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**LOAN AGREEMENT**

**Dated as of June 29, 2023**

**by and among**

**NEW YORK SOCIAL EQUITY CANNABIS INVESTMENT FUND, L.P.**

**NYSECIF OPERATING COMPANY LLC, and**

**NYSECIF LEASING COMPANY, LLC, as Borrowers,**

**and**

**CHICAGO ATLANTIC ADMIN, LLC, as the Agent**

**and**

**CHICAGO ATLANTIC CREDIT ADVISERS, LLC, as the Sole Arranger**

**and**

**CHICAGO ATLANTIC REAL ESTATE FINANCE, INC., together with their Successors  
and Assignees, as a Lender**

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## LOAN AGREEMENT

This Loan Agreement, dated as of June 29, 2023 (this “Agreement”), is made by and among NEW YORK SOCIAL EQUITY CANNABIS INVESTMENT FUND, L.P. (the “Fund”), its wholly-owned special purpose limited liability company subsidiaries, NYSECIF OPERATING COMPANY, LLC (the “OpCo”) and NYSECIF LEASING COMPANY, LLC (the “PropCo”) (the Fund, the OpCo and the PropCo each a “Borrower” and collectively, the “Borrowers”), CHICAGO ATLANTIC ADMIN, LLC, as Agent (the “Agent”), CHICAGO ATLANTIC CREDIT ADVISERS, LLC, as the Sole Arranger (the “Sole Arranger”), and CHICAGO ATLANTIC REAL ESTATE FINANCE, INC., as Lender (together with its successors and assignees, the “Lenders”).

### RECITALS:

WHEREAS, Borrowers have requested, and the Lenders have agreed to make available to Borrowers, a delayed draw term loan facility upon and subject to the terms and conditions set forth in this Agreement;

WHEREAS, Borrowers desire to use the proceeds of each Term Loan as set forth in Section 7.3 (*Use of Proceeds*) hereof;

WHEREAS, Borrowers desire to secure all of their Obligations under the Loan Documents by granting to Agent, for the benefit of the Lenders, a security interest in and lien upon the Collateral; and

WHEREAS, subject to the terms hereof, each Borrower is willing to grant to the Agent, for the benefit of the Lenders, a security interest in and lien upon the Collateral (including for the avoidance of doubt the Fund’s equity interest in the PropCo, the OpCo;

NOW THEREFORE, in consideration of the premises and the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I.

### DEFINITIONS AND ACCOUNTING TERMS

Section 1.1. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

“Affiliate” means as to any Person, any other Person that, directly or indirectly, Controls or is Controlled by or is under common Control with such Person.

“Agent” has the meaning specified in the preamble.

“Anti-Corruption Laws” means Requirements of Law relating to anti-bribery or anti-corruption (governmental or commercial) which apply to a Borrower, including Requirements of Law that prohibit the corrupt payment, offer, promise, or authorization of the payment or transfer of anything of value (including gifts or entertainment), directly or indirectly, to any foreign

government official, foreign government employee or commercial entity to obtain a business advantage; including the Foreign Corrupt Practices Act.

“Anti-Money Laundering Laws” means any of the Requirements of Law relating to terrorism or money laundering, including Executive Order No. 13224, the PATRIOT Act, the Bank Secrecy Act, the Money Laundering Control Act of 1986 (i.e., 18 USC. §§ 1956 and 1957) and all Requirements of Law comprising or implementing these Requirements of Law.

“Assignment and Acceptance Agreement” means an assignment and acceptance entered into by an assigning Lender and an assignee, and accepted by Agent, in accordance with Section 12.9 (*Assignments*) hereof and substantially in the form of Exhibit E hereto or such other form acceptable to Agent.

“Assignment of Leases” means the Assignment of Leases dated the date hereof between the PropCo as Assignor and the Agent as Assignee, which collaterally assigns, subject to any required landlord consent (whether provided in the applicable Fund Lease or obtained prior to enforcement), PropCo’s full right, title and interest in each current or hereafter executed Fund Lease, as it may be amended from time to time.

“Assignment of Subleases and Rents” means the Assignment of Subleases and Rents dated the date hereof between the PropCo, as Assignor, and the Agent as Assignee with respect to all lease rental payments of all Operators and other right, title and interest of PropCo under each current or hereafter executed Operator Sublease, as it may be amended from time to time, together with all documents and agreements ancillary and incidental thereto, including, without limitation, any so called 291-F Notices.

“Authorized Officer” means, with respect to the Fund, any of the Principals of Social Equity Impact Ventures GPI, LLC; and with respect to PropCo and Opco, the President or any Vice President of the Fund or such Borrower.

“Bank Account” has the meaning specified in Section 6.27 (*Bank Accounts*).

“Bankruptcy Code” means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, arrangement, receivership, insolvency, administration, reorganization, or similar debtor relief Laws of the United States, or other applicable jurisdictions from time to time in effect and permitting a debtor to obtain a stay or a compromise of the claims of its creditors or affecting the rights of creditors generally.

“Blocked Person” shall have the meaning assigned to such term in Section 6.16(b) (*Anti-Money Laundering Laws*) hereof.

“Borrowers” has the meaning specified in the preamble.

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

“Cannabis License” means a conditional or final adult-use retail dispensary license, issued by OCM pursuant to the Marihuana Regulation and Taxation Act authorizing an approved licensee to acquire, possess, sell and deliver cannabis to cannabis consumers under certain OCM-required conditions at pre-approved premises.

“Capital Expenditures” shall mean, for any period, without duplication, with respect to any Person, (a) any expenditure or commitment to expend money for any purchase or other acquisition of any asset, including Tenant Improvements and any other capitalized leasehold improvements, which would be classified as a fixed or capital asset on a consolidated balance sheet of such Person prepared in accordance with GAAP and (b) Capital Lease Obligations.

“Capital Lease” means, with respect to any Person, any lease of, or other arrangement conveying the right to use, any Property by such Person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such Person prepared in accordance with GAAP.

“Capital Lease Obligations” mean, with respect to any Person, the obligations of such Person to pay rent or other amounts under any Capital Lease, any lease entered into as part of any Synthetic Lease, or a combination thereof, which obligations are (or would be, if such Synthetic Lease or other lease were accounted for as a Capital Lease) required to be classified and accounted for as Capital Leases on a balance sheet of such person under GAAP, and the amount of such obligations shall be the capitalized amount thereof (or the amount that would be capitalized, if such Synthetic Lease or other lease were accounted for as a Capital Lease) determined in accordance with GAAP.

“Cash Equivalents” means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one (1) year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one (1) year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor’s Rating Group (“S&P”) or Moody’s Investors Service, Inc. (“Moody’s”), (c) commercial paper maturing no more than two hundred seventy (270) days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody’s, (d) certificates of deposit, time deposits, overnight bank deposits or bankers’ acceptances maturing within one (1) year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than One Hundred Million Dollars (\$100,000,000), (e) deposit accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than Five Hundred Million Dollars (\$500,000,000), having a term of not more than seven (7) days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six (6)



months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above.

“Change in Law” means the occurrence after the Closing Date, of any adverse change in applicable law, including State Cannabis Law, or the application or interpretation thereof by any Governmental Authority, (a) that makes it unlawful for Agent or any Lender to (i) continue to be a party to any Loan Document, (ii) perform any of its obligations hereunder or under any other Loan Document or (iii) to fund or maintain the Loans, (b) pursuant to which any Governmental Authority has enjoined Agent or any Lender from (i) continuing to be a party to any Loan Document, (ii) performing any of its obligations hereunder or under any other Loan Document or (iii) funding or maintaining the Loans, (c) pursuant to which any Governmental Authority, in an exercise of its jurisdiction over the Borrowers or any Operator, mandates (i) confidential information from or disclosure of confidential information about Agent, any Lender, any Affiliate thereof or any investor therein which Agent, a Lender or Affiliate or such investor reasonably determines would violate any confidentiality agreement or obligation applicable to it, or (ii) Agent or any Lender to obtain any Permit, in each case, to (A) continue to be a party to any Loan Document, (B) perform any of its obligations hereunder or under any other Loan Document, (C) fund or maintain the Loans, or (d) that would result in the Agent or Lenders being engaged in Restricted Cannabis Activities as a result of this Agreement.

“Change of Control” means (i) in the case of an Operator, the acquisition, directly or indirectly, by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act) of the beneficial ownership of more than 50% of the outstanding equity interests of such Operator on a fully-diluted basis, other than by a Person holding or receiving the Cannabis license for the Operator’s property, and (ii) in the case of Borrowers, the failure of the Fund to beneficially own and control 100% of the outstanding equity interest in Propco and Opco.

“Closing Date” means June 29, 2023.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“Collateral” means all assets in which a security interest or lien is granted to Agent by one or more Borrowers under the Collateral Documents.

“Collateral Assignment of Operator Obligation Documents” means the collateral assignment in favor of Agent of each Borrower’s rights under each of the Operator Obligation Documents.

“Collateral Documents” means the Pledge Agreement, the Security Agreement, the Collateral Assignment of Operator Obligation Documents, the Assignment of Leases and the Assignment of Subleases and Rents.

“Commitment” means, as to each Lender, such Lender’s obligation to make an Initial Term Loans or Delayed Draw Term Loans, in an amount up to, but not exceeding the amount set forth for such Lender on Schedule 1.1, as such Lender’s “Commitment Amount.”

“Confidential Information” shall have the meaning assigned to such term in the Section 12.18 (*Confidentiality*) hereof.

“Construction Budget” means a forecast through the completion of the costs and expenses associated with each Project, along with actual expenses incurred to date with details of the expected timing for substantial completion of each Project, and the granting of operational status from the applicable regulatory agencies, in a form reasonably acceptable to the Agent.

“Control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing; provided, that Control shall not be deemed to exist by reason of the right of any Person to approve or veto major decisions or comparable actions.

“DACA” and “DACAs” has the meaning specified in Section 7.10 (*Deposit Account Control Agreement*).

“DASNY” means the Dormitory Authority of the State of New York, a New York Public Benefit Corporation.

“Debt” means (without duplication), for any Person, (a) indebtedness of such Person for borrowed money or arising out of any extension of credit to or for the account of such Person (including, without limitation, extensions of credit in the form of reimbursement or payment obligations of such Person relating to letters of credit issued for the account of such Person) or for the deferred purchase price of property or services, but excluding liabilities incurred in the ordinary course of business including as incurred through the obtaining of credit and for credit on an open account basis customarily extended and in fact extended in connection with normal purchases of goods and services; (b) indebtedness of the kind described in clause (a) of this definition which is secured by (or for which the holder of such debt has any existing right, contingent or otherwise, to be secured by) any Lien upon or in Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness or obligations; (c) all Capital Lease Obligations; (d) all purchase money obligations; (e) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any stock or membership interests or equivalents of such Person, valued, in the case of redeemable preferred stock or membership units, at the greater of its voluntary liquidation preference and its involuntary liquidation preference plus accrued and unpaid distributions, other than distributions made to pay Taxes; (f) all contingent liabilities and obligations under direct or indirect guarantees in respect of, obligations under any lease and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clauses (a) through (f) above. For the avoidance of doubt, “Debt” shall not include “Intercompany Indebtedness”.

“Debtor Laws” means all applicable liquidation, conservatorship, bankruptcy, moratorium, arrangement, receivership, insolvency, reorganization or similar laws including the Bankruptcy Code, or general equitable principles from time to time in effect affecting the rights of creditors generally.

