DBA: Matthew G. Kallner, LLC Kallner and Associates	5/1/14	4/30/24	950	1,405.21	16,862.52	17.75	CMR CMR	5/1/2022 5/1/2023	1,444.79 1,484.38	18.25 18.75	
2688-01240	LEASE DBA: Ohio Wholesale Marketers Association Ohio Wholesale Marketers	9/1/11	6/30/24	656	915.67	10,988.04	16.75	CMR CMR	7/1/2022 7/1/2023	929.33 943.00	17.00 17.25	
2688-01250	Vacant			2,914	0	0	0.00					

Database: SMCPROD Bldg Status: Active only Sq Foot Type: GLA		Reporting Rent Roll Broad Third Partners LLC Columbus, OH 1/10/2022				Page: 4 Date: 1/10/2022 Time: 05:05 PM						
Bldg Id-Suit Id	Occupant Name/DBA	Generation 1 Occupancy Date		Expir.	Sqft	Monthly Base Rent	Annual Base Rent Rate	Annual Rate PSF	Cat	Date	Future Rent Increases Monthly Amount PSF	
2688-01270	LEASE DBA: General Employment Enterprises, Inc. General Employment Enterprises, Inc.	5/4/20	5/3/25		2,502	4,065.76	48,789.12	19.50	CMR CMR CMR	5/4/2022 5/4/2023 5/4/2024	4,170.00 4,274.25 4,378.50	20.00 20.50 21.00
2688-01300	LEASE DBA: The Buckeye Institute The Buckeye Institute	6/18/19	6/30/26		4,528	6,792.00	81,504.00	18.00	CMR CMR CMR CMR	7/1/2022 7/1/2023 7/1/2024 7/1/2025	6,980.67 7,185.17 7,358.00 7,546.67	18.50 19.04 19.50 20.00
Options: Option Date 7/1/2026 Exp. Date 6/30/2031 Monthly Rent 0.00 PSF Notes Annual Rent TBD												
2688-01303	LEASE DBA: The East Ohio Gas Company Dominion Energy Ohio	9/15/19	1/31/25		985	1,518.54	18,222.48	18.50	CMR CMR CMR	2/1/2022 2/1/2023 2/1/2024	1,559.58 1,600.63 1,641.67	19.00 19.50 20.00
Options: Option Date 2/1/2025 Exp. Date 1/31/2030 Monthly Rent 0.00 PSF Notes 2/1/2030 1/31/2035												
2688-01305	LEASE DBA: Michelle Fitzgibbon The Fitzgibbon Group	4/1/12	6/30/22		1,043	1,694.88	20,338.56	19.50				
2688-01320	LEASE DBA: American Petroleum Institute API Ohio	1/1/12	3/31/25		2,114	3,215.04	38,580.48	18.25	CMR CMR CMR	4/1/2022 4/1/2023 4/1/2024	3,259.08 3,303.13 3,347.17	18.50 18.75 19.00
2688-01340	Vacant				1,557	0	0					
2688-01350	LEASE DBA: Dennis McNamara McNamara Law Office	9/1/11	3/31/23		832	1,352.00	16,224.00	19.50	CMR	4/1/2022	1,386.67	20.00

Database: SMCPROD		Reporting Rent Roll				Page: 5					
Bldg Status: Active only		Broad Third Partners LLC				Date: 1/10/2022					
Sq Foot Type: GLA		Columbus, OH				Time: 05:05 PM					
		1/10/2022									
Bldg Id-Suit Id	Occupant Name/DBA	Generation 1 Occupy Date	Expir.	Sqft	Monthly Base Rent	Annual Base Rent Rate	Annual PSF	Cat	Date	Future Rent Increases Monthly Amount	PSF
2688-01400	LEASE DBA: Ohio Oil and Gas Association	8/23/13	8/31/23	4,204	5,868.08	70,416.96	16.75	CMR	9/1/2022	5,955.67	17.00
2688-01410	Vacant			926	0	0					
2688-01450	Vacant			1,898	0	0	0.00				
2688-01460	LEASE DBA: Sallynda Rothchild Dennison	9/15/17	12/31/22	1,278	2,130.00	25,560.00	20.00				
Options:	Option Date 1/1/2023	Exp. Date 12/31/2027	Monthly Rent 0.00	PSF Notes							
2688-01475	LEASE DBA: Charitable Healthcare Network, Inc.	4/6/20	4/30/25	1,194	1,940.25	23,283.00	19.50	CMR CMR CMR	5/1/2022 5/1/2023 5/1/2024	1,990.00 2,039.75 2,089.50	20.00 20.50 21.00
2688-01490	LEASE DBA: Ohio Chemistry Technology Council	9/1/11	9/30/23	1,192	1,986.67	23,840.04	20.00	CMR	10/1/2022	2,036.33	20.50
Options:	Option Date 10/1/2023	Exp. Date 9/30/2028	Monthly Rent 0.00	PSF Notes							
2688-01500	LEASE DBA: Jeff DeLeone & Associates, LLC	11/1/21	1/31/27	4,047	6,407.75	76,893.00	19.00	CMR CMR CMR	2/1/2023 2/1/2024 2/1/2025	6,492.06 6,576.38 6,660.69	19.25 19.50 19.75
				Abatement Total	-6,407.75 0.00	-76,893.00 0.00	-19.00	CMR CMR	2/1/2025 2/1/2026	6,660.69 6,745.00	19.75 20.00
Options:	Option Date 2/1/2027	Exp. Date 1/31/2032	Monthly Rent 0.00	PSF Notes LY1: \$20.25 PSF/\$81,951.75 YR/\$6,829.31 MO; LY2: \$20.50 PSF/\$82,963.50 YR/\$6,913.63 MO;							

Database: SMCPROD		Reporting Rent Roll				6				
Bldg Status: Active only		Broad Third Partners LLC				Date: 1/10/2022				
		Columbus, OH				Time: 05:05 PM				
Sq Foot Type: GLA		1/10/2022								
Bldg Id-Suit Id	Occupant Name/DBA	Generation 1 Occupy Date	Expir.	Sqft	Monthly Base Rent	Annual Base Rent Rate	Annual PSF	Future Rent Increases Date	Monthly Amount	PSF
LY3: \$20.75 PSF/\$83,975.25 YR/\$6,997.94 MO; LY4: \$21.00 PSF/\$84,987.00 YR/\$7,082.25 MO; LY5: \$21.25 PSF/\$85,998.75 YR/\$7,166.56 MO; LY1: \$21.75 PSF/\$88,022.25 YR/\$7,335.19 MO; LY2: \$22.25 PSF/\$90,045.75 YR/\$7,503.81 MO; LY3: \$22.75 PSF/\$92,069.25 YR/\$7,672.44 MO; LY4: \$23.25 PSF/\$94,092.75 YR/\$7,841.06 MO; LY5: \$23.75 PSF/\$96,116.25 YR/\$8,009.69 MO										
2688-01540	LEASE DBA: Gillespie Law, LLC Gillespie Law	11/11/19	10/31/20	467	739.42	8,873.04	19.00			
2688-01560	LEASE DBA: Capitol Partners II, LLC Capitol Partners II LLC	2/1/14	3/31/24	2,697	4,157.88	49,894.56	18.50 CMR	4/1/2022 4/1/2023	4,270.25 4,382.63	19.00 19.50
2688-01590	LEASE DBA: Whitt Sturtevant LLP Whitt Sturtevant LLP	11/11/15	4/30/24	3,781	5,592.73	67,112.76	17.75 CMR	5/1/2022 5/1/2023	5,671.50 5,750.27	18.00 18.25
2688-01600	LEASE DBA: HNTB Corporation HNTB Corporation	7/27/15	1/31/24	6,793	10,472.54	125,670.48	18.50 CMR	2/1/2022 2/1/2023	10,755.58 11,038.63	19.00 19.50
2688-01650	Vacant			4,270	0	0				
2688-01740	LEASE DBA: Avison Young Avison Young	4/1/12	5/31/12	2,599	900.00	10,800.00	4.16			