“Default” means any event the occurrence of which does, or with the lapse of time or giving of notice or both would, constitute an Event of Default.

“Default Rate” means with respect to any Obligations and during any time that an Event of Default exists, a rate per annum equal to the lesser of (i) the Highest Lawful Rate or (ii) the Interest Rate plus 7.50% per annum.

“Delayed Draw Term Loan” means each secured, first lien, term loan issued by Lenders in accordance with Section 2.1(b) (*The Delayed Draw Term Loans*).

“Disposition” means any transaction, or series of related transactions, pursuant to which any Borrower sells, assigns, transfers, leases, licenses (as licensor) or otherwise disposes of any interest in its Property (whether now owned or hereafter acquired) to any other Person in violation of the covenants and conditions set forth in this Agreement, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person. For purposes of clarification, “Disposition” shall include (a) the sale or other disposition for value of any Material Contract without the prior consent of Agent, and (b) the early termination of any Material Contract resulting in the receipt by any Borrower of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination). In no event shall “Disposition” include any Permitted Disposition.

“Dollars” means the lawful currency of the United States.

“Draw Date” means the date on which the Initial Term Loan is funded and the first (1<sup>st</sup>) Business Day of each calendar quarter thereafter until July 1, 2026 for which Agent has received a Funding Notice in the form of Exhibit A hereto and consented to provide such funding.

“Eligible Assignee” means any existing Lender, any Affiliate of a Lender, and any other Person approved by Agent and, in the absence of an Event of Default, the Fund, such approval not to be unreasonably withheld, conditioned or delayed, provided, however that in no case shall any Person who is (i) a holder or a “true party of interest” (within the meaning of the Marihuana Regulation and Taxation Act and the regulations thereunder) of any holder of a Cannabis License or (ii) any Debarred or Nonresponsible Entity listed on the publicly available database of the New York State Office of General Services be an Eligible Assignee.

“Environmental Laws” means any and all laws, rules, orders, regulations, statutes, ordinances, guidelines, codes, decrees, or other legally binding requirements (including, without limitation, principles of common law) of any Governmental Authority, regulating, relating to or imposing liability or standards of conduct concerning pollution, the preservation or protection of the environment, natural resources or human health (including employee health and safety), or the generation, manufacture, use, labeling, treatment, storage, handling, transportation or release of,

or exposure to, Materials of Environmental Concern, as has been, is now, or may at any time hereafter be, in effect.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties, attorney or consultant fees or indemnities) resulting from or based upon (a) non-compliance with any Environmental Law or any Environmental Permit, (b) exposure to any Materials of Environmental Concern, (c) release or threatened release of any Materials of Environmental Concern, (d) any investigation, remediation, removal, clean-up or monitoring required under Environmental Laws or required by a Governmental Authority (including without limitation Governmental Authority oversight costs that the party conducting the investigation, remediation, removal, clean-up or monitoring is required to reimburse) or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permits” means any and all permits, licenses, approvals, registrations, notifications, exemptions and other authorizations required under any Environmental Law applicable to the Borrowers or the operation of the Real Property.

“Erroneous Payment” shall have the meaning assigned to such term in Section 13.8 (*Standard of Care; Erroneous Payment*).

“Events of Default” and “Event of Default” have the meaning specified in Section 10.1 (*Events of Default*).

“Excluded Subsidiary” means a Subsidiary of the Fund which is (i) capitalized by up to \$5,000,000 provided through the “Tier Three Funding Debenture” described in the Fund’s Amended and Restated Limited Partnership Agreement as in effect on the Closing Date or amended with the consent of the Agent or (ii) capitalized through an equity contribution to the Fund by DASNY above DASNY’s original equity commitment of \$50,000,000 and which Subsidiary has no Debt and no right to obtain funds from the Payment Reserve.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Lender or required to be withheld or deducted from a payment to a Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.3 of this Agreement, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Lender’s failure to comply with Section 3.3(c) of this Agreement and (d) any withholding Taxes imposed under FATCA.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code

“Federal Cannabis Law” means any federal laws of the United States treating cannabis and related products as illegal or as controlled substances.

“Fee Letter” means the letter dated the date hereof from the Agent to the Fund, and accepted by all Borrowers, setting forth the fees related to the transaction to be paid by Borrowers on the Closing Date and on each Payment Date, as applicable.

“Fiscal Year” means the fiscal year of the Borrowers ending on December 31 of each year.

“Fund” means the New York Social Equity Cannabis Investment Fund, L.P., a New York limited partnership and the sole member of PropCo and OpCo.

“Fund Lease” means each Lease Agreement for a Retail Property between the Retail Property Owner of the applicable Retail Property as lessor, and the PropCo, as lessee, whether entered into before or after the Closing Date, which has been funded or approved (or deemed approved) for funding hereunder by Agent in its sole and absolute discretion, until such time as such funding hereunder no longer remains outstanding pursuant to the terms of this Agreement, together with all documents and agreements ancillary and incidental thereto.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions and comparable stature and authority within the accounting profession) that are applicable to the circumstances as of the date of determination.

“Governmental Authority” means any (domestic or foreign) federal, state, county, municipal, parish, provincial, or other government, or any department, commission, board, court, agency, or any other instrumentality of any of them or any other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of, or pertaining to, government, including, without limitation, any arbitration panel, any court, or any commission, in each case, that has jurisdiction over any Loan Documents, any Borrower, Agent, any Lender or the Property.

“Highest Lawful Rate” means with respect to any Lender, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Obligations under laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“Indemnitee” shall have the meaning assigned to such term in Section 12.6 (*Indemnification*) hereof.

“Information Certificate” means the Information Certificate delivered in form and substance reasonably satisfactory to the Agent, on the Closing Date and updated thereafter pursuant to Section 7.2(e) (*Quarterly Compliance Certificate*).

“Initial Term Loan” means the secured, first lien, term loan issued by each Lender on the Closing Date in accordance with Section 2.1 (*The Term Loan*).

“Intercompany Indebtedness” has the meaning set forth in Section 12.10 (*Subordination of Intercompany Indebtedness*) hereof.

“Interest Rate” means fifteen percent (15.00%) per annum to be calculated in accordance with Section 2.2 (*Interest*) hereof.

“Investments” shall have the meaning assigned to such term in Section 8.8 (*Restricted Investments*) hereof.

“Lender Cost of Capital” means 15.0% annualized.

“Lender Expenses” shall have the meaning assigned to such term in Section 12.5 (*Costs and Expenses*).

“Lenders” has the meaning specified in the preamble.

“Lien” means any security interest, mortgage, deed of trust, pledge, hypothecation (as security), charge, claim, option, right to acquire, adverse interest, assignment (as security), deposit arrangement, encumbrance, restriction, statutory or other lien, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any financing lease involving substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable Requirement of Law of any jurisdiction). For the avoidance of doubt, “Lien” shall not include any of the same if and to the extent limited to any Retail Property Owner’s or Operator’s interest in the Property or to any personal property owned by any Retail Property Owner or Operator.

“Lien Waiver” means the waiver or subordination of Liens reasonably satisfactory to Agent from a contractor, subcontractor or material supplier with respect to a Project that may have a Lien upon any Collateral, by which such Person shall waive its Liens and claims with respect to any Collateral in favor of Agent.

“Loan Documents” means this Agreement, the Payment Reserve Side Letter, the Collateral Documents, the Information Certificate, the Fee Letter, the DACA(s), and any document or instrument executed in connection with any of the foregoing.

“Local Cannabis Laws” means all of the laws, rules, regulations and guidance issued by OCM and other New York Governmental Authorities pertaining to cannabis, as from time to time amended.

“Loss” shall mean actual out-of-pocket liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable out-of-pocket fees and disbursements of third-party counsel related thereto), but expressly excluding (a) any diminution in value, and (b) any special, consequential, punitive, indirect or exemplary damages or other similar amounts, unless such damages in this clause (b) are charged to or required to be paid by Agent, any Lender or any Indemnitee to a third party and the same do not arise from the gross negligence, willful misconduct, fraud, illegal acts or breach of the Loan Documents by Agent, any Lender or any Indemnitee.

“Make-Whole Amount” means an amount equal to the sum of all payments of interest and all other fees on the applicable Term Loans that would be due after the date of repayment thereof through the tenth anniversary of the funding date of the applicable Term Loan, provided, however, the interest component of the Make Whole Amount shall be limited to the difference (which shall not be less than zero) between (A) the aggregate amount of interest (without giving effect to any assessment of the Default Rate) which would have otherwise been payable on the principal amount of the Term Loan being prepaid on such date from the date of repayment through the tenth anniversary of the funding date of the applicable Term Loan minus (B) the aggregate amount of interest the Lenders would earn if the prepaid amount of such Term Loan were reinvested on the prepayment date for the period from the date of prepayment until the tenth anniversary of the funding date of the applicable Term Loan at a discount factor equal to the sum of (x) the Treasury Rate and (y) one half of one percent (0.50%).

“Management Agreement” means any agreement or contract pursuant to which any Person will provide management services to a Borrower.

“Material Adverse Effect” means a material adverse effect, not caused by an act or omission of Agent or any Lender, on any of (a) the operations, assets, liabilities, or financial condition of the Borrowers taken as a whole, or of Payment Reserve Provider, the result of which materially and adversely effects the ability of the Borrowers taken as a whole to perform any of their obligations under any Loan Document, (b) the legality, validity or enforceability of this Agreement or any other Loan Document, (c) the rights and remedies of any Lender under any Loan Document, (d) the validity, perfection or priority of a Lien in favor of the Agent on Collateral or (e) the Agent’s legal authority to access the Payment Reserve.

“Material Contract” means as to each Borrower (a) each contract or agreement to which such Person is a party involving aggregate consideration payable to or by such Person of \$400,000 or more in any Fiscal Year (other than purchase orders in the ordinary course of the business of such Person, employment agreements, and other than contracts that by their terms may be terminated by such Person in the ordinary course of its business upon less than thirty (30) days’ notice without penalty or premium); and (b) each Management Agreement.

“Materials of Environmental Concern” means any material, substance or waste that is listed, regulated, or otherwise defined as hazardous, toxic, radioactive, a pollutant or a contaminant (or words of similar regulatory intent or meaning) under applicable Environmental Law, or which could give rise to liability under any Environmental Law, including but not limited to petroleum (including crude oil or any fraction thereof), petroleum by-products, toxic mold, polychlorinated biphenyls, urea-formaldehyde insulation, asbestos or asbestos-containing material, flammable or explosive substances, or pesticides.

“Maturity Date” means the date thirteen (13) years after the Closing Date.

“Note Threshold” means, as to each Operator Note, an amount equal to the lesser of (i) 75% of the Total Budget for the Project on the related Retail Property or (ii) 100% of the cost of Tenant Improvements at such Retail Property.

“Obligations” means all of the obligations of the Borrowers now or hereafter existing under the Loan Documents, whether for principal, interest, fees, Lender Expenses, prepayment premiums, indemnification or otherwise. All references in the Loan Documents to the payment or performance or satisfaction of the Obligations “in full” (or words of similar import) shall exclude any indemnification or other contingent obligation, in each case not yet due or accrued, which survive payment in full of the Loan pursuant to the terms of the Loan Documents.

“OCM” means the Office of Cannabis Management of the State of New York.

“OpCo” means NYSECIF Operating Company, LLC, a Delaware limited liability company, special purpose entity, and wholly owned Subsidiary of the Fund.