Reporting Rent Roll											7	
Database: SMCPROD		Broad Third Partners LLC									Page:	
Bldg Status: Active only		Columbus, OH									Date: 1/10/2022	
Sq Foot Type: GLA		1/10/2022									Time: 05:05 PM	
Bldg Id-Suit Id	Occupant Name/DBA	Generation 1 Occupancy Date	Expir.	Sqft	Monthly Base Rent	Annual Base Rent	Annual Rate	PSF	Cat	Date	Future Rent Increases Monthly Amount	PSF
2688-01750	LICENSE AGREEMENT Lawrence, Evans & Co., LLC DBA: Broad Street Capital LLC	2/1/21	2/28/21	3,439	1,905.16	22,861.92	6.65					
2688-01760	Vacant			741	0	0	0.00					
2688-01770	Vacant			4,379	0	0	0.00					
2688-01980	LEASE DBA: Hatch Associates Consultants, Inc. Hatch Associates Consultants Inc	9/1/11	12/31/23	4,506	9,150.94	109,811.28	24.37	CMR	1/1/2023		9,244.81	24.62
2688-02000	LEASE DBA: Ohio Capital Corporation For Housing Ohio Capital Corporation For Housing	9/14/16	12/31/22	24,207	35,411.44	424,937.28	17.55					
2688-02025	LEASE DBA: EMC Research, Inc. EMC Research	6/13/16	6/30/26	4,520	7,439.17	89,270.04	19.75	CMR	7/1/2022		7,533.33	20.00
								CMR	7/1/2023		7,627.50	20.25
								CMR	7/1/2024		7,721.67	20.50
								CMR	7/1/2025		7,815.83	20.75
2688-1560A	Vacant			125	0	0	0.00					
2688-720	LEASE DBA: Ohio Access to Justice Foundation Ohio Access to Justice Foundation	4/26/19	7/31/29	6,390	9,851.25	118,215.00	18.50	CMR	5/1/2022		9,984.38	18.75
								CMR	5/1/2023		10,117.50	19.00
								CMR	5/1/2024		10,250.63	19.25
								CMR	5/1/2025		10,383.75	19.50
								CMR	5/1/2026		10,516.88	19.75
								CMR	5/1/2027		10,650.00	20.00
								CMR	5/1/2028		10,783.13	20.25

Database: SMCPROD		Reporting Rent Roll				Page: 8						
Bldg Status: Active only		Broad Third Partners LLC				Date: 1/10/2022						
Sq Foot Type: GLA		Columbus, OH				Time: 05:05 PM						
		1/10/2022										
Bldg Id-Suit Id	Occupant Name/DBA	Generation 1 Occupy Date	Expir.	Sqft	Monthly Base Rent	Annual Base Rent	Annual Rate	Annual PSF	Cat	Date	Future Rent Increases Monthly Amount	PSF
2688-B10	Vacant			558	0	0	0	0.00				
2688-B12	Vacant			144	0	0	0	0.00				
2688-B13	Vacant			70	0	0	0	0.00				
2688-B14	LICENSE AGREEMENT Starbucks Corporation DBA: Starbucks	4/1/12	4/30/12	87								
2688-B15	Vacant			2,207	0	0	0	0.00				
2688-B17	Vacant			192	0	0	0	0.00				
2688-BO1	Vacant			179	0	0	0	0.00				
2688-BO2	Vacant			558	0	0	0	0.00				
2688-BO3	Vacant			2,207	0	0	0	0.00				
2688-BO4	Vacant			558	0	0	0	0.00				
2688-BO5	Vacant			125	0	0	0	0.00				

Database: SMCPROD		Reporting Rent Roll				Page: 9				
Bldg Status: Active only		Broad Third Partners LLC				Date: 1/10/2022				
Sq Foot Type: GLA		Columbus, OH				Time: 05:05 PM				
		1/10/2022								
Bldg Id-Suit Id	Occupant Name/DBA	Generation 1 Occupancy Date	Expir.	Sqft	Monthly Base Rent	Annual Base Rent Rate	Annual PSF	Future Rent Increases Date	Monthly Amount	PSF
2688-BO6	Vacant			129	0	0	0.00			
2688-BO7	LEASE DBA: Level 3 Communications LLC Level 3 Communications LLC	9/1/11	12/31/23	80	284.12	3,409.44	42.62			
2688-BO9	Vacant			1,123	0	0	0.00			
2688-CABLE	LICENSE AGREEMENT Time Warner Communications, Div. of TW Enr DBA: Time Warner Cable	6/27/08		90						
2688-COGEN	LICENSE AGREEMENT Cogent Communications, Inc. DBA: Cogent Communications Inc	5/1/12	4/30/22	0	400.00	4,800.00				
2688-LBBY1	LEASE Starbucks Corporation DBA: Starbucks	9/1/11	2/28/25	1,883	4,006.08	48,072.96	25.53			
2688-LBBY2	LEASE OH Pizza and Brew, LLC DBA: OH Pizza and Brew LLC	3/1/19	8/31/23	2,660	6,144.55	73,734.60	27.72	CMR 9/1/2022	6,571.11	29.64
	Options:	Option Date	Exp. Date	Monthly Rent	PSF Notes					
		9/1/2023	8/31/2028	7,270.18	PSF Notes					

Database: SMCPROD		Reporting Rent Roll				Page: 10	
Bldg Status: Active only		Broad Third Partners LLC				Date: 1/10/2022	
		Columbus, OH				Time: 05:05 PM	
Sq Foot Type: GLA		1/10/2022					

2688-LOBBY	Vacant				276	0	0	0.00
2688-OCITY	LEASE	City of Columbus DBA: City of Columbus Division of Traffic	9/1/11	5/31/08	0	83.33	999.96	
2688-PARK	LICENSE AGREEME	Citrin Ohio, LLC DBA: Citrin Ohio	9/1/15	7/31/21	0			
	Options:	Option Date	Exp. Date	Monthly Rent	PSF Notes			
		8/1/2021	7/31/2022	0.00				
		8/1/2022	7/31/2023	0.00				
		8/1/2023	7/31/2024	0.00				
		8/1/2024	7/31/2025	0.00				
		8/1/2025	7/31/2026	0.00				
		8/1/2026	7/31/2027	0.00				
		8/1/2027	7/31/2028	0.00				
		8/1/2028	7/31/2029	0.00				
		8/1/2029	7/31/2030	0.00				
2688-PARK1	LICENSE AGREEME	Citrin Ohio, LLC DBA: Citrin Ohio	7/1/15	7/31/21	0			
	Options:	Option Date	Exp. Date	Monthly Rent	PSF Notes			
		8/1/2021	7/31/2022	0.00				
		8/1/2022	7/31/2023	0.00				
		8/1/2023	7/31/2024	0.00				
		8/1/2024	7/31/2025	0.00				
		8/1/2025	7/31/2026	0.00				
		8/1/2026	7/31/2027	0.00				
		8/1/2027	7/31/2028	0.00				
		8/1/2028	7/31/2029	0.00				
		8/1/2029	7/31/2030	0.00				
2688-SIGN	LEASE	The Lamar Companies DBA: The Lamar Companies	6/1/17	6/30/22	0	850.00	10,200.00	

Database: SMCPROD		Reporting Rent Roll		Page: 11								
Bldg Status: Active only		Broad Third Partners LLC		Date: 1/10/2022								
Sq Foot Type: GLA		Columbus, OH		Time: 05:05 PM								
		1/10/2022										
Bldg Id-Suit Id	Occupant Name/DBA	Generation 1 Occupy Date	Expir.	Sqft	Monthly Base Rent	Annual Base Rent	Annual Rate	Annual PSF	Cat	Date	Future Rent Increases Monthly Amount	PSF

Space Summary	Square Feet	Base Rent (Annual)	Base Rent (PSF)	Total Area %
Occupied:	184,428	3,126,525.48	16.95	72.75%
Vacancy:	68,845			27.16%
Admin units:	220			0.09%
Total:	<u>253,493</u>	<u>3,126,525.48</u>	<u>16.95</u>	

SCHEDULE 6.6

MAJOR PROJECT DOCUMENTS

1. Management Agreement by and between BARUCH BROAD STREET, LLC and DIVERSIFIED MANAGEMENT PLUS, L.L.C. dated as of January 21, 2022
2. Exclusive Lease Representation Agreement by and between BARUCH BROAD STREET, LLC and ADENA COMMERCIAL, LLC, d/b/a Colliers Greater Columbus Region dated as of December 13, 2021

SCHEDULE 6.6(3)

FORM OF

CERTIFICATE, CONSENT AND ACKNOWLEDGEMENT

(CONTRACTOR/ DESIGN PROFESSIONAL)

THIS CERTIFICATE, CONSENT AND ACKNOWLEDGMENT (this "**Certificate**") is delivered by _____, a _____ ("**Contract Party**") to [LENDER], a Delaware limited liability company, as lender ("**Secured Party**") in accordance with the terms of that certain Loan and Security Agreement dated _____, 20__ (the "**Loan Agreement**"), between Secured Party and [BORROWER], a _____ ("**Assignor**").

1. **Certifications.** Contract Party hereby certifies to Secured Party as follows as follows:

(a) Reference is hereby made to that certain [*describe contract*] between Assignor and Contract Party (including all general conditions, exhibits, schedules, addendums, plans, specifications and the like attached thereto or incorporated therein by reference or prepared in connection therewith, as amended, modified, supplemented and/or changed in accordance herewith, the "**Contract**"). A true, correct and complete copy of the Contract is attached hereto as **Schedule 1**. As of the date hereof, except as attached hereto in **Schedule 1**, no change orders or other amendments, modifications or supplements have been entered into or are pending.

(b) To the knowledge of Contract Party, no matured default of any of Assignor's obligations under the Contract has occurred and no condition exists or event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default.

2. **Assignment.** Contract Party hereby acknowledges and consents to the assignment of the Contract by Assignor in favor of Secured Party pursuant to the Loan Agreement.

3. **Amendments, Modifications, Supplements, Change Orders, etc.** Contract Party agrees that it will not enter into any amendment, modification, supplement or change order to the Contract without the prior written consent of the Lender. Lender has agreed with Borrower that it will not unreasonably withhold condition or delay such consent.

4. **Default and Secured Party's Right To Cure.** Contract Party agrees that it will send to Secured Party copies of all default notices simultaneously with the sending of any such notices to Assignor. All notices shall be sent pursuant to the notice provisions in the Contract to Secured Party at 3565 Piedmont Road NE, One Piedmont Center, Suite 2500, Atlanta, Georgia 30305. Contract Party further agrees that Secured Party is hereby granted the right (but not the obligation) to cure any defaults by Assignor within thirty (30) days after receipt of written notice by the undersigned of the Assignor's failure to cure any such default; provided, however, with

respect to all non-monetary defaults said thirty (30) day period shall be extended so long as within said thirty (30) day period the Secured Party has commenced to cure and is proceeding with due diligence to cure said defaults.

5. **Right To Performance.** Contract Party agrees to look solely to the Assignor for the performance of any of the obligations of the Assignor under the Contract. However, if Secured Party exercises, with respect to the Contract, any rights and privileges conferred upon it by the assignment of the Contract and asserts the present right to have the benefits of the Contract and to enforce the same against the Contract Party in the place and stead of the Assignor, the Contract Party agrees with respect to such Contract (i) to perform for, and for the benefit of, Secured Party, all of the obligations of Contract Party under and pursuant to the Contract if the balance then due under the Contract (being the portion of the total Contract which is then due and payable as provided therein, less the total of all portions thereof theretofore paid to or for the benefit of the Contract Party) has been paid or is then paid, and if Secured Party thereafter pays Contract Party such amounts that become due under the Contract as such amounts become due, and (ii) Secured Party shall have no personal obligations or liabilities of any kind under the Contract.

The foregoing Certificate is furnished for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Contract Party, and the Contract Party understands and intends that Secured Party will disburse substantial sums in reliance on, and will otherwise rely on, the foregoing and that the Contract Party will be legally bound by the foregoing.

This Certificate shall inure to the benefit of Secured Party and its successors and assigns (including any purchasers at a foreclosure sale or transferees who acquire the Project (or any portion thereof to which the Contract is applicable) by deed in lieu or otherwise and their respective successors and assigns).

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate, Consent and Acknowledgment as of [_____], pursuant to proper authority duly granted.

[_____] , a [_____]

By: _____
Name: _____
Title: _____

SCHEDULE 1

[Attach Contract]

SCHEDULE 2

LIST OF EXISTING CHANGE ORDERS

SCHEDULE 6.8

APPROVED AFFILIATE AGREEMENTS

1. Limited Liability Company Agreement of Yahalom Broad Street, LLC dated as of January 10, 2022

SCHEDULE 6.18

PRE-APPROVED LEASING CRITERIA

Pre-approved Leasing Criteria*

New:

Base Rent:	\$40.00
Max TI (per year):	\$5.00 PSF
Max Broker Commission:	7%
Max Free Rent (per year of term):	1 Month
Minimum Lease Term:	60 Months

Renewal:

Base Rent:	\$10.00
Max TI (per year):	\$5.00 PSF
Max Broker Commission:	5%
Max Free Rent (per year of term):	1 Month
Minimum Lease Term:	60 Months

* Must be within 10%

EXHIBIT B

PROMISSORY NOTE

\$11,800,000.00

January 21, 2022

For value received, **BARUCH BROAD STREET, LLC**, a Delaware limited liability company ("**Borrower**"), promises and agrees to pay to the order of **AFF IV 88 E BROAD, LLC**, a Delaware limited liability company (together with its successors and assigns, "**Lender**"), in lawful money of the United States of America, the principal sum of up to ELEVEN MILLION EIGHT HUNDRED THOUSAND and No/100 Dollars (\$11,800,000.00) or so much thereof as may be outstanding under the Loan and Security Agreement of even date herewith between Borrower and Lender (as modified, supplemented, extended and in effect from time to time, the "**Loan Agreement**"), with interest on the unpaid principal sum owing thereunder at the rate or rates or in the amounts computed in accordance with the Loan Agreement, together with all other amounts due Lender under the Loan Agreement, all payable in the manner and at the time or times provided in the Loan Agreement. Capitalized terms used herein, but not defined, shall have the meanings assigned to them in the Loan Agreement.

If not sooner due and payable in accordance with the Loan Agreement, Borrower shall pay to Lender all amounts due and unpaid under the Loan Agreement on January 21, 2024 as such date may possibly be extended as provided in Section 2.3(4) of the Loan Agreement, or on any earlier Maturity Date as set forth in the Loan Agreement. Every payment on this Note, whether such payment is a regular installment, prepayment or final payment, shall be made by wired federal funds, or other immediately available funds in accordance with the wire transfer instructions as Lender may from time to time provide. All payments to Lender shall be drawn on an account owned by Borrower or another Person approved in writing in advance by Lender and maintained at a banking institution organized under the laws of the United States or one of its constituent States, or at a federally-regulated securities broker-dealer.

This Note is the Note referred to in the Loan Agreement and evidences the Loan made by Lender thereunder.

Except as otherwise provided in the Loan Documents, Borrower, co-makers, sureties, endorsers and guarantors, and each of them, expressly waive demand and presentment for payment, notice of nonpayment, protest, notice of protest, notice of dishonor, notice of intent to accelerate the maturity hereof, notice of the acceleration of the maturity hereof, bringing of suit and diligence in taking any action to collect amounts called for hereunder and in the handling of securities at any time existing in connection herewith; subject to Section 11.1 of the Loan Agreement, such parties other than the Guarantors (as defined in the Loan Agreement) are and shall be jointly, severally, directly and primarily liable for the payment of all sums owing and to be owing hereon, regardless of and without any notice, diligence, act or omission as or with respect to the collection of any amount called for hereunder or in connection with any right, lien, interest or property at any and all times had or existing as security for any amount called for hereunder, except as expressly provided for in any of the Loan Documents.

This Note evidences all advances made, interest due and all amounts otherwise owed to Lender under the Loan Agreement. This Note is executed in conjunction with the Loan Agreement and is secured by the liens and security interests created under the Loan Documents (including those arising under the Security Instrument). Reference is made to the Loan Agreement for provisions relating to repayment of the indebtedness and liabilities evidenced by this Note, including mandatory repayment, acceleration following default, late charges, default rate of interest, limitations on interest and restrictions on prepayment.

This Note shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to conflict of laws principles.

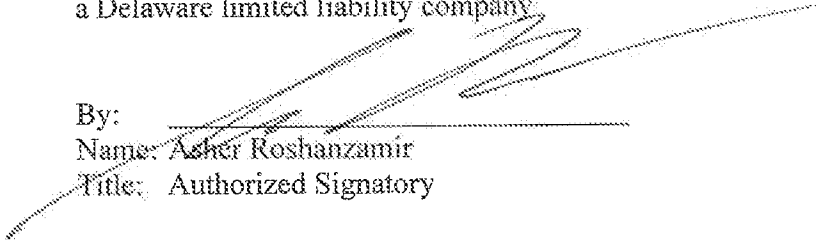
The provisions of Section 11.1 of the Loan Agreement are hereby incorporated by reference into this Note to the same extent and with the same force as if fully set forth herein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrower has executed this Note as of the day and year first above written.

BORROWER:

BARUCH BROAD STREET, LLC,
a Delaware limited liability company

By: 

Name: Azher Roshanzamir

Title: Authorized Signatory

EXHIBIT C

DO NOT DETACH

 Instrument Number: 202201260016173 Recorded Date: 01/26/2022 12:35:10 PM  Daniel J. O'Connor Jr. Franklin County Recorder 373 South High Street, 18th Floor Columbus, OH 43215 (614) 525-3930 http://Recorder.FranklinCountyOhio.gov Recorder@FranklinCountyOhio.gov	Return To (Simplifile): Madison Title Agency, LLC 1125 Ocean Avenue Lakewood, NJ 08701
Transaction Number: T20220011840 Document Type: MORTGAGE Document Page Count: 22	Simplifile
Submitted By (Simplifile): Madison Title Agency, LLC 1125 OCEAN AVENUE Lakewood, NJ 08701	Simplifile
First Grantor: BARUCH BROAD STREET LLC	First Grantee: AFF IV II E BROAD LLC
Fees: Document Recording Fee: \$34.00 Additional Pages Fee: \$160.00 Total Fees: \$194.00 Amount Paid: \$194.00 Amount Due: \$0.00	Instrument Number: 202201260016173 Recorded Date: 01/26/2022 12:35:10 PM

OFFICIAL RECORDING COVER PAGE

DO NOT DETACH

THIS PAGE IS NOW PART OF THIS RECORDED DOCUMENT

NOTE: If the document data differs from this cover sheet, please first check the document on our website to ensure it has been corrected. The document data always supersedes the cover page.