“Operator” means any holder of a Cannabis License that has entered into an Operator Sublease of a property subject to a Fund Lease.

“Operator Note” means, as to each Operator, a promissory note (or amended and restated promissory note) payable by such Operator to OpCo, evidencing the obligations of the Operator to pay an amount at least equal to the Term Loan funded by Lender with respect to the Operator’s Project, plus all applicable Lender fees, plus other amounts funded by Borrower for such Project (including all fees and expenses relating to leasing and sub-leasing, loan servicing, design and build-out, insurance, training, Fund organizational expenses, and a portion of program expenses), and an interest rate sufficient to cover the Lender Cost of Capital plus 0.25% per annum, maturing on the last day of the corresponding Operator Sublease and providing for a ten-year (10) mortgage-style amortization, substantially in the form of Exhibit C.

“Operator Obligation Documents” means, as to each Operator, its respective Reimbursement Agreement, Operator Note, and Operator Sublease and any document or instrument executed in connection with any of the foregoing.

“Operator Sublease” means, as to each Operator, a subleasing agreement between the PropCo, as sublandlord and such Operator, as subtenant, substantially in the form of Exhibit D, which shall be for a term equal to the lesser of (i) ten (10) years or (ii) the remaining term of the Fund Lease; and require rents equal to all payments due from PropCo to the landlord under the corresponding Fund Lease.



“Organizational Documents” mean, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws; (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Connection Taxes” means, with respect to a Lender, Taxes imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax (other than connections arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Outstanding Balance” means on any date of determination, the outstanding principal amount of the Term Loans plus all accrued and unpaid interest, fees and other amounts owed to any Lender hereunder.

“P+I Holdback” shall have the meaning assigned to such term in Section 2.3(a) (*P+I Holdback*) hereof.

“Participant” shall have the meaning assigned to such term in Section 12.9(c) (*Participations*) hereof.

“Participant Register” shall have the meaning assigned to such term in Section 12.9(c) (*Participations*) hereof.

“Payment Account” means the deposit account of Agent or its designee identified by Agent in writing for receipt of each payment owed by Borrowers hereunder.

“Payment Date” means the last Business Day of each calendar month.

“Payment Reserve” means a fund in the initial amount of Ten Million Dollars (\$10,000,000) held at all times in a blocked deposit account in the name of the Agent and replenished from time to time as provided in Section 2.3(c) hereof.

“Payment Reserve Provider” means DASNY.

“Payment Reserve Side Letter” means that certain letter agreement dated as of the date hereof, between the Fund and the Agent, acknowledged by the Payment Reserve Provider, regarding the Payment Reserve and the Replenishment Requirements, as the same may be amended from time to time.

“Permitted Dispositions” means any of the following:

- (a) sale of inventory in the ordinary course of business;
- (b) any involuntary loss, damage or destruction of property, to the extent such disposition could not reasonably be expected to result in a Material Adverse Effect;
- (c) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain, or confiscation or requisition of use of property by a Governmental Authority, to the extent such disposition could not reasonably be expected to result in a Material Adverse Effect;
- (d) disposition of obsolete or worn-out equipment, furniture or similar type asset in the ordinary course of business;
- (e) any voluntary or involuntary Disposition resulting from or caused by the exercise by Agent or any Lender of its rights and remedies under the Pledge Agreement or the other Loan Documents or any Disposition made after the occurrence or existence of an Event of Default at the written direction of Agent or any Lender; and
- (f) transactions to which Agent has consented in writing.

“Permitted Liens” has the meaning specified in Section 8.4 (*Restriction on Liens*).

“Person” means an individual, partnership, limited liability company, joint stock company, trust, unincorporated association, corporation, joint venture or other entity (including a business trust or a real estate investment trust), or a government or any political subdivision or agency thereof.

“Pledge Agreement” means the Pledge Agreement in form and substance reasonably satisfactory to Agent, executed and delivered by the Fund in favor of the Agent, acting on behalf of the Lenders, simultaneously with this Agreement (as may be amended, restated, supplemented or otherwise modified from time to time).

“Pledged Shares” the equity interests in PropCo and OpCo constituting Collateral under the Pledge Agreement.

“Project” means, as to each Retail Property, the construction and capital improvements thereon.

“Project Schedule” means the estimated schedule for completion for each Project.

“Promotional Rights” has the meaning specified in Section 12.18 (*Confidentiality*).

“PropCo” means NYSECIF Leasing Company, LLC, a Delaware limited liability company, special purpose entity, and wholly owned Subsidiary of the Fund.

“Property” means, individually, and “Properties” means, collectively, any interest or right of any Borrower in any Real Property or any other kind of property or asset, whether real,

personal, or mixed, owned or leased, tangible or intangible, and whether now held or hereafter acquired.

“Quarterly Compliance Certificate” has the meaning specified in Section 7.2(e) (*Quarterly Compliance Certificate*).

“Real Property” mean all real property in which Borrower holds a leasehold interest as a tenant (including, without limitation, each Retail Property, but excluding 100 Wall Street, New York, New York).

“Register” shall have the meaning assigned to such term in Section 12.9(f) (*Register*) hereof.

“Reimbursement Agreement” means collectively, each Reimbursement Agreement, between the Fund and an Operator that is substantially in the form of Exhibit G.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Replenishment Requirements” means the obligation of the Borrowers set forth in Section 2.3(c) to replenish the Payment Reserve and fund the Reserve Shortfall at least once every twelve months.

“Required Lenders” means, at any time, Lenders holding more than 50% of the aggregate amount of the outstanding Term Loans.

“Requirements of Law” means, with respect to any Person, collectively, the common law and all federal, state or local laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives or requirements of, any Governmental Authority, in each case that are applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject, except for federal laws and regulations promulgated pursuant to or relating to the Controlled Substances Act (21 U.S.C. § 811) pertaining to cannabis that conflict with applicable state law.

“Reserve Shortfall” means for any calendar year in which the Payment Reserve is fully disbursed pursuant to Section 2.3(b), the difference between (i) the sum of aggregate amount due to Agent for principal, interest, fees and other Obligations hereunder on each Payment Date during such year, plus the aggregate amount of rent and other amounts due to landlords under Fund Leases during such year, less (ii) the sum of the actual amount of such Obligations paid cash on such Payment Dates plus the actual amount of rent and other amounts paid to landlord under Fund Leases during such year, including in each case amounts paid through disbursements of the Payment Reserve.

“Restricted Cannabis Activities” means, in connection with the cultivation, distribution, sale and possession of cannabis and related products: (a) any activity that is not

permitted under applicable State Cannabis Laws; (b) distribution and sale of cannabis and related products to minors; (c) payments to criminal enterprises, gangs, cartels and Persons subject to Sanctions; (d) non-compliance with anti-terrorism laws and other applicable law relating to money-laundering; (e) diversion of cannabis and related products from states where it is legal under State Cannabis Law to other states; (f) use of activities permitted under State Cannabis Law as a cover or pretext for the trafficking of other controlled substances or illegal drugs or other illegal activity; (g) the commission, or making threats, of violence and the use of firearms; (h) drugged driving and other adverse public health consequences associated with the use of cannabis and related products; (i) growing cannabis and related products on public lands; and (j) directly or indirectly, aiding, abetting or otherwise participating in a common enterprise with any Person or Persons in such activities.

“Restricted Payment” means (a) the declaration or payment of any dividend or other distribution, direct or indirect, on account of any equity interests of a Borrower, now or hereafter outstanding, (b) the making of any repurchase, redemption, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any equity interests of a Borrower or any direct or indirect parent of any Borrower, now or hereafter outstanding, (c) the making of any payment to retire, or to obtain the surrender of, any outstanding warrants, options or other rights for the purchase or acquisition of any equity interests of a Borrower, now or hereafter outstanding, (d) the return of any equity interests to any shareholders or other equity holders of a Borrower, or making any other distribution of property, assets, shares of equity interests, warrants, rights, options, obligations or securities thereto as such or (e) the payment of any management, consulting, monitoring or advisory fees or any other fees or expenses (including the reimbursement thereof by any Borrower) pursuant to any management, consulting, monitoring, advisory or other services agreement to any of the shareholders or other equity holders of a Borrower, or to any other Subsidiary, or other Affiliate of any Borrower, excluding, in the absence of an Event of Default, (x) such management fees and organizational expenses paid to Social Equity Impact Ventures GP I, LLC, (y) such management fees to DASNY or any Affiliate of DASNY under Management Agreements that have been approved by Agent or disclosed to Agent in any schedule hereto, and (z) such other commissions and market payments for goods and services.

“Retail Property” means each retail property approved in writing by Agent for dispensaries operated by the Operators.

“Retail Property Owner” means the owner of the fee interest in each Retail Property.

“Sales Tracking Software” means any “seed-to-sale” tracking, point-of-sale, or other inventory or sales reporting software used by Borrowers.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or by the United Nations Security

Council, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

“Security Agreement” means the Security Agreement in form and substance satisfactory to Agent, executed and delivered by each Borrower in favor of the Agent, acting on behalf of the Lenders, simultaneously with this Agreement (as may be amended, restated, supplemented or otherwise modified from time to time).

“Sole Arranger” means Chicago Atlantic Credit Advisers, LLC.

“Solvent” or “Solvency” means, at any time with respect to any Person, that at such time for such Person (a) the fair value of the Property of such Person is not less than the total amount of the liabilities of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its existing debts as they become absolute and matured, (c) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute unreasonably small capital.

“State Cannabis Law” means any Local Cannabis Law and any law enacted by any other state of the United States which legalizes cannabis and related products in some form and which implements strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale and possession of cannabis and related products.

“Subsidiary” means, with respect to any Person at any date, any corporation, limited or general partnership, limited liability company, joint venture, trust or estate, or other Person of or in which such Person or its other Subsidiaries own or control, directly or indirectly, fifty percent (50%) or more of (a) the combined voting power of all classes having general voting power under ordinary circumstances to elect a majority of the directors (if it is a corporation), managers or equivalent body of such Person, (b) the capital interest or profits interest of such Person, if it is a partnership, limited liability company, joint venture or similar entity, or (c) the beneficial interest of such Person, if it is a trust, association or other unincorporated association or organization. References to a Subsidiary shall mean any Subsidiary of a Borrower other than an Excluded Subsidiary to the extent applicable unless the context expressly provides otherwise.

“Synthetic Lease” means, as to any Person, (a) any lease (including leases that may be terminated by the lessee at any time) of any Property (whether real, personal or mixed) (i) that is accounted for as an operating lease under GAAP and (ii) in respect of which the lessee retains or obtains ownership of the Property so leased for U.S. federal income tax purposes, or (b) (i) a

synthetic, off-balance sheet or tax retention lease or (ii) an agreement for the use or possession of Property, in each case under this clause (b), creating obligations that do not appear on the balance sheet of such person but which, upon the application of any debtor relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Taxes” shall have the meaning assigned to such term in Section 3.3(a) (*Taxes*).

“Tenant Improvements” means Tenant Improvements to any Retail Property.

“Term Loan” means individually and “Term Loans” means collectively each loan advanced pursuant to Section 2.1(a) or (b) hereof for any Project approved by Agent in its sole discretion.

“Total Budget” means the Construction Budget and the budget for all soft costs and any other costs to be covered by the Fund’s social equity program with respect to each Operator and its related Retail Property, including but not limited to costs of administering the Fund, management fees and the equity investments made to date and any equity commitments expected thereafter, all of the foregoing to the extent approved by Agent in its sole and absolute discretion, or deemed approved as provided herein.