If an error on the cover page appears on our website after review please let our office know.

COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.

(Space Above Reserved for Recording Information)

BARUCH BROAD STREET, LLC,
a Delaware limited liability company,

as Mortgagor

(Mortgagor)

to

AFF IV 88 E BROAD, LLC,
a Delaware limited liability company

as Mortgagee

(Mortgagee)

**OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

Dated: January 21, 2022
88 & 72 E Broad Street, Columbus, Ohio

County: Franklin County, Ohio

Maximum Principal Amount: \$11,800,000.00

**OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY
AGREEMENT AND FIXTURE FILING**

THIS SECURITY INSTRUMENT COVERS GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY AND SHOULD BE FILED FOR RECORD IN THE REAL PROPERTY RECORDS WHERE MORTGAGES AND DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. THIS INSTRUMENT SHOULD ALSO BE INDEXED AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY. THE MAILING ADDRESSES OF THE SECURED PARTY/MORTGAGEE AND THE DEBTOR/MORTGAGOR ARE WITHIN.

THIS OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Security Instrument**" or "**Mortgage**") is executed as of January 21, 2022, by **BARUCH BROAD STREET, LLC**, a Delaware limited liability company ("**Mortgagor**"), whose address is c/o Zamir Equities, 551 Fifth Avenue, Suite 2500, New York, NY 10176 in favor of and for the benefit of **AFF IV 88 E BROAD, LLC**, a Delaware limited liability company ("**Mortgagee**"), whose address is c/o The Ardent Companies, 3565 Piedmont Road NE, One Piedmont Center, Suite 200, Atlanta, Georgia 30305.

ARTICLE 1

DEFINITIONS

Section 1.1 **Definitions.** As used herein, the following terms shall have the following meanings:

"**Indebtedness**" means the sum of all (a) principal, interest and all other amounts due from Mortgagor under or secured by the Loan Documents, including, without limitation, the indebtedness evidenced by the Note, (b) principal, interest, and other amounts which may hereafter be loaned by Mortgagee, its successors or assigns, to or for the benefit of the owner of the Mortgaged Property, when evidenced by a promissory note or other instrument which, by its terms, is secured hereby, (c) any and all additional advances made by Mortgagee to protect or preserve the Mortgaged Property or the lien hereof on the Mortgaged Property, or to pay taxes, to pay premiums or insurance on the Mortgaged Property or to repair or maintain the Mortgaged Property, or to complete improvements on the Mortgaged Property (whether or not the original Mortgagor remains the owner of the Mortgaged Property at the time of such advances and whether or not the original Mortgagee remains the owner of the Indebtedness and this Security Instrument), (d) the Exit Fee and the Minimum Interest Amount, if any, (e) any and all expenses incident to the collection of the Indebtedness secured hereby and the foreclosure hereof by action in any court or by exercise of the power of sale herein contained and (f) all other indebtedness, obligations and liabilities now or hereafter existing of any kind of Mortgagor to Mortgagee under

documents which recite that they are intended to be secured by this Security Instrument. Indebtedness, however, shall not include amounts owing under the Hazardous Materials Indemnity executed this date by the Mortgagor in favor of the Mortgagee.

"Loan Documents" means (1) the Loan and Security Agreement of even date between Mortgagor and Mortgagee (the **"Loan Agreement"**), (2) the Promissory Note of even date, executed by Mortgagor, payable to the order of the Mortgagee or any one or more of them (collectively, together with all promissory notes delivered in substitution or exchange therefor, in each case as the same may be consolidated, severed, split, modified, amended or extended from time to time, the **"Note"**), in the aggregate stated principal amount of up to \$11,800,000.00, which matures on January 21, 2024, the maturity of which may be extended for one (1) additional twelve-month period, as provided in the Loan Agreement, (3) this Security Instrument, (4) the Guaranty, (5) the Hazardous Materials Indemnity Agreement, (6) all other documents now or hereafter executed by Mortgagor, Guarantor or any other person or entity to evidence, guaranty or secure the payment and performance of the Obligations, and (7) all amendments, modifications, restatements, extensions, renewals and replacements of the foregoing.

"Mortgaged Property" means all estate, right, title, interest, claim and demand whatsoever which Mortgagor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to the following:

(1) the real property described in Exhibit A attached hereto and made a part hereof (the **"Land"**);

(2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the **"Improvements"**),

(3) all materials, supplies, appliances, equipment (as each such term is defined in the UCC), apparatus and other items of personal property now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the **"Fixtures"**),

(4) all goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is presently or hereafter defined in the UCC, and all other personal property of any kind or character, now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, software, trademarks, goodwill, promissory notes, electronic and tangible chattel paper, payment intangibles, documents, trade names, licenses and/or franchise

agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Personalty"), notwithstanding the foregoing, Personalty shall not include any property belonging to tenants under leases, Property Manager, guests or invitees of the Land and the Improvements, except to the extent that Borrower shall have any right or interest therein,

(5) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts (including accounts holding security deposits) maintained by Mortgagor with respect to the Mortgaged Property

(6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "Plans"),

(7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the "Leases"),

(8) all of the rents, revenues, income, proceeds, profits, security and other types of deposits, lease termination or cancellation payments and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Mortgaged Property (the "Rents"),

(9) all other agreements (to the extent assignable), such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Property Agreements"),

(10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof,

(11) all present and future accessories, additions, attachments, replacements and substitutions of, for or to any of the foregoing and all proceeds and products thereof,

(12) subject to the terms of the Loan Agreement, all insurance policies (regardless of whether required by Mortgagee), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor,

(13) all mineral, water, oil and gas rights relating to all or any part of the Mortgaged Property, and

(14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Security Instrument, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein, wherever located.

"Obligations" means, collectively, all (1) Indebtedness due under or secured by the Loan Documents, and (2) covenants, agreements, conditions, warranties, representations and other obligations made or undertaken by Mortgagor to Mortgagee under the Loan Documents provided, however, that the Obligations shall not include amounts owing under the Hazardous Materials Indemnity executed this date by the Mortgagor in favor of the Mortgagee.

"UCC" means the Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the UCC is used to define any term herein or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

All other capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Loan Agreement.

ARTICLE 2

GRANT

To secure the full and timely payment and performance of the Obligations, Mortgagor has granted, conveyed, bargained, warranted, sold, aliened, enfeoffed, released, confirmed, assigned to, granted a security interest in and mortgaged, and by these presents does hereby grant, convey, bargain, warrant, defend, sell, alien, enfeoff, release, confirm, assign to, grant a security interest in and mortgage unto Mortgagee all of the Mortgaged Property, TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee to and for the use of Mortgagee forever; provided always, nevertheless, that if Mortgagor shall well and truly pay or cause to be paid unto Mortgagee the Obligations, and has performed all Obligations under, and is not otherwise in default under, the Loan Documents, then and from henceforth, this Security Instrument and the estate hereby granted, shall cease, determine and become void and of no effect, anything hereinbefore contained to the contrary notwithstanding.

ARTICLE 3

WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

Section 3.1 **Warranty of Title.** Mortgagor has good and marketable fee simple absolute title to the Mortgaged Property, subject only existing exceptions to title other than mortgages or monetary liens in favor of any party other than Mortgagee and judgment liens (the "**Permitted Encumbrances**"), and Mortgagor shall defend the validity, priority and enforceability of the lien of this Security Instrument against the claims of all persons excepting only those claiming under Permitted Encumbrances.

Section 3.2 **Cooperation.** Where any of the Mortgaged Property is in the possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's security interest and obtaining an acknowledgment from the third party that it is holding such Mortgaged Property for the benefit of Mortgagee. Mortgagor will cooperate with Mortgagee in obtaining control (for lien perfection purposes under the UCC) with respect to any Mortgaged Property consisting of deposit accounts, investment property, letter-of-credit rights or electronic chattel paper.