“Treasury Rate” means, with respect to a mandatory prepayment of a Term Loan required by Section 3.2(b)(i) or (iii), a rate per annum (computed on the basis of actual days elapsed over a year of 360 days) equal to the rate determined by the Agent on the date 3 Business Days prior to the date of such prepayment, to be the yield expressed as the highest rate listed in The Wall Street Journal for United States Treasury securities having a term of not greater than 12 months, provided, that for purposes of this definition, in no event shall such rate be less than zero.

“291-F Notice” means that certain notice required pursuant to N.Y. Real Prop. Law § 291-f upon the Fund signing an Operator Sublease.

Section 1.2. Terms Generally. The definitions in Section 1.1 (*Certain Defined Terms*) apply equally to both the singular and plural forms of the terms defined. Whenever the context requires, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be construed as if followed by the words “without limitation”. The words “herein”, “hereof” and “hereunder” and words of similar import refer to this Agreement (including the Exhibits hereto) in its entirety and not to any part hereof, unless the context otherwise requires. All references herein to Articles, Sections, and Exhibits are references to Articles and Sections of, and Exhibits to, this Agreement unless the context otherwise requires. Unless the context otherwise requires, any references to any agreement or other instrument or statute or regulation are to such agreement, instrument, statute or regulation as amended and supplemented from time to time (and, in the case of a statute or regulation, to any successor provisions). Any reference in this Agreement to a “day” or number of “days” (without the explicit qualification of “business”) shall mean a calendar day or number of calendar days. If any action or notice is to be taken or given on or by a particular day, and such day is not a Business Day, then such action or notice shall be deferred until, or may be taken or given on, the next Business Day.

Section 1.3. Computation of Time Periods. In this Agreement in the computation of periods of time from a specified date to a later specified date, unless otherwise specified herein the word “from” means “from and including” and the words “to” and “until” each means “to and including”. All computations of interest and fees hereunder shall be made on the basis of a year consisting of 360 days, with regard to the actual number of days (including the first (1<sup>st</sup>) day and the last day) elapsed. Interest on each Term Loan shall accrue for each day, from and including the date such Term Loan is made available to Borrowers through and including the date of repayment in full.

Section 1.4. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistent with those applied in the preparation of the financial statements referred to in Section 7.2 (*Reporting and Notice Requirements*).

## ARTICLE II.

### AMOUNTS AND TERMS OF THE TERM LOANS

#### Section 2.1. The Term Loans.

(a) The Initial Term Loan. Each Lender agrees, on the terms and conditions hereinafter set forth, to make the Initial Term Loan in an amount requested by Borrowers, not to exceed the Commitment, and such Initial Term Loan shall be advanced by the Lenders in one draw on the date the conditions set forth in Section 5.1(b) have been satisfied, less any cost, fees, and expenses to be paid pursuant to Section 12.5 (*Costs and Expenses*) hereof. The Initial Term Loan shall be payable in accordance with Sections 2.3 (*Reserves*) and 3.1 (*Payments and Computations*) hereof.

(b) The Delayed Draw Term Loans. The Lenders agree, on the terms and conditions hereinafter set forth, to make the Delayed Draw Term Loans upon satisfaction of the conditions set forth in Section 5.2 (*Conditions Precedent to Delayed Draw Terms*) hereof. Each such Delayed Draw Term Loan shall be advanced by the Lenders on any Draw Date up to its Commitment amount less the principal amount of any Obligations related to Terms Loans at such time including but not limited to, fees (as set forth in the Fee Letter) and Lender Expenses outstanding on such date. The Delayed Draw Term Loans shall rank pari passu in right of payment with the Initial Term Loan and be secured on a pari passu basis with the Initial Term Loan and secured by the same Collateral that secures the Initial Term Loan. The Delayed Draw Term Loans shall be payable in accordance with Sections 2.3 (*Reserves*) and 3.1 (*Payments and Computations*) hereof.

(c) The Outstanding Balance for each Term Loan shall be due and payable on the Maturity Date. For the avoidance of doubt, each Term Loan shall relate to a Project in accordance with Section 7.3 (*Use of Proceeds*) hereof.

#### Section 2.2. Interest.

(a) Each Term Loan shall bear interest from and including the Closing Date or the Draw Date, as applicable, at a rate of 15% per annum (the “Interest Rate”). The Borrowers

jointly and severally promise to pay interest on the Outstanding Balance in cash in arrears on each Payment Date with respect thereto, as set forth in Section 3.1 (*Payments and Computations*) below. Automatically upon the occurrence and during the continuance of any Event of Default described in Section 10.1(a) or (d) (*Events of Default*), or, at the election of Agent, upon the occurrence and during the continuance of any other Event of Default described in Section 10.1 (*Events of Default*), in each case after any applicable notice, cure or grace period applicable thereto; the Outstanding Balance shall bear interest at the Default Rate from the date of such Event of Default until (a) with respect to a monetary Event of Default, Agent's receipt of immediately available funds to cure such Event of Default, or (b) with respect to a non-monetary Event of Default, such time as such Event of Default is cured.

Section 2.3. Holdback and Reserve.

(a) P+I Holdback. On the Closing Date and each Delayed Draw Date, at the request of Borrowers, Agent shall withhold an amount equal to the amount of principal, interest and fees that shall be due and payable for the applicable Term Loan for up to six (6) months after such Draw Date (the "P+I Holdback"). The P+I Holdback shall be disbursed for the payment of principal and interest on such Term Loan as it becomes due and payable commencing on the first Payment Date following the funding date of such Term Loan and continuing on each subsequent Payment Date until the P+I Holdback is fully disbursed. For the avoidance of doubt, the P+I Holdback shall constitute proceeds of the Loans for all purposes hereunder and shall accrue interest in accordance with this Agreement commencing on the date disbursed, and shall be subject to all other terms and provisions of this Agreement and the other Loan Documents; and

(b) Payment Reserve. The Payment Reserve shall be disbursed as follows:

(i) To the extent Borrowers fail to make any required payment of principal or interest on any Term Loan (excluding any mandatory prepayment required under Section 3.2(b) and associated Make-Whole Amount) within fifteen (15) days after written notice from Agent, or any other amounts due hereunder, Agent may withdraw such amounts from the Payment Reserve and apply such funds to such outstanding Obligations owed to Agent or any Lender hereunder; and

(ii) if an Operator has failed to make any payment due under an Operator Obligation Document, and if all payments then required to be made from the Payment Reserve under (i) above have been made, then, at the option of Borrowers, (x) Agent shall at Borrower's request withdraw from the Payment Reserve and, at Borrower's direction, pay to Borrower or the applicable Retail Property Owner the amount required to satisfy the rent obligations then due under the Operator Obligation Document, or (y) if the payment reserve is insufficient, Borrower shall pay Retail Property Owner from its own funds the amount required to satisfy any rent obligation; and

(iii) any funds remaining in the Payment Reserve once the Obligations have been irrevocably repaid in full shall be automatically and promptly returned to Borrower.

(c) Replenishment. Borrowers shall replenish the Payment Reserve at least once every twelve (12) months by paying into the Payment Reserve an amount equal to all



withdrawals from the Payment Reserve since the most recent satisfaction of the Replenishment Requirement (or since the Closing Date in the case of the first replenishment hereunder), plus any Reserve Shortfall for such period. The Fund acknowledges that the foregoing Replenishment Requirements are part of an “Indebtedness Required Reserve” as defined in Section 1.8(d) of its Amended and Restated Limited Partnership Agreement, and agrees to use all legal authority available to it, thereunder or otherwise, to cause the Payment Reserve Provider to exercise rights as necessary to obtain and provide to Borrowers the funds required to satisfy the Replenishment Requirements at least once every twelve months and in furtherance thereof, hereby assigns to Agent all of its rights to enforce such Section 1.8(d) and designates the Agent its attorney-in-fact with respect to enforcement of such Section 1.8(d).

### **ARTICLE III.**

#### **PAYMENTS, PREPAYMENTS, TAXES**

##### **Section 3.1. Payments and Computations.**

(a) The Borrowers shall pay fifteen percent (15.00%) per annum interest on the Outstanding Balance in cash in arrears on each Payment Date with respect thereto.

(b) On each Payment Date, Borrower shall repay principal in the amount equal to 87.7 basis points (0.877%) of the aggregate principal amount of the Term Loans advanced through such Payment Date (excluding any amount advanced for the P+I Holdback within six months prior to the Payment Date), with the remaining Outstanding Balance of the Term Loans then outstanding due and payable in full on its respective Maturity Date.

(c) Whenever any Payment Date shall occur on or any other payment hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or fee, as the case may be.

(d) If any Term Loan becomes due and payable in full prior to its Maturity Date as a result of an acceleration of such Term Loan following an Event of Default, other than an Event of Default under clause (l) (Change of Law) or clause (q) (Material Adverse Effect) of Section 10.1, then the Outstanding Balance thereof (including for the avoidance of doubt, any, accrued and unpaid interest, including interest at the Default Rate, if applicable) and any fees and premium (if applicable) including, without limitation, the Make-Whole Amount, shall automatically become due and payable.

(e) The Borrowers shall make each payment under this Agreement not later than 2:00 p.m. (New York City time) on the day when due, by wire, in Dollars and in immediately available funds to the Payment Account.

##### **Section 3.2. Prepayments.**

(a) Voluntary Prepayments.

(i) The Borrowers may, upon prior written notice to Agent and the Lenders, prepay the Outstanding Balance in full with accrued interest in an amount equal to the amount being prepaid *plus* the Make-Whole Amount; provided, that, in the event that the Agent has declined to approve ten (10) Lease Agreements as Fund Leases within any period of three months, and less than Thirty Million Dollars (\$30,000,000) in Loans have been funded hereunder, the Make-Whole Amount due in connection with a voluntary prepayment in full of the Outstanding Balance shall be calculated based on interest due to the first anniversary of the prepayment date, rather than to the Maturity Date.

(ii) Any Make-Whole Amount payable in accordance with this Section 3.2 shall be presumed to be equal to the liquidated damages sustained by Agent and the Lenders as the result of the occurrence of the repayment and the Borrowers agree that it is reasonable under the circumstances currently existing and it does not constitute unmaturing interest under the Loan. THE BORROWERS EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING APPLICABLE PREMIUM IN CONNECTION WITH ANY ACCELERATION. The Borrowers expressly agree that: (A) the Make-Whole Amount is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Make-Whole Amount shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and the Borrowers giving specific consideration in this transaction for such agreement to pay the Make-Whole Amount; (D) the Borrowers shall be estopped hereafter from claiming differently than as agreed to in this paragraph; (E) their agreement to pay the Make-Whole Amount is a material inducement to Lenders to provide the Commitments and make the Loans, and (F) the Make-Whole Amount represents a good faith, reasonable estimate and calculation of the lost profits or damages of Agent and the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to Agent and the Lenders or profits lost by Agent and the Lenders as a result of such repayment.

(b) Mandatory Prepayment.

(i) Change of Control. Notwithstanding anything in Section 3.2(a) to the contrary, within thirty (30) Business Days of a Change of Control of any Operator, if the new controlling party has failed to obtain a Cannabis License for each Retail Property of the Operator, the Borrowers shall prepay the Outstanding Balance of, *plus* the Make-Whole Amount for, each Term Loan the proceeds of which funded in whole or part any Project at any Retail Property for which the new controlling party of such Operator has not obtained a Cannabis license.