Section 3.3 **Payment and Performance.** Mortgagor shall pay and perform, or cause to be paid or performed, the Obligations when due under the Loan Documents

Section 3.4 **Other Covenants.** All of the covenants in the Loan Agreement are incorporated herein by reference, and together with covenants in this **Article 3**, shall be

covenants running with the land. The covenants set forth in the Loan Agreement include, among other provisions: (a) except as otherwise permitted under the Loan Agreement, the prohibition against the further sale, transfer or encumbering of any of the Mortgaged Property and against certain transfers of interests in Mortgagor or in entities owning interests in Mortgagor, (b) the obligation to pay when due all taxes on the Mortgaged Property or assessed against Mortgagee with respect to the Loan, (c) the right of Mortgagee to inspect the Mortgaged Property, (d) the obligation to keep the Mortgaged Property insured as Mortgagee may require, (e) the obligation to comply with all legal requirements (including environmental laws), maintain the Mortgaged Property in good condition, and promptly repair any damage or casualty, and (f) except as otherwise permitted under the Loan Agreement, the obligation of Mortgagor to obtain Mortgagee's consent prior to entering into, modifying or taking other actions with respect to Leases.

Section 3.5 **Condemnation Awards and Insurance Proceeds.** Mortgagor assigns to Mortgagee all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, and all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. All such awards, compensation and proceeds shall be governed by and subject to the provisions of the Loan Agreement governing the same.

ARTICLE 4

DEFAULT AND FORECLOSURE

Section 4.1 **Remedies.** If an Event of Default exists and is continuing, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses as permitted by applicable legal requirements:

(a) **Acceleration.** Declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor to the extent permitted by applicable law), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property.** Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such

repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of **Section 4.7.**

(d) **Foreclosure and Sale.** Institute proceedings for the foreclosure of this Security Instrument, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. With respect to any notices required or permitted under the UCC, Mortgagor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor, including any and all right or equity of redemption. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagor against the Indebtedness in lieu of paying cash. In connection with any foreclosure sale: (i) Mortgagee shall have no obligation to clean up, repair or otherwise prepare the Mortgaged Property for sale; (ii) Mortgagor waives any right it may have to require Mortgagee to pursue any third party for any of the Obligations; (iii) Mortgagee may comply with any applicable state or federal law requirements in connection with a disposition of the Mortgaged Property; (iv) Mortgagee may specifically disclaim any warranties of title or the like; (v) if Mortgagee sells any of the Mortgaged Property on credit, Mortgagor will be credited only with payments actually made by purchaser, received by Mortgagee and applied to the indebtedness of the purchaser; and (vi) Mortgagee may apply any noncash proceeds of a disposition of the Mortgaged Property in any commercially reasonable manner selected by Mortgagee. Compliance by Mortgagee with the standards set forth in the foregoing sentence shall not be deemed to adversely affect the commercial reasonableness of any sale of the Mortgaged Property or portion thereof.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the Obligations secured thereby, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of **Section 4.7.**

(f) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action

for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Security Instrument).

Section 4.2 **Separate Sales.** The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee, in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3 **Remedies Cumulative, Concurrent and Nonexclusive.** Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Note and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4 **Release of and Resort to Collateral.** Subject to the terms and conditions of the Loan Agreement, Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment and performance of the Obligations, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 4.5 **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Mortgagee's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6 **Discontinuance of Proceedings.** If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagee shall be restored to its former position with respect to the Obligations, the Loan Documents, the Mortgaged Property and

otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 4.7 **Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of, the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and performing Borrower's obligations under the Loan Documents during the period of Borrower's ownership of the Mortgaged Property, including (1) receiver's fees and expenses, (2) court costs, (3) reasonable attorneys' and accountants' fees and expenses, (4) costs of advertisement, (5) utility costs and charges incurred during the Borrower's ownership of the Mortgaged Property, (6) insurance premiums incurred during Borrower's ownership of the Mortgaged Property, (7) costs and expenses with respect to any litigation affecting the Mortgaged Property as a result of any occurrence or non-occurrence occurring during Borrower's ownership of the Mortgaged Property, (8) wages and salaries of employees and commissions of agents, (9) all ground rent, real estate taxes and assessments incurred during Borrower's ownership of the Mortgaged Property, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold, and (10) all other carrying costs, fees, charges, reserves, and expenses whatsoever relating to the foregoing that are incurred during Borrower's ownership of the Mortgaged Property.

(b) to the payment of all amounts (including interest thereon), other than the unpaid principal balance of the Note and accrued but unpaid interest thereon, which may be due to Mortgagee under the Loan Documents;

(c) to the payment and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

Section 4.8 **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to **Section 4.1(d)** shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

Section 4.9 Additional Advances and Disbursements; Costs of Enforcement.

(a) If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section 4.9, or otherwise under this Security Instrument or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall be secured by this Security Instrument.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Security Instrument and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Security Instrument and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise. "Reasonable attorney fees" shall mean an amount actually charged by the attorneys (such to be based on time actually spent, at its usual hourly rates) retained by the Mortgagee in exercising its rights under this Security Instrument.

Section 4.10 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 5

ASSIGNMENT OF RENTS AND LEASES

Section 5.1 Assignment. Mortgagor unconditionally, presently and absolutely assigns to Mortgagee all of Mortgagor's right, title and interest in and to the Leases and Rents. This assignment is an absolute assignment to Mortgagee and not an assignment as security for the payment and performance of the Obligations.

Section 5.2 Rights of Mortgagee. Subject to the provisions of Section 5.5 below, during the existence of an Event of Default Mortgagee shall have the right, power and authority to: (a) notify any Person that the Leases have been assigned to Mortgagee and that all

Rents are to be paid directly to Mortgagee, whether or not Mortgagee has commenced or completed foreclosure or taken possession of the Mortgaged Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Mortgaged Property; (e) lease all or any part of the Mortgaged Property; and/or (f) perform any and all obligations of Mortgagor under the Leases and exercise any and all rights of Mortgagor therein contained to the full extent of Mortgagor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. Mortgagor irrevocably directs any tenant, manager, managing agent, or operator of the Mortgaged Property, without any requirement for notice to or consent by Mortgagor, to comply with all demands of Mortgagee under this Agreement and to turn over to Mortgagee on demand all Rents which it receives.

Section 5.3 **No Obligation.** Notwithstanding Mortgagee's rights hereunder, Mortgagee shall not be obligated to perform, and Mortgagee does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Mortgaged Property on account of this Security Instrument. Mortgagee shall have no responsibility on account of this Security Instrument for the control, care, maintenance or repair of the Mortgaged Property, for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property.

Section 5.4 **Right to Apply Rents.** Mortgagee shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with **Section 4.7** hereof.

Section 5.5 **Revocable License.** Notwithstanding that the assignment of the Rents and Leases under this **Article 5** is an absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and Leases, Mortgagee grants to Mortgagor a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents. Upon the occurrence and during the continuance of any Event of Default, such license may be revoked by Mortgagee, without notice to or demand (in accordance with applicable law) upon Mortgagor, and Mortgagee immediately shall be entitled to receive and apply all Rents, whether or not Mortgagee enters upon and takes control of the Mortgaged Property. Prior to such revocation, Mortgagor shall apply any Rents which it receives in accordance with the Loan Agreement.

Section 5.6 **Liability of Mortgagee.** Mortgagee shall not in any way be liable to Mortgagor for any action or inaction of Mortgagee, its employees or agents under this **Article 5**.

Section 5.7 **No Merger of Estates.** So long as any part of the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of

such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

ARTICLE 6

SECURITY AGREEMENT

Section 6.1 **Security Interest.** This Security Instrument constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least ten (10) Business Days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.2 **Financing Statements.** Mortgagor hereby irrevocably authorizes Mortgagee, at any time and from time to time, to file in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Mortgaged Property, without the signature of Mortgagor where permitted by law. Mortgagor agrees to furnish Mortgagee, promptly upon request, with any information required by Mortgagee to complete such financing or continuation statements. If Mortgagee has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Mortgagor ratifies and confirms its authorization of all such filings. Mortgagor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Mortgagee, and agrees that it will not do so without Mortgagee's prior written consent, subject to Mortgagor's rights under Section 9-509(d)(2) of the UCC. Mortgagor shall execute and deliver to Mortgagee, in form and substance reasonably satisfactory to Mortgagee, such additional financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

Section 6.3 **Fixture Filing.** This Security Instrument shall also constitute a "fixture filing" under applicable law against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as indicated at the beginning of this Security Instrument. The name and address of the Debtor (Mortgagor) and

Secured Party (Mortgagee) are as indicated at the beginning of this Security Instrument, the description of the collateral is included in the definition of Mortgaged Property set forth in **Article 1** of this Security Instrument and the description of real estate to which the collateral is attached or upon which it is or will be located is described in Exhibit A attached hereto. **This Financing Statement covers the following types or items of property:** The Mortgaged Property. This Security Instrument covers goods or items of personal property which are or are to become fixtures upon the Land. The Mortgagor is the record owner of the Land.

ARTICLE 7

MISCELLANEOUS

Section 7.1 **Notices.** All Notices required or permitted to be given hereunder shall be in accordance with **Section 12.1** of the Loan Agreement.

Section 7.2 **Covenants Running with the Land.** All of the covenants in the Loan Agreement and in **Article 3** of this Security Instrument, and all other Obligations contained in this Security Instrument, are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Security Instrument and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.3 **Attorney-in-Fact.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) while any Event of Default exists, to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) to execute any or all of the rights or powers described in **Article 5** with the same force and effect as if executed by Mortgagor, and Mortgagor ratifies and confirms any and all acts done or omitted to be done by Mortgagee, its agents, servants, employees or attorneys in, to or about the Mortgaged Property, (c) upon the issuance of a deed pursuant to the foreclosure of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the Mortgagee of any such deed and as may be necessary or desirable for such purpose, (d) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Mortgaged

Property, and (e) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Obligations and shall bear interest at the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other Person for any failure to take any action which it is empowered to take under this Section.

Section 7.4 **Successors and Assigns.** This Security Instrument shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 7.5 **No Waiver.** Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6 **Loan Agreement.** If any conflict or inconsistency exists between this Security Instrument and the Loan Agreement, the Loan Agreement shall govern; provided, however, the terms and conditions of this Security Instrument shall continue to control and govern with respect to matters relating to the creation, perfection, priority and enforcement of the lien of and security interests granted in this Security Instrument.

Section 7.7 **Release or Reconveyance.** Upon full payment and performance of the Obligations, Mortgagee, at Mortgagor's expense, shall cancel and surrender of record this Security Instrument, and release the liens and security interests created by this Security Instrument or reconvey the Mortgaged Property.

Section 7.8 **Waiver of Stay, Moratorium and Similar Rights.** Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Security Instrument or the Indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee, or any one or more of them.

Section 7.9 **Obligations of Mortgagor, Joint and Several.** If more than one Person or entity has executed this Security Instrument as "Mortgagor," the obligations of all such Persons hereunder shall be joint and several.

Section 7.10 **Governing Law.** **THIS SECURITY INSTRUMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE**

STATE OF OHIO INCLUDING WITH RESPECT TO THE PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED BY THIS SECURITY INSTRUMENT AND ANY OTHER LOAN DOCUMENTS IN PROPERTY WHOSE PERFECTION AND PRIORITY IS COVERED BY ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE. MORTGAGOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT.

Section 7.11 **Interpretation.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections. When used in this Security Instrument, "include(s)" shall mean "include(s), without limitation," and "including" shall mean "including, but not limited to."

Section 7.12 **Counterparts.** This Security Instrument may be executed in any number of identical counterparts, any of which may contain the signatures of fewer than all of the parties, but all of which together shall constitute a single instrument. Copies of originals, including copies delivered by facsimile, PDF or other electronic means, shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Security Instrument. For purposes of recordation, original, executed counterpart signature pages shall be attached to one copy of this Security Instrument to form one document.

Section 7.13 **Future Advances.** This Security Instrument is given to secure not only existing Indebtedness (including, without limitation, any existing obligations incurred or any advances made at or prior to the recording of this Security Instrument), but also future advances and/or future obligations made pursuant to or as provided in the Loan Documents and any other documents from time to time evidencing any of the advances or obligations secured hereby, to the same extent as if such future advances and/or future obligations were made on the date of recording hereof, and although there may be no Indebtedness outstanding at the time any advance is made or obligation incurred. To the fullest extent permitted by law, the lien of this Security Instrument shall be valid as to all such Indebtedness, including, without limitation, all revolving credit and future advances and other future obligations, from the time this Security Instrument is recorded. The maximum principal amount that may be secured by this Security Instrument at any one time, exclusive of interest accrued thereon and protective advances, is ELEVEN MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$11,800,000.00).

Section 7.14 **Mechanics Lien Law.** Mortgagor hereby authorizes and empowers the Mortgagee, at its option, to do all things authorized or required to be done by the Mortgagee, as a mortgagee, under Section 1311.14 of the Ohio Revised Code, under any amendments or supplements thereto or under any other present or future law of the State of Ohio relating to the creation or attachment of mechanics, materialmen or other similar liens.

Section 7.15 **Receiver.** Upon, or at any time prior or after, the filing of any complaint to foreclose the lien of this Security Instrument or instituting any other foreclosure of the liens and security interests provided for in this Security Instrument or any other legal proceedings under this Security Instrument, Mortgagee may, at Mortgagee's sole option, make application to a court of competent jurisdiction for appointment of a receiver pursuant to Ohio Revised Code Section 2735.01 et. seq., and other applicable law for all or any part of the Mortgaged Property, as a matter of strict right and without notice to Mortgagor, and Mortgagor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Mortgagee, but nothing herein is construed to deprive Mortgagee of any other right, remedy or privilege Mortgagee may now have under the law to have a receiver appointed; provided that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Mortgagee to receive payment of all of the Rents, issues, deposits and profits pursuant to other terms and provisions set forth in this Security Instrument. Such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Indebtedness; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by Ohio Revised Code Section 2735.04 and other applicable law, including the power to take possession, control and care of the Mortgaged Property and to collect all Rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Indebtedness, and in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such Rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of any such period.

Section 7.16 **Priority of Mortgage Lien.** Lender is authorized and empowered to do all things provided to be done by a mortgagee under Section 1311.14 of the Ohio Revised Code, and any present or future amendments or supplements thereto.

Section 7.17 **Foreclosure; Judicial Foreclosure.** In the event that any provision in this Security Instrument shall be inconsistent with any provision of Ohio law, the provisions of Ohio law shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with applicable law. If any provision of this Security Instrument shall grant to Mortgagee any rights or remedies upon an Event of Default which are more limited than the rights that would otherwise be vested in Mortgagee under Ohio law in the absence of said provision, Mortgagee shall be vested with the rights granted by Ohio law.

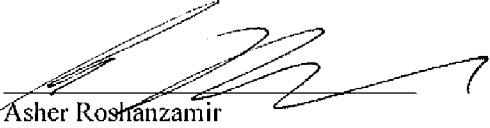
Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under applicable law, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Security Instrument, shall be added to the Indebtedness.

Section 7.18 **Other Amounts Secured; Maximum Indebtedness.** Mortgagor acknowledges and agrees that this Security Instrument secures the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the Loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part or are future advances made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Mortgagee in connection with the Loan, all in accordance with the Loan Documents. In accordance with the provisions of Ohio Revised Code Sections 5301.232 and 5301.233, this Security Instrument is given to, and the parties intend that it shall secure, among other items, indebtedness in a maximum amount of \$11,800,000.00, exclusive of interest thereon and of advances for taxes, assessments, insurance premiums and costs incurred for protection of the Mortgaged Property, which indebtedness may include advances made by Mortgagee, after this Security Instrument is filed of record. The making of such advances is obligatory on the part of Mortgagee subject to the terms and conditions provided for in the Loan Documents. The maximum amount of the unpaid balance of such indebtedness, in the aggregate and exclusive of interest thereon, which is or will be outstanding at any time, is that set forth above, provided that this Security Instrument shall also secure unpaid balances of advances made by Mortgagee for the payment of taxes, assessments, insurance premiums, and other costs incurred for the protection of the Mortgaged Property as contemplated by Section 5301.233 of the Ohio Revised Code.

Section 7.19 **Entire Agreement.** This Security Instrument and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

EXECUTED under seal as of the date first above written.

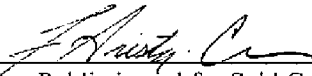
BARUCH BROAD STREET, LLC
a Delaware limited liability company

By: 
Name: Asher Roshanzamir
Title: Authorized Signatory

ACKNOWLEDGMENT

STATE OF NEW YORK :
COUNTY OF New York : ss

The foregoing instrument was acknowledged before me this 19th day of January, 2022 by Asher Roshanzamir, the Authorized Signatory of Baruch Broad Street, LLC, a Delaware limited liability company. No oath or affirmation was administered.


Notary Public in and for Said County and State

Franchesca Ansty-Cruz
(Type, print or stamp the Notary's name below his or her signature.)

My Commission Expires: July 23, 2024

Franchesca Ansty-Cruz
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01AR6263062
Qualified New York County
Commission Expires July 23, 2024

This Instrument Prepared By:

Jordan S. Lewis
Greenberg Traurig, LLP
3333 Piedmont Road NE, Suite 2500
Atlanta, Georgia 30305

EXHIBIT A**LEGAL DESCRIPTION OF THE LAND**

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the of Columbus, County of Franklin, State of Ohio.

Tract I

Situated in the City of Columbus, County of Franklin, State of Ohio, and being all of Inlot No. 445 and 62.5 feet of the rear (North) end of Inlot No. 446 in the City of Columbus as the same are numbered and delineated upon the recorded plat thereof, recorded in Deed Book F, Page 332 (record burned); and re-recorded in Plat Book 3, Pages 247, 248 and 249 and also in Plat Book 14, Page 27 of Franklin County Records.