(ii) Reserved.

(iii) Obligor Note Prepayment. In the event that a Borrower shall receive a prepayment in full of amounts due from an Operator under an Operator Note, the Borrowers shall, within five (5) Business Days of such Operator Note prepayment, (i) make a prepayment of the Outstanding Balance of the Term Loan provided for the benefit of such Operator, in an amount equal to a pro rata share (based on the original principal amounts of the Term Loan and the Operator Note, respectively) of the amount so prepaid by the Operator, and (ii) pay to Lenders a pro rata share of any "Make-Whole Amount" (as such term is defined in the applicable Operator

Obligation Documents) or similar premium paid by the Operator, other than a "Modified Make-Whole Amount" under the applicable Reimbursement Agreement. For the avoidance of doubt, no separate Make-Whole Amount under this Agreement is required in connection with the prepayment required under this clause (iii) and no portion of any Modified Make-Whole Amount (as defined in the applicable Reimbursement Agreement) shall be paid to Lenders.

Section 3.3. Taxes.

(a) Any and all payments by the Borrowers under the Term Loan shall be made, in accordance with Section 3.1 (*Payments and Computations*), free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto ("Taxes"), excluding Excluded Taxes. If the Borrowers shall be required by law to deduct any such amounts from or in respect of any sum payable under the Term Loan to the Lenders, (A) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.3) the Lenders receive an amount equal to the sum they would have received had no such deductions been made, (B) the Borrowers shall make such deductions and (C) the Borrowers shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with Requirements of Law. The Borrowers further agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made on the Term Loan or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any other Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

(b) The Borrowers will indemnify the Agent and Lenders for the full amounts for which additional amounts are payable pursuant to Section 3.3(a) (including, without limitation, any such amounts imposed by any Governmental Authority on amounts payable under this Section 3.3) paid by Agent or the Lenders and any reasonable liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such amounts were correctly or legally asserted.

(c) Each Lender shall deliver to Borrower (a) such properly completed and executed documentation as may be required by applicable law as will permit payments under any Loan Documents to be made without withholding or at a reduced rate of withholding or to enable Borrower to comply with any applicable law relating thereto and (b) such other documentation as may be required by applicable law as will enable Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Without limiting the foregoing, if a Lender is a U.S. Person, such Lender shall deliver to Borrower prior to becoming a party hereunder and at the time or times reasonably requested by Borrower a Form W-9 (unless it establishes to the reasonable satisfaction of Borrower that it is otherwise eligible for an exemption from backup withholding tax or other withholding tax). If a Lender is not a U.S. Person (a "Non-U.S. Lender"), such Non-U.S. Lender shall, to the extent it is legally entitled to do so, deliver to Borrower prior to becoming a party hereunder and at the time or times reasonably requested by Borrower (i) a properly completed and executed Form W-8BEN, W-8BEN-E, W-8ECI, or W-8IMY, as applicable, (and other appropriate certification documents from each beneficial owner, as applicable) and, to the extent it is able to claim the benefits for portfolio

interest under Section 871(h) or Section 881(c) of the Code, a portfolio interest certificate in a form reasonably acceptable to Borrower that provides that such Non-U.S. Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a “controlled foreign corporation” related to Borrower as described in Section 881(c)(3)(C) of the Code, and (ii) such documentation prescribed by applicable law (including under Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower as may be necessary for Borrower to comply with its obligations under FATCA and to determine that such Non-U.S. Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Each Lender (including any Non-U.S. Lender) agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowers and the Agent in writing of its legal inability to do so.

(d) If any Lender has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund).

#### **ARTICLE IV.**

#### **SECURITY**

Section 4.1. Grant of Security Interest. The Borrowers have entered into the Collateral Documents in favor of the Agent, on behalf of the Lenders, pursuant to which they have granted liens and security interests in the Collateral to the Agent for their benefit of the Lenders to secure prompt repayment of any and all Obligations, to secure prompt performance by Borrowers of its covenants and duties under the Loan. Following any Event of Default hereunder, the Agent will immediately have the right to exercise the remedies set forth in **Article X** hereof, in addition to exercising any and all of its other rights and remedies hereunder and under the other Collateral Documents and other Loan Documents.

Section 4.2. Delivery of Additional Documentation Required. The Borrowers shall execute and deliver to the Agent, on behalf of the Lenders, to the extent reasonably requested by the Agent, prior to or concurrently with the Borrowers’ execution and delivery of this Agreement and at any time thereafter at the request of the Agent, all financing statements, continuation financing statements, fixture filings, security agreements, assignments, affidavits, reports, notices, schedules of accounts, letters of authority, and all other documents that the Agent may reasonably request, provided that no such document shall result in the imposition of mortgage recording tax, in form reasonably satisfactory to the Agent, to perfect and maintain perfection of the Agent’s security interests in the Collateral and in order to fully consummate all of the transactions contemplated under the Loan Documents.

## ARTICLE V.

### CONDITIONS OF LENDING

#### Section 5.1. Conditions Precedent to Effectiveness and Initial Term Loan.

(a) This Agreement shall be effective when the following conditions have been satisfied or deemed satisfied in Agent's sole discretion:

(i) This Agreement and the Collateral Documents shall have been duly executed by all parties thereto in form and substance satisfactory to the Agent;

(ii) an Authorized Officer of each Borrower shall have executed and delivered to Agent a certificate certifying and attaching as applicable: (i) the articles/certificate of formation, as applicable, and all amendments thereto, certified as of a recent date by the secretary of the state of formation, (ii) bylaws/operating agreement, as applicable, and all amendments thereto, (iii) resolutions authorizing the Loan Documents, (iv) the incumbency and signatures of the officers or representatives executing the Loan Agreement and the other Loan Documents, (v) certificates of appropriate officials as to the existence and good standing of each Borrower in its jurisdiction of formation dated as of a recent date and (vi) that each of the representations and warranties made in **Article VI** hereof is true and correct as of the Closing Date;

(iii) the Fund shall have delivered to Agent a copy of each Fund Lease in effect on the Closing Date, and the 291-F Notice for each such Retail Property, it being acknowledged and agreed that each Fund Lease in effect on the Closing Date has been approved by Agent;

(iv) the Fund shall have delivered to Agent the form of Fund Lease to be used for each Fund Lease that is executed after the Closing Date, which shall be in form and substance satisfactory to AGent;

(v) the Payment Reserve Side Letter shall have been duly executed by the Fund and the Agent and acknowledged by the Payment Reserve Provider;

(vi) Agent shall have reviewed and been satisfied with tax, lien and judgment searches as to each Borrower through a date no earlier than the thirtieth Business Day prior to the Closing Date;

(vii) Agent and each Lender shall have received the approval of the transactions from its investment committee or, as applicable, other primary credit authority;

(viii) Borrowers shall have paid all fees then due pursuant to the Fee Letter and Lender Expenses payable to Agent on or before the Closing Date as required by this Agreement or any other Loan Document, including reasonable fees and disbursements of legal counsel to the Agent (directly to such legal counsel if requested by the Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such reasonable fees and disbursements of legal counsel as shall constitute its reasonable estimate of such fees and disbursements incurred or to be incurred by Agent through the closing proceedings (provided that

such estimate shall not thereafter preclude a final settling of accounts between Agent and Borrowers) and

(ix) All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with the execution of this Agreement shall have been obtained and shall be in full force and effect.

(b) The obligation of the Lenders to make the Initial Term Loan is subject to the following conditions and, upon satisfaction of the following conditions precedent, Lenders shall be obligated to make the Initial Term Loan:

(i) Agent shall have received a letter of direction from Borrowers attaching a funds flow;

(ii) to the extent in effect on the funding date of the Initial Term Loan, Agent shall have received copies of the fully executed Operator Obligation Documents of the Operator of each Retail Property for which funding is provided through the Initial Term Loan, including (1) the Reimbursement Agreement, (2) the Operator Note and (3) the Operator Sublease;

(iii) to the extent in effect on the date of funding of the Initial Term Loan, Agent shall have received each original executed Operator Note for each such Retail Property;

(iv) the Total Budget for each Project to be funded with proceeds of the Initial Term Loan shall be satisfactory to Agent in its sole and absolute discretion;

(v) Agent shall have received a customary opinion or opinions of counsel for the Borrowers, dated as of the Closing Date and addressed to the Agent and the Lenders in form satisfactory to the Agent;

(vi) The Agent shall have received certificates evidencing the Borrowers insurance coverage as required pursuant to Section 7.7 (*Insurance*) hereof.

Section 5.2. Conditions Precedent to Delayed Draw Term Loans. The obligation of any Lender to make a Delayed Draw Term Loans on each Draw Date is subject to the fulfillment of each of the following conditions precedent, and, upon satisfaction of the following conditions precedent, Lenders shall be obligated to make the applicable Delayed Draw Term Loan:

(a) The Borrowers shall have paid all reasonable out-of-pocket costs and expenses incurred by Agent with respect to the applicable Delayed Draw Term Loan.

(b) The Borrowers shall deliver to the Agent a fully executed Funding Notice in the form of Exhibit A hereto for the applicable Delayed Draw Term Loan and no earlier than fifteen (15) Business Days in advance of any Draw Date.

(c) The Agent shall have received a signed certificate stating that the following statements shall be true and correct and Borrowers' acceptance of the proceeds of such Delayed Draw Term Loan, shall each be deemed to be a representation and warranty by each Borrower on

the date of such Delayed Draw Term Loan that: (i) the representations and warranties contained in **Article VI** and in each other Loan Document delivered to Agent pursuant hereto or thereto on or prior to the date of such Delayed Draw Term Loan are true and correct in all material respects (except that any representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all material respects) on and as of such date as though made on and as of such date (unless such representations and warranties were made as of a specific date), subject to changes to such representations and warranties required or appropriate by the passage of time, as a result of changes in factual matters, as permitted under the terms of the Loan Documents, or as otherwise disclosed to Agent in writing, so long as such changes or updates are not the result of any Event of Default by Borrower), (ii) at the time of and after giving effect to the making of such Delayed Draw Term Loan and the application of the proceeds thereof, no Event of Default has occurred and is continuing or would result from the making of the Delayed Draw Term Loan to be made on such date and (iii) the conditions set forth in this Section 5.2 have been satisfied as of the date of such request.

(d) The Agent shall have received and approved in its sole and absolute discretion the form and substance of (i) the Fund Lease for each Retail Property for which funding is to be provided through such Delayed Draw Term Loan and (ii) a Total Budget for each such Retail Property, provided, that, in each case, if Lender has failed to respond to Borrower's request for approval within thirty (30) days of Lender's receipt of such request, such request for approval shall be deemed approved.

(e) To the extent available on date of the Delayed Draw Term Loan, the Operator Obligation Documents of the Operator of each Retail Property for which funding is to be provided through the Delayed Draw Term Loan;

(f) To the extent available on the date of the Delayed Draw Term Loan, such zoning reports or similar analysis to the extent prepared by or on behalf of Borrower in connection with Borrower's diligence of such Retail Property;

(g) The Borrowers shall deliver a closing certificate stating that, to the knowledge of the Borrowers, there are no actions, suits, proceedings or investigations of any kind pending against any Operator receiving funding through the Delayed Draw Term Loan before any court or by or before any other Governmental Authority as it pertains to its ability to operate its business which could reasonably be expected to have a Material Adverse Effect;

(h) The Agent shall have received a certificate of a responsible person of the Borrowers in the form of Exhibit G hereto, certifying as to the Solvency of the Borrowers;

(i) The Agent shall have received updated certificates evidencing the Borrowers insurance coverage as required pursuant to Section 7.7 (*Insurance*) hereof and any other insurance required for such Project, in form and substance reasonably satisfactory to Agent

(j) The making of such Delayed Draw Term Loan shall not contravene any law, rule or regulation applicable to any Agent, any Lender or Borrowers; and

(k) In addition, the Agent shall have received all other information and such other documents or information as it may reasonably request.

For the avoidance of doubt, no Lender shall have any obligation to provide a Term Loan hereunder if the Replenishment Requirements have not been satisfied as of the requested date of the Term Loan, regardless of whether an Event of Default has been declared with respect thereto.

## ARTICLE VI.

### REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders to enter into this Agreement, the Borrowers represent and warrant to the Lenders as of the date hereof that:

Section 6.1. Existence. Each Borrower is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is incorporated or organized and is duly qualified or licensed to do business in all jurisdictions where its Property is owned or the business transacted by it makes such qualification necessary.

Section 6.2. Power and Authorization. The Borrowers are duly authorized and empowered to execute, deliver, and perform their obligations under each Loan Document and all corporate or other action required to be taken by the Borrowers for the due execution, delivery, and performance of each Loan Document has been duly and effectively taken. The PropCo and the Opco are each a Special Purpose Entity, the activities of which are limited as set forth in Exhibit H.

Section 6.3. Binding Obligations. Each Loan Document constitutes the legal, valid and binding obligation of the Borrowers, enforceable against each Borrower in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies (regardless of whether such enforceability is considered in a proceeding at law or in equity); provided that the unenforceability of any waiver by Borrower in the Loan Documents which waiver is prohibited by applicable law shall not constitute a breach of any Loan Document representation or a misrepresentation by Borrower.

Section 6.4. Reserve Liquidity; Bank Statements; No Material Adverse Effect.

(a) The Replenishment Requirement has been met at the times required hereunder since the Closing Date, and no Borrower has any reasonable basis to believe that the Replenishment Requirements will not be satisfied for any future periods.

(b) The Borrowers have delivered to the Agent current bank statements of the Fund.

(c) The Borrowers have delivered to the Agent and the Lenders, the Total Budget.

(d) Since the most recent Draw Date, to the knowledge of the Borrowers, there has been no event, change, circumstance, condition, development or occurrence that has had, or



could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect..

Section 6.5. Intellectual Property. Each Borrower owns or is licensed to use, free and clear of all Liens (other than Permitted Liens), all intellectual property, necessary for the conduct of its business as currently conducted.

Section 6.6. Properties.

(a) Each Borrower has good and marketable title to, or valid leasehold interests in, all its property material to its business (including the Fund Leases), free and clear of all Liens and irregularities, deficiencies and defects in title, except for Permitted Liens and minor irregularities, deficiencies and defects in title that, individually or in the aggregate, do not, and could not reasonably be expected to, interfere with its ability to conduct its business as currently conducted or to utilize such property for its intended purpose.

(b) The Real Property (owned or leased) of the Borrowers, taken as a whole, (i) is, or following completion of the applicable Project will be, in good operating order, condition and repair (ordinary wear and tear excepted), and (ii) constitutes all Real Property which is required for the business and operations of the Borrower as presently conducted.

(c) Schedule 6.6(c) contains a true, accurate and complete list of each ownership and leasehold interest in Real Property (i) owned by any Borrower and describes the type of interest therein held by such Borrower and (ii) leased, subleased or otherwise occupied or utilized by any Borrower, as lessee, sub-lessee, franchisee or licensee and describes the type of interest therein held by such Borrower and whether such lease, sublease or other instrument requires the consent of the landlord thereunder or other parties thereto (including but not limited to each Fund Lease).

(d) Each Borrower owns or has rights to use all of its Property and all rights with respect to any of the foregoing which are required for the business and operations of such Borrower as presently conducted. The use by each Borrower of its property and all such rights with respect to the foregoing do not infringe on the rights or other interests of any person, in any material respect. No claim has been made and remains outstanding that any Borrower's use of any of its property does or may violate the rights of any third party in any material respect.

Section 6.7. Equity Interests and Subsidiaries. The Pledged Shares under the Pledge Agreement constitute sufficient voting interest to control of each of Propco and Opco. The Fund is the record and beneficial owner of, and has good and marketable title to, the equity interests pledged by (or purported to be pledged by) it under the Pledge Agreement, free of any and all Liens, rights or claims of other persons and, as of the Closing Date (other than in favor of Lender), there are no outstanding warrants, options or other rights (including derivatives) to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any such equity interests (or any economic or voting interests therein). The Fund has no Subsidiaries other than the PropCo and the OpCo. Neither the PropCo nor the OpCo has any Subsidiaries.

Section 6.8. Investment Company Act. No Borrower is an “investment company” or a company “controlled” by an “investment company,” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 6.9. No Material Misstatements. Each Borrower has disclosed to the Agent all material agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. On the Closing Date or at the time furnished, the reports, financial statements, certificates or other information furnished (in writing) (other than forecasts and other forward-looking information, budgets, estimates and information of a general economic or industry-specific nature) by, or on behalf of any Borrower to the Agent in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) are complete and correct in all material respects and do not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not materially misleading.

Section 6.10. Labor Matters. No Borrower has any employees.

Section 6.11. Intentionally Omitted.

Section 6.12. Environmental Matters. No Borrower has received any written notice from any Governmental Authority, Real Property Owner or Operator of any material violation of applicable Environmental Laws with respect to the Property.

Section 6.13. Insurance. Schedule 6.13 sets forth a true, complete and accurate (in all material respects) description in reasonable detail of all insurance maintained by each Borrower (if applicable). Each Borrower is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which it is engaged. No Borrower (i) has received written notice from any insurer or agent of such insurer that substantial capital improvements or other material expenditures will have to be made in order to continue such insurance, (ii) has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers, (iii) is aware of any cancellation, reduction or material change in the insurance applicable to any Retail Property; other than has been disclosed in writing to Agent.

Section 6.14. Collateral Documents. The Collateral Documents are effective to create in favor of the Agent, for the benefit of Lenders, a legal, valid, binding and enforceable security interest in and pledge of the Collateral described therein and proceeds and products thereof except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally, or by principles governing the availability of equitable remedies (regardless of whether such enforceability is considered in a proceeding at law or in equity). In the case of (i) pledged equity interests represented by certificates, if any, (x) when such certificates are delivered to the Agent or (y) when financing statements in appropriate form are filed, and (ii) the other Collateral, when financing statements in appropriate form are filed, the Liens created by the Collateral Documents shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Borrowers in such

Collateral and the proceeds and products thereof, as security for the Obligations, in each case, prior and superior in right to any other Person (except, with respect to priority only, Permitted Liens).

Section 6.15. PATRIOT Act, etc. To the extent applicable, each Borrower is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the PATRIOT Act. No part of the proceeds of the Term Loan will be used, directly or indirectly, for any payment to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

Section 6.16. Anti-Money Laundering Laws.

(a) Borrower is not in violation of any Anti-Money Laundering Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Money Laundering Law.

(b) None of the Borrowers nor any of their respective agents acting or benefiting in any capacity in connection with the Loans or the other transactions hereunder, is any of the following (each a "Blocked Person"):

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

(iii) a Person with which the Agent or each Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Money Laundering Law;

(iv) a Person that commits, threatens or conspires to commit or supports "terrorism" (as defined in Executive Order No. 13224);

(v) a Person that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website or any replacement website or other replacement official publication of such list; or

(vi) a Person affiliated or associated with any Person described in Section 6.16(b)(i)-(v) above.

(c) No Borrower or, to the knowledge of any Borrower, any of its agents acting in any capacity in connection with the Term Loan or the other transactions hereunder (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or

for the benefit of any Blocked Person or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.

Section 6.17. Anti-Corruption Laws and Sanctions.

(a) The Borrowers have implemented and maintain in effect policies and procedures designed to ensure compliance by the Borrowers and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

(b) the Borrowers and their respective officers, directors, employees and to the knowledge of the Borrowers, the agents of the Borrowers, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

(c) (i) No Borrower and to the knowledge of such Borrower none of its directors, officers or employees, and (ii) to the knowledge of any Borrower, no agent of such Borrower that will act in any capacity in connection with or benefit from the Term Loan, is a Sanctioned Person.

Section 6.18. Government Approvals. The execution, delivery and performance by the Borrowers of this Agreement and the other Loan Documents to which such Borrower is or is to become a party and the transactions contemplated hereby and thereby do not require the approval or consent of, or filing with, any governmental agency or authority other than those already obtained.

Section 6.19. Taxes; Governmental Charges. The Borrowers have timely filed or caused to be timely filed all material federal, state, province, and foreign income tax returns which are required to be filed, and has paid or caused to be paid all Taxes as shown on such returns or on any assessment received by it to the extent that such Taxes have become due.

Section 6.20. Compliance with Law. The business and operations of the Borrowers as conducted, are in compliance in all material respects with all Requirements of Law.

Section 6.21. Absence of Financing Statements. Except as provided herein and those in existence as of the Closing Date, there is no financing statement, security agreement, chattel mortgage, real estate mortgage/deed of trust or other document filed or recorded with any filing records, registry or other public office, that purports to cover, affect or give notice of any present or possible future lien on, or security interest in, the Property of a Borrower, or any rights relating thereto, except for Permitted Liens.

Section 6.22. Litigation. Except as set forth in Schedule 6.22 there are no actions, suits, proceedings or investigations of any kind pending or, to the knowledge of the Borrowers, threatened (in writing) against any Borrower before any court, tribunal or administrative agency or board.

Section 6.23. Solvency. The Borrowers are Solvent and intend to remain Solvent after the creation of the Obligations contemplated hereunder; provided, that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower.

Section 6.24. Material Contracts. Schedule 6.24 contains a true, accurate and complete list (in all material respects) of each Material Contract, each of which is in full force and effect and is binding upon and enforceable against each Borrower that is a party thereto and, to the knowledge of such Borrower, all other parties thereto in accordance with its terms. No Borrower is in default (beyond applicable notice and cure periods) under any Material Contract to which it is a party and has not received any written notice of the intention of any other party (including any Governmental Authority) thereto to terminate, revoke, or suspend any Material Contract or of any alleged non-compliance thereunder.

Section 6.25. Event of Default. No event has occurred or is continuing which constitutes, or could reasonably be expected to result in, an Event of Default hereunder.

Section 6.26. No Conflicts. The transactions contemplated by this Agreement (i) do not require any consent, exemption, authorization or approval of, registration or filing with, or any other action by, any Governmental Authority, except (A) such as have been obtained or made and are in full force and effect, and (B) filings necessary to perfect or maintain the perfection or priority of the Liens created by the Collateral Documents, (ii) will not violate the Organizational Documents of any Borrower, (iii) will not violate or result in a default or require any consent or approval under any indenture, instrument, agreement, or other document binding upon any Borrower or its property or to which any Borrower or its property is subject, and (iv) will not violate any Requirement of Law in any material respect, in each case, which violation, conflict, breach or default would have a Material Adverse Effect, or result in the creation or imposition of any Lien on any property of any Borrower, except Liens created by the Collateral Documents or other Permitted Liens.