And also described as shown as follows:

Situated in the City of Columbus, County of Franklin, State of Ohio, and being all of Inlot No. 445 and a part of Inlot No. 446 as the same are numbered and delineated upon the recorded plat thereof, recorded in Deed Book F, Page 332 (record burned); and re-recorded in Plat Book 3, Pages 247, 248 and 249 and also in Plat Book 14, Page 27 of Franklin County Records, and being more particularly described as follows:

Beginning at the Northwestern intersection of the right of way lines of East Broad Street (120 feet wide) and Third Street (82.5 feet wide), and being the Southeasterly corner of said Inlot No. 445; thence North 90 deg. 00' 00" West, a distance of 62.80 feet, along the Southerly line of said Inlot 445 and the Northerly line of East Broad Street, to a point at the Southwesterly corner of said Inlot 445 and being the Southeasterly corner of said Inlot No. 446 as conveyed to the City National Bank & Trust Company by deed recorded in Deed Book 1648, Page 71 of Franklin County Records; thence North 00 deg. 00' 00" West, a distance of 125 feet, along the line common to said Inlots 445 and 446, to a point; thence North 90 deg. 00' 00" West, a distance of 62.50 feet, across said Inlot 446, to a point on the Westerly line of said Inlot; thence North 00 deg. 00' 00" West, a distance of 62.50 feet, along the Westerly line of said Inlot 446, to a point on the Northerly line of said Inlot 446 and being on the Southerly right of way of Lynn Street (33 feet wide); thence North 89 deg. 56' 45" East, a distance of 125.30 feet, along the Northerly line of said Inlots 445 and 446 and the Southerly right of way line of Lynn Street, to a point, said point being on the Westerly right of way line of Third Street, and being the Northeasterly corner of Inlot 445; thence South 00 deg. 00' 00" East, a distance of 187.50 feet, along the Easterly line of said Inlot 445, being the Westerly right of way line of said Third Street, to the point of beginning, containing 0.359 acres of land. Bearings shown hereon are based on an assumed bearing of North 90 deg. 00' 00" East for the centerline of East Broad Street.

Tract II

Being One Hundred Twenty-five (125) feet off the south end of Inlot Number Four Hundred Forty-six (446) and a part of Inlot Number Four Hundred Forty-seven (447) to the City of Columbus, as the same are numbered and delineated upon the recorded plat of said City, of record in D.B. "F", Page 332, Recorder's Office, Franklin County, Ohio, which part of said Inlot No. 447 is bounded and described as follows:

Beginning at the southeast corner of said Inlot No. 447; thence northerly along the east line of said Inlot to the north line thereof; thence westerly along the north line of said Inlot, forty-one and five tenths (41.5) feet more or less to a point in the said north line; thence southerly on a line parallel with the east line of said Inlot, eighty (80) feet to a point; thence easterly parallel with the north line of said Inlot, eighteen (18) feet to a point; thence southerly parallel with the east line of said Inlot to the south line of said Inlot; thence easterly along the south line of said Inlot, twenty-three and five tenths (23.5) feet more or less to the place of beginning.

NOTE FOR INFORMATION: Being Parcel No. 010-011313 (Tract I) and 010-066864 (Tract II), of the City of Columbus, County of Franklin

EXHIBIT D

DO NOT DETACH

 Instrument Number: 202202240030619 Recorded Date: 02/24/2022 10:11:08 AM  Daniel J. O'Connor Jr. Franklin County Recorder 373 South High Street, 18th Floor Columbus, OH 43215 (614) 525-3930 http://Recorder.FranklinCountyOhio.gov Recorder@FranklinCountyOhio.gov	Return To (Simplifile): Madison Title Agency, LLC 1125 Ocean Avenue Lakewood, NJ 08701 Simplifile										
Transaction Number: T20220022346 Document Type: FINAN STATEMENT REAL ESTATE Document Page Count: 4											
Submitted By (Simplifile): Madison Title Agency, LLC 1125 OCEAN AVENUE Lakewood, NJ 08701 Simplifile											
First Grantor: BARUCH BROAD STREET LLC	First Grantee: AFF IV 88 E BROAD LLC										
Fees: <table> <tr> <td>Document Recording Fee:</td> <td>\$12.00</td> </tr> <tr> <td>Name Indexing Fee:</td> <td>\$8.00</td> </tr> <tr> <td>Total Fees:</td> <td>\$20.00</td> </tr> <tr> <td>Amount Paid:</td> <td>\$20.00</td> </tr> <tr> <td>Amount Due:</td> <td>\$0.00</td> </tr> </table>	Document Recording Fee:	\$12.00	Name Indexing Fee:	\$8.00	Total Fees:	\$20.00	Amount Paid:	\$20.00	Amount Due:	\$0.00	Instrument Number: 202202240030619 Recorded Date: 02/24/2022 10:11:08 AM
Document Recording Fee:	\$12.00										
Name Indexing Fee:	\$8.00										
Total Fees:	\$20.00										
Amount Paid:	\$20.00										
Amount Due:	\$0.00										

OFFICIAL RECORDING COVER PAGE

DO NOT DETACH

THIS PAGE IS NOW PART OF THIS RECORDED DOCUMENT

NOTE: If the document data differs from this cover sheet, please first check the document on our website to ensure it has been corrected. The document data always supersedes the cover page.

If an error on the cover page appears on our website after review please let our office know.

COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Jordan Lewis
B. E-MAIL CONTACT AT FILER (optional) lewisjo@gtlaw.com
C. SEND ACKNOWLEDGMENT TO: (Name and Address) Greenberg Traurig, LLP 3333 Piedmont Road NE, Suite 2500 Atlanta, GA 30305 Attn: Jordan Lewis, Esq.

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. **DEBTOR'S NAME:** Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME BARUCH BROAD STREET, LLC				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS 551 Fifth Avenue, Suite 2500	CITY New York	STATE NY	POSTAL CODE 10176	COUNTRY USA

2. **DEBTOR'S NAME:** Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. **SECURED PARTY'S NAME** (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME AFF IV 88 E BROAD, LLC				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS 3565 Piedmont Road NE, One Piedmont Ctr.	CITY Atlanta	STATE GA	POSTAL CODE 30305	COUNTRY USA

4. **COLLATERAL:** This financing statement covers the following collateral:

All assets of Debtor, whether now owned or existing or hereafter acquired.

5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative		
6a. Check <u>only</u> if applicable and check <u>only</u> one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility	6b. Check <u>only</u> if applicable and check <u>only</u> one box: ☐ Agricultural Lien ☐ Non-UCC Filing	
7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor		

8. **OPTIONAL FILER REFERENCE DATA:**

Franklin County, Ohio (real estate records) (142145.033900)

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here ☐

OR	9a. ORGANIZATION'S NAME	
	BARUCH BROAD STREET, LLC	
	9b. INDIVIDUAL'S SURNAME	
FIRST PERSONAL NAME		
ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

OR	10a. ORGANIZATION'S NAME					
	10b. INDIVIDUAL'S SURNAME					
	INDIVIDUAL'S FIRST PERSONAL NAME					
	INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)				SUFFIX	
10c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

OR	11a. ORGANIZATION'S NAME					
	11b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
	11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. ☒ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:

☐ covers timber to be cut ☐ covers as-extracted collateral ☒ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

See Exhibit "A" attached hereto and by this reference made a part hereof.

17. MISCELLANEOUS:

Exhibit A**Legal Description**

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the of Columbus, County of Franklin, State of Ohio.

Tract I

Situated in the City of Columbus, County of Franklin, State of Ohio, and being all of Inlot No. 445 and 62.5 feet of the rear (North) end of Inlot No. 446 in the City of Columbus as the same are numbered and delineated upon the recorded plat thereof, recorded in Deed Book F, Page 332 (record burned); and re-recorded in Plat Book 3, Pages 247, 248 and 249 and also in Plat Book 14, Page 27 of Franklin County Records.