Section 6.27. Bank Accounts. Schedule 6.27 contains a true, accurate and complete list of each bank account or other depository account of the Borrowers (each such account, a "Bank Account").

Section 6.28. Intentionally Omitted.

Section 6.29. Fund Leases. With respect to each Fund Lease, except as otherwise set forth on Schedule 6.29:

(a) the Fund Lease represents the entire agreement between PropCo and the Retail Property Owner related to the applicable Retail Property and is in full force and effect and has not been modified, amended or supplemented in any material respect;

(b) there is no default existing thereunder, and no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a default thereunder;

(c) PropCo's interest in the Fund Lease is not subject to any Liens other than Permitted Liens.

(d) The Borrowers have furnished Agent with true and correct (in all material respects) copies of the Fund Lease, including all related information and documents reasonably

requested by Agent. Each of the representations and warranties contained in the Fund Lease made by PropCo is true and correct in all material respects.

Section 6.30. Special Purpose Entity. Each of the PropCo and the Opco is and shall at all times remain, a Special Purpose Entity as defined in Exhibit H.

## ARTICLE VII.

### AFFIRMATIVE COVENANTS

So long as any Obligation shall remain unpaid, the Borrowers covenant and agree that, unless the Agent shall otherwise consent in writing:

#### Section 7.1. Compliance.

(a) Compliance with Laws, Etc. The Borrowers will comply in all material respects with all Requirements of Law; comply in all material respects with all agreements, leases, licenses, franchises, indentures and mortgages to which they are party or by which they or any of their properties is bound and obtain and keep in full force and effect any and all Permits and all governmental approvals necessary to the ownership of its properties or the conduct of its business. Each Borrower will maintain in effect and use commercially reasonable efforts to enforce policies and procedures designed to ensure compliance by such Borrower and their respective directors, officers, employees and agents with Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

(b) Compliance with Environmental Laws. The Borrowers will, and will use commercially reasonable efforts to cause all lessees and sublessees operating or occupying the Real Property to: (A) comply, with all applicable Environmental Laws and Environmental Permits; (B) obtain and renew all Environmental Permits necessary for its operations; and (C) promptly notify Agent of any investigation, notice, demand, claim, suit or other proceeding asserting Environmental Liability against such Borrower.

Section 7.2. Reporting and Notice Requirements. Each Borrower will keep accurate and complete records and books of account with respect to its business activities in which proper entries are made in accordance with GAAP reflecting all its financial transactions; and prepare or furnish, or cause to be prepared or furnished to the Agent the following:

(a) At-all-times Access to Greenspace. To the extent of its legal authority to do so, provide Agent, at all times during this Agreement, with real-time access to view Operator's activity in Greenspace including but not limited to, if applicable, change orders, contractor bids, permits, monthly pay applications, and conditional/unconditional lien waivers.

(b) Monthly Reporting; Notices. As soon as available, and in any event within fifteen (15) days after the end of each month, copies of:

(i) For each Project, to the extent in Borrower's possession and control, each invoice, evidence of timely payment of each invoice, all change orders, all construction agreements, including general contractor subcontractor agreements, AIA contracts, mechanical,

electrical and engineering permits, building plans and specifications (including design drawings) and all other material documentation for construction relating to such Project;

(ii) Any material written communication received from any cannabis regulatory agency relating to a Project, excluding routine communications in the ordinary course of such agency's licensing or monitoring function;

(iii) bank account statements for all Bank Accounts held by the Borrowers;

(iv) Delinquency reports related to the Operator Subleases, along with any existing or expected plans to replace any Operator;

(v) all reporting and material notices provided to any Borrower by an Operator pursuant to any Operator Obligation Documents including but not limited to all profit and loss statements of the Operators; and

(vi) any other reports prepared in the ordinary course of business requested by the Agent in its reasonable discretion without creating an undue burden on Borrowers.

(c) Quarterly Financial Statements. As soon as available and in any event within sixty (60) days after the end of each fiscal quarter of the Borrowers commencing with the first (1<sup>st</sup>) fiscal quarter ending after the Closing Date, balance sheets (which are to be consolidated, if applicable), statements of operations and statements of cash flows of each Borrower as at the end of such quarter, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such quarter, setting forth in each case in comparative form the figures for the corresponding date or period set forth in the financial statements for the immediately preceding Fiscal Year, in reasonable detail and certified by the Chief Financial Officer or equivalent officer of such Borrower as fairly presenting, in all material respects, the financial position of the Borrowers as of the end of such quarter and the results of operations and cash flows of the Borrowers for such quarter and for such year-to-date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements of the each Borrower furnished to the Lenders, subject to the absence of footnotes and normal year-end adjustments;

(d) Annual Financial Statements. As soon as available, and in any event within ninety (90) days after the end of each Fiscal Year, balance sheets (which are to be consolidated, if applicable), statements of operations, changes in partnership capital and statements of cash flows of the Borrowers as at the end of such Fiscal Year, setting forth in each case in comparative form the figures for the corresponding date or period set forth in the financial statements for the immediately preceding Fiscal Year, in reasonable detail and prepared in accordance with GAAP, and accompanied by a report and an opinion, prepared in accordance with generally accepted auditing standards, of independent certified public accountants of recognized standing selected by the Borrowers and satisfactory to the Agent (which opinion shall be without any qualification or exception as to the scope of such audit), together with any final management letters or other final reports prepared by such auditors in connection therewith;

(e) Quarterly Compliance Certificate. Simultaneously with the delivery of the quarterly financial statements of the Borrowers required by clause (c) of this Section 7.2, a certificate of an Authorized Officer of each Borrower (a “Quarterly Compliance Certificate”): certifying (or providing a schedule of exceptions) that (i) the Authorized Officer has reviewed the provisions of this Agreement and the other Loan Documents and has made or caused to be made under his or her supervision a review of the condition and operations of each Project and of the Borrowers during the period covered by such financial statements with a view to determining whether the Borrowers were in compliance with all of the provisions of this Agreement and such Loan Documents at the times such compliance is required hereby and thereby, and that such review has not disclosed, and the Chief Financial Officer has no knowledge of, the occurrence and continuance during such period of an Event of Default or, if an Event of Default had occurred and continued or is continuing, describing the nature and period of existence thereof and the action which the Borrowers propose to take or have taken with respect thereto; (ii) each of the representations and warranties made in **Article VI** hereof shall be true and correct in all material respects as of the date thereof with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date), subject to changes to such representations and warranties required or appropriate by the passage of time, as a result of changes in factual matters, as permitted under the terms of the Loan Documents, or as otherwise disclosed to Agent in writing, so long as such changes or updates do not result in and are not the result of any Event of Default by Borrower; *provided* that any representation and warranty qualified by “materiality”, “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects; (iii) all insurance coverage required hereunder is being maintained and there have been no claims filed under such policies; (iv) no lawsuits or material claims have been threatened or filed against any Borrower, or, to the knowledge of any Borrower, against the Payment Reserve Provider (in its capacity as such), if, in each case, it could reasonably be expected to cause a Material Adverse Effect; (v) there have not been any investigations, inquiries, or other disciplinary actions by any Governmental Authority; (vi) the Borrowers have complied with all covenants under **Articles VII, VIII, and XI** of this Agreement; (vii) there have been no changes to the information contained in the Information Certificates delivered on the Closing Date and/or attaching an updated Information Certificate identifying any such changes to the information contained therein; and (viii) attaches (x) a summary of the status of the progress of the Project, along with updates for this Project and the Construction Budget as specified in clause (f) below and (y) any new Management Agreement entered into since the Closing Date, which for the avoidance of doubt, shall have been collaterally assigned to the Agent. The Borrowers shall disclose any updates to the Total Budgets delivered in the Fund Notice previously delivered for such quarter and any variances to the Note Threshold.

(f) Reports Relating to Total Budget, Project Schedule, Progress, Sales. On a quarterly basis, an Authorized Officer of Borrowers shall provide the Agent with an updated Construction Budget, Total Budget (including the Construction Budget) and Project Schedule for each Project, in form and substance satisfactory to the Agent, superseding the Construction Budget, Total Budget and Project Schedule previously required to be delivered pursuant to this Agreement, in actual cost or expenses incurred for the Project for such prior period that has been prepared on a reasonable basis and in good faith based on assumptions, estimates, methods and tests that are believed by the Borrowers to be reasonable at the time such Construction Budget and Total Budget were prepared and information believed by the Borrowers to have been accurate



based upon the information available to the Borrowers at the time such Construction Budget and Total Budget were furnished to the Lenders, along with a summary analysis of any variances in respect of the Project from the Construction Budget, Total Budget and Project Schedule that was previously required to be delivered. Upon demand by the Lender, the Borrowers shall also provide any Total Budget (including the Construction Budget) and Project Schedule, any progress reports on the Project and shall share, to the extent of its legal authority to do so, any relevant reports drawn from an Operator's Sales Tracking Software.

(g) Intentionally Omitted.

(h) Tax Returns. Within five (5) Business Days after the filing thereof, copies of the tax returns filed by the Borrower, and in the event such Borrower shall file an application for extension of the time to file an income tax return with respect to any such tax return, each Borrower agrees to furnish to Agent a copy of such extension, not later than fifteen (15) days after such application for an extension is filed.

(i) Notice of Default or Material Adverse Effect. Promptly after any officer of any Borrower knows that an Event of Default has occurred, but in any event within five (5) Business Days after Borrower has received written notice or has knowledge of: (A) the occurrence of an Event of Default, (B) any event of default under the Fund Lease, or (C) any event of default under any Operator Obligation Documents, the written statement of an Authorized Officer of the Borrowers setting forth the details of such Event of Default and the action which the affected Borrower proposes to take with respect thereto.

(j) Notification of Claim against Collateral. Each Borrower will, promptly upon becoming aware thereof, notify the Agent in writing of any setoff, or other defenses to which any of the Collateral, or the Lenders' rights with respect to the Collateral, are subject.

(k) Communications with Governmental Authorities. Promptly after submission to any Governmental Authority, or receipt thereof, all material documents and information furnished to or received by such Governmental Authority in connection with any Borrower, other than routine or ordinary course correspondence.

(l) Intentionally Omitted.

(m) Intentionally Omitted.

(n) Insurance. Promptly upon request, any certification or other evidence reasonably requested from time to time by Agent (but not more frequently than once per calendar year unless an Event of Default has occurred and is continuing) confirming the Borrowers' compliance with Section 7.7 (*Insurance*) hereof.

(o) Notice of Change in Fiscal Year. The Fiscal Year of the Borrowers is December 31 of each calendar year. Each Borrower will promptly notify the Agent if it changes its Fiscal Year.

(p) Notification of Pending Litigation. Each Borrower will, promptly upon becoming aware thereof, notify the Agent in writing of the commencement of, or any material

development in, any material litigation or material proceeding against a Borrower which has an amount in controversy in excess of \$200,000 or greater.

(q) Press Releases. Any press releases or other statements made available by any Borrower to the public concerning the Loan. All press releases and other statements shall be subject to the terms of Section 12.19 (*Press Releases, etc.*) hereto.

(r) Government Enforcement. Promptly upon receipt or transmission thereof, and in any event no later than five (5) Business Days after the date of such receipt or transmission, copies of all material communications to and from applicable Governmental Authority, including the Internal Revenue Service, the Federal Communications Commission, the Pension Benefit Guaranty Corporation and the Securities Exchange Commission, regarding notice of enforcement proceedings, complaints, inspections and related matters addressed to any Borrower.

(s) Regulatory Matters. Promptly (and, in any event, within five (5) Business Days) upon receiving or obtaining knowledge of, any written notice of any proposed amendment to, or revocation or reduction of, or information concerning the status or renewal of, any Cannabis License held by any Operator (including information that such a Cannabis License may not be renewed or that any renewed Cannabis License will be different than any existing Cannabis License, any change in applicable laws affecting the legality or validity of any existing Cannabis License, and upon written request of Agent, evidence of the timely payment of all necessary fees and other payments to any Governmental Authority). In addition, Borrowers shall promptly deliver any update to Schedule 22 of the Information Certificate that would be necessary to ensure that such schedule remains true, correct, and complete in all material respects at all times, as if the representations given with respect to Schedule 22 of the Information Certificate were given at such time.

(t) Loan Monitoring. The Borrowers shall provide Agent, at all times during this Agreement, with sufficient real-time access to view the activity in (i) all commercial transaction accounts of the Borrowers and, to the extent available to any Borrower, the Operators, including all deposit and securities accounts and (ii) such other accounts and sales and inventory software and data as Agent deems necessary and appropriate, for the purpose of monitoring the business activities and finances of the Borrowers and the Operators. Upon receipt of a written request from Agent, Borrowers shall grant to Agent view access with respect to Sales Tracking Software of the Operators to the extent of their legal authority to do so. Within fifteen (15) days of receipt of a written request from Agent, Borrowers shall grant to Agent real-time view access with respect to each of their respective Securities Accounts, Deposit Accounts and Investment Property, in each case, which shall continue to be provided until the Maturity Date.

(u) Additional Information. Such further detailed information in Borrower's possession and control and then being routinely prepared by Borrower with respect to the operation of the Property and the financial affairs of Borrower as may be reasonably requested by Agent (including regarding Operator compliance under the Operator Note, Operator Subleases and Reimbursement Agreement); provided, however, this provision shall not permit Agent to request materially different forms of the items set forth in this Section 7.2 or the delivery of such items within shorter or more frequent time periods than as set forth in this Section 7.2.

Section 7.3. Use of Proceeds. The proceeds of each Term Loan shall be used by the Borrowers exclusively to fund certain Tenant Improvements set forth in the Construction Budget (or to reimburse Borrowers for amounts previously expended by Borrowers for such Tenant Improvements) in an amount not to exceed the Note Threshold for each Retail Property.

Section 7.4. Taxes and Liens. (a) File all tax returns and appropriate schedules thereto that are required to be filed under applicable law, prior to the date of delinquency, including any permissible extensions, and (b) pay and discharge, before the same shall become delinquent or in default, its obligations, including Taxes and nongovernmental levies or charges resulting from covenants, conditions, and restrictions affecting its assets which are assessed or imposed upon such assets or become due and payable, except and only to the extent that the validity or amount thereof is being properly contested. Agent may, at its option, from time to time, discharge any Taxes or Liens on any of the Collateral, and Borrowers will pay to Agent within five (5) Business Days of demand therefor, and such amounts paid by Agent shall constitute Obligations secured by the Collateral. If requested by Agent in writing, the applicable Borrower shall provide proof of payment or, in the case of withholding or other employee taxes, deposit required by applicable law and shall deliver to Agent copies of all tax returns (and amendments thereto).

Section 7.5. Maintenance of Property.

(a) Maintenance of Rights and Property. Each Borrower shall maintain and preserve all rights, franchises, Permits, privileges and other authority adequate for the conduct of its business; maintain its properties, equipment and facilities in good order and repair, working order and condition, reasonable wear and tear excepted, to the extent required pursuant to each Fund Lease; conduct its business in an orderly manner without voluntary interruption; maintain and preserve its existence; and qualify and remain qualified and authorized to do business in each jurisdiction in which the character of its properties or the nature of its business requires such qualification or authorization, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. Each Borrower shall (a) remain the sole and lawful owner of, and in possession of, its assets, except as otherwise provided in this Agreement (b) use its assets only in its trade or business, and (c) use and maintain its assets only in compliance with all applicable laws, regulations and insurance policies, and all State Cannabis Laws, in each case, in all material respects.

(b) Preservation of Material Contracts and Permits. Each Borrower shall at all times preserve, renew and keep in full force and effect the Fund Leases and the Operator Obligation Documents, in each case, except as otherwise permitted pursuant to this Agreement. Each Borrower shall at all times (i) preserve, renew and keep in full force and effect all other Material Contracts (other than any termination or expiration of a Material Contract pursuant to the terms thereof or as a result of a default thereunder, for which Agent's consent shall not be required) except to the extent failure to do so would not reasonably be expected to result in a Material Adverse Effect, and all governmental permits, licenses, authorizations, approvals, entitlements and accreditations that are necessary to the conduct of its business in accordance with applicable law, and (ii) file all documents required to be filed by it and pay all regulatory obligations required to be paid by it to any Governmental Authority with jurisdiction over each such Borrower or any of its Material Contracts (if applicable) and other governmental permits or licenses necessary to conduct its business in accordance with applicable law. Promptly after receipt or delivery thereof,

provide to Agent copies of any written notice of default by any party under any Material Contract beyond any applicable notice and cure period, which default could reasonably be expected to have a Material Adverse Effect.

Section 7.6. Right of Inspection. The Borrowers will permit the Agent and any representative of the Agent (including but not limited to the Agent's engineer, architect, or inspector), to (i) visit and inspect its properties (including the Retail Properties but subject to the terms and provisions of each Fund Lease and corresponding Operator Sublease and the rights of any Retail Property Owner, Operator and other occupants of the Retail Property) during normal business hours and upon reasonable advance written notice, and (ii) examine and make copies of and abstracts from its records and books of account (except to the extent such records are subject to any confidentiality agreement or attorney-client privilege), to verify materials, leases, plans and shop drawings, notes, accounts receivable, deposit accounts and its other assets, to conduct audits, physical counts, valuations, appraisals or examinations and to discuss its affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants, contractors and subcontractors, or any of its other representatives; provided, however, that unless an Event of Default exists, the foregoing shall be conducted during normal business hours and upon reasonable advance written notice to Borrowers. For the avoidance of doubt, nothing herein shall be construed as granting to Agent or its representatives (x) so long as access to Borrowers' books and records is otherwise provided, a right of access to, or inspection of, offices located at 100 Wall Street, 18<sup>th</sup> Floor, New York, New York, or (y) any right to review documents subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege or immunity from disclosure.

Section 7.7. Insurance.

(a) The Borrowers will maintain or cause to be maintained with financially sound and reputable insurers having a rating of at least A- or better by Best's Ratings, a publication of A.M. Best Company, (i) business interruption insurance reasonably satisfactory to the Agent, and (ii) casualty insurance, such public liability insurance, and third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Borrowers as may customarily be carried or maintained by Persons of established reputation engaged in business in the applicable jurisdiction, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. All policies covering the Collateral are to be made payable to the Agent in case of loss, under a standard noncontributory "lender" or "secured party" clause and are to contain such other provisions as the Agent may require to fully protect the Agent's interest in the Collateral and to any payments to be made under such policies. On or prior to the Closing Date, and at all times thereafter, the Borrowers will cause Agent to be named as an additional insured, assignee and loss payee, as applicable, on each insurance policy required to be maintained pursuant to this Section 7.7 pursuant to endorsements in form and content acceptable to the Agent. All certificates of insurance are to be delivered to the Agent and the policies are to be premium prepaid, with the loss payable and additional insured endorsement in favor of the Agent for the benefit of the Lenders, as their respective interests may appear, and such other Persons as the Agent may designate from time to time, and shall provide for not less than thirty (30) days' (ten (10) days' in the case of non-payment) prior written notice to the Agent of the exercise of any right of cancellation. If any Borrower fails to maintain such insurance, the

Agent may arrange for such insurance, but at the Borrowers' expense and without any responsibility on the Agent's and Lenders' part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, the Agent shall, upon the direction of the Lenders, have the sole right, in the name of the Lenders, to direct any Borrower to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(b) Unless the Borrowers provide Agent with evidence of the continuing insurance coverage required by this Agreement, Agent may purchase insurance at the Borrowers' expense to protect Agent's and Lenders' interests in the Collateral. The coverage that Agent purchases may, but need not, pay any claim that is made against any other Borrower in connection with the Collateral. The Borrowers may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Borrowers has obtained the insurance coverage required by this Agreement. If Agent purchases insurance for the Collateral, as set forth above, Agent will provide Borrowers with prompt notice thereof. Borrowers will be responsible for the costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance and the costs of the insurance may be added to the Outstanding Balance.

Section 7.8. Existence and Maintenance of Office. Each Borrower will preserve and maintain its legal existence. The Borrowers will maintain their chief executive offices at 100 Wall Street, 18th Floor, New York, NY 10005, or at such other place in the United States of America as the Borrowers shall designate upon written notice to the Agent, where notices, presentations and demands to or upon the Borrowers in respect of the Loan Documents to which the Borrowers are a party may be given or made. The Borrowers shall notify the Agent in writing of the intent of any such Borrower to relocate their chief executive offices or the place where Borrowers keep their primary books and records, at least five (5) Business Days prior to the date of such proposed relocation, identifying the new location of Borrowers' chief executive office and primary location of their books and records.

Section 7.9. Intentionally Omitted.

Section 7.10. Deposit Account Control Agreement. On or before the funding of the Initial Term Loan, unless extended by the Agent in its sole discretion, the Borrowers shall have delivered to the Agent a fully executed deposit account control agreement (the "DACA"), in form and substance satisfactory to the Agent, with respect to each Bank Account. No Borrower shall be permitted to open a new Bank Account after the Closing Date without the prior written consent from Agent (which consent shall not be unreasonably withheld, conditioned or delayed). In the event that any Borrower opens any new Bank Account after the date hereof, such Borrower shall deliver to the Agent a fully executed DACA, in form and substance satisfactory to the Agent, prior to depositing any funds into such new Bank Account, unless otherwise agreed by the Agent in writing in its sole discretion. All proceeds of Collateral shall be deposited in Bank Accounts subject to a DACA.

Section 7.11. Intentionally Omitted.

Section 7.12. Collateral Security. With respect to the following items entered into after the Closing Date, each Borrower shall promptly, in any event within fifteen (15) days, deliver to Agent: (i) all service agreement, Management Agreement, or material agreements with respect to Intercompany Indebtedness, (ii) all Fund Leases, (iii) all Equipment Lease Agreements, (iv) all promissory notes payable to any Borrower; (v) all purchase options of any Borrower, or (iv) all other Material Contract.

Section 7.13. Meetings. At the request of the Agent, the Borrowers will participate in quarterly conference calls or, whenever practicable and at no additional cost to Borrower, in person meetings with the Agent and certain Lenders, such meetings to be held at such time as may be agreed to by the Borrowers and the Agent.

Section 7.14. Intentionally Omitted.

Section 7.15. Further Assurances. Each Borrower agrees to take such further actions as the Agent shall reasonably request from time to time in connection herewith to evidence, give effect to or carry out this Agreement and the other Loan Documents and any of the transactions contemplated hereby or thereby. Promptly after Agent's request therefor, each Borrower shall execute or cause to be executed and delivered to the Agent such instruments, assignments, title certificates or other documents as are necessary under the UCC or other applicable law to protect or perfect (or continue the perfection of) Agent's Liens upon the Collateral