And also described as shown as follows:

Situated in the City of Columbus, County of Franklin, State of Ohio, and being all of Inlot No. 445 and a part of Inlot No. 446 as the same are numbered and delineated upon the recorded plat thereof, recorded in Deed Book F, Page 332 (record burned); and re-recorded in Plat Book 3, Pages 247, 248 and 249 and also in Plat Book 14, Page 27 of Franklin County Records, and being more particularly described as follows:

Beginning at the Northwestern intersection of the right of way lines of East Broad Street (120 feet wide) and Third Street (82.5 feet wide), and being the Southeasterly corner of said Inlot No. 445; thence North 90 deg. 00' 00" West, a distance of 62.80 feet, along the Southerly line of said Inlot 445 and the Northerly line of East Broad Street, to a point at the Southwesterly corner of said Inlot 445 and being the Southeasterly corner of said Inlot No. 446 as conveyed to the City National Bank & Trust Company by deed recorded in Deed Book 1648, Page 71 of Franklin County Records; thence North 00 deg. 00' 00" West, a distance of 125 feet, along the line common to said Inlots 445 and 446, to a point; thence North 90 deg. 00' 00" West, a distance of 62.50 feet, across said Inlot 446, to a point on the Westerly line of said Inlot; thence North 00 deg. 00' 00" West, a distance of 62.50 feet, along the Westerly line of said Inlot 446, to a point on the Northerly line of said Inlot 446 and being on the Southerly right of way of Lynn Street (33 feet wide); thence North 89 deg. 56' 45" East, a distance of 125.30 feet, along the Northerly line of said Inlots 445 and 446 and the Southerly right of way line of Lynn Street, to a point, said point being on the Westerly right of way line of Third Street, and being the Northeasterly corner of Inlot 445; thence South 00 deg. 00' 00" East, a distance of 187.50 feet, along the Easterly line of said Inlot 445, being the Westerly right of way line of said Third Street, to the point of beginning, containing 0.359 acres of land. Bearings shown hereon are based on an assumed bearing of North 90 deg. 00' 00" East for the centerline of East Broad Street.

Tract II

Being One Hundred Twenty-five (125) feet off the south end of Inlot Number Four Hundred Forty-six (446) and a part of Inlot Number Four Hundred Forty-seven (447) to the City of Columbus, as the same are numbered and delineated upon the recorded plat of said City, of record in D.B. "F", Page 332, Recorder's Office, Franklin County, Ohio, which part of said Inlot No. 447 is bounded and described as follows:

Beginning at the southeast corner of said Inlot No. 447; thence northerly along the east line of said Inlot to the north line thereof; thence westerly along the north line of said Inlot, forty-one and five tenths (41.5) feet more or less to a point in the said north line; thence southerly on a line parallel with the east line of said Inlot, eighty (80) feet to a point; thence easterly parallel with the north line of said Inlot, eighteen (18) feet to a point; thence southerly parallel with the east line of said Inlot to the south line of said Inlot; thence easterly along the south line of said Inlot, twenty-three and five tenths (23.5) feet more or less to the place of beginning.

NOTE FOR INFORMATION: Being Parcel No. 010-011313 (Tract I) and 010-066864 (Tract II), of the City of Columbus, County of Franklin

EXHIBIT E



Corporate Real Estate Solutions
4900 Tiedeman Road
Brooklyn, OH 44144-2302
Tel: (216) 471-2107
robert_arundel@keybank.com

April 8, 2024

Via Federal Express
Columbus Main – PID 3618

Baruch Broad Street LLC
1125 Ocean Avenue
Lakewood, NJ 08701
Attn: Asher Roshanzamir, Managing Member

RE: Lease of Office Space dated September 14, 1995 (the “Lease”), as may have been amended and/or assigned between Baruch Broad Street LLC (“Landlord”) and KeyBank National Association (“Tenant”) for the premises located at 88 East Broad Street, Columbus, OH (the “Premises”)

NOTICE OF ELECTRIC DISCONNECTION – RENT ABATEMENT

To Whom It May Concern:

On Friday, April 5, 2024, the enclosed notice was found posted on each floor of the building at 88 East Broad Street indicating power will be disconnected effective Wednesday, April 10, 2024, due to nonpayment. The notice directs Tenant to contact the property manager for the building with our questions, which we have done.

Ashlee Zimmerman with Colliers, who we now understand continues to represent this building as its property manager advised us through responding email dated April 5th that building ownership will make immediately payment of the outstanding utility charges and avoid power disconnect. Should payment not be timely made, and power is disconnected, Tenant will hold Landlord fully responsible and immediately discontinue rent payments effective on the date of disconnect and not resume them until we are able to resume occupancy and operations from our Premises as this is a clear violation of our quiet enjoyment rights defined within the Lease. We demand Landlord take immediate action to resolve this latest issue and avoid additional actions available to Tenant as defined within the Lease.

Your immediate attention to this matter is appreciated and expected.

Sincerely,

Robert J. Arundel
Director, Corporate Real Estate

Baruch Broad Street LLC

April 8, 2024

Page 2 of 2

Enclosure

Cc: Ashlee Zimmerman – via email only at ashlee.zimmerman@colliers.com
Dror Bezalel, AFF IV 88 E Broad, LLC, c/o The Ardent Companies, 3565 Piedmont Road NE, One
Piedmont Center, Atlanta, Georgia 30305 and via email at dbezalel@theardentcompanies.com
Michael Baum, Greenberg Traurig, LLP, 77 West Wacker Drive, Suite 3100, Chicago, IL 60601 and via
email at baumm@gtlaw.com
Robert Schmitz
Cassidy Lowden
Cathy Hurst

NOTICE OF DISCONNECTION FROM AEP OHIO

Power to this building, located at
88 East Broad Street, is scheduled
to be disconnected due to
nonpayment on **04/10/2024**.

Please make arrangements as
appropriate regarding this notice.

If you have questions regarding
this disconnection, contact the
property manager.



An **AEP** Company

EXHIBIT F



Jordan S. Lewis
Tel 678.553.2298
jordan.lewis@gtlaw.com

April 12, 2024

Via Email & UPS Overnight Delivery

Baruch Broad Street, LLC
c/o Zamir Equities LLC
551 Fifth Avenue, Suite 2500
New York, New York 10176
Attention: Asher Roshanzamir
Email: asher@zamirequities.com

Asher Roshanzamir
c/o Zamir Equities
551 Fifth Avenue, Suite 2500
New York, New York 10176
Email: asher@zamirequities.com

Re: \$11,800,000.00 loan (the "Loan") evidenced by that certain Loan and Security Agreement entered into as of January 21, 2022 (the "Loan Agreement") by and between **BARUCH BROAD STREET, LLC**, a Delaware limited liability company ("Borrower"), and **AFF IV 88 E BROAD, LLC**, a Delaware limited liability company ("Lender")

Dear Sir/Madam:

We are writing on behalf of Lender in connection with the above-referenced Loan. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Loan Agreement.

As you are aware, Section 2.3(3) of the Loan Agreement provides that on the Maturity Date, Borrower shall pay to Lender all outstanding principal, accrued and unpaid interest, and any other amounts due under the Loan Documents, including the unpaid portion of the Exit Fee and any Minimum Interest Amount (the "Maturity Payment"). The Maturity Date was January 21, 2024 and the Loan is now past due. Because Borrower has failed to make the Maturity Payment on the Maturity Date, an Event of Default has occurred and is continuing.

Lender hereby demands immediate payment in full of the Loan and all amounts due under the Loan Documents.

Lender has the right to exercise all of its available legal remedies including, without limitation, commencing foreclosure proceedings on the Collateral. Please note that pursuant to

ACTIVE 697277619v1

Baruch Broad Street, LLC

April 12, 2024

Page 2

Section 12.5 of the Loan Agreement, Lender's expenses incurred to enforce Lender's rights under the Loan Documents shall be paid or reimbursed on demand, together with interest at the Default Rate, and all such amounts shall constitute part of the Loan and be secured by the Loan Documents.

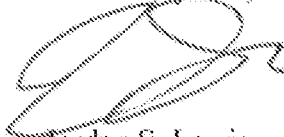
Please be advised that the notice given hereby is being given pursuant to the terms and provisions of the Loan Documents. By providing this notice, Lender does not waive any of the rights or remedies available to Lender under the Loan Documents or otherwise. No failure by Lender to exercise any rights or remedies available to Lender and no delay in exercising any such rights or remedies shall operate as a waiver of any rights which Lender may have pursuant to the terms of the Loan Documents or otherwise, all of which are expressly reserved. Further, any specific reference herein to any Defaults or Events of Default shall in no way constitute, or be construed to be, a waiver of any other Default(s) or Event(s) of Default that may now exist or hereafter arise under the Loan Documents.

By copy of this notice to Guarantor, Lender reminds Guarantor of its obligations under the Guaranty, and demands that Guarantor comply with all of its obligations under the Guaranty.

Please be advised that any discussions that may have occurred or may occur in the future between representatives of Borrower and/or Guarantor, on the one hand, and Lender, on the other hand, regarding the Project or the Loan Documents are not binding upon the parties. Borrower and Guarantor may not rely upon any such discussions in any manner or fashion.

Should you have any further questions, please feel free to contact me.

Sincerely yours,



Jordan S. Lewis

cc: (Via Email & UPS
Overnight Delivery)

Morrison Cohen LLP
909 Third Avenue
New York, New York 10022
Attention: Stephen Soleymani, Esq.
Email: ssoleymani@morrisoncohen.com

(Via Email Only)

Baruch Broad Street, LLC

April 12, 2024

Page 3

Dror Bezalel

Email: dbezalel@theardentcompanies.com

Michelle Fowler

Email: mfowler@theardentcompanies.com

Michael Baum

Email: baumm@gtlaw.com

Jon Robins

Email: robinsi@gtlaw.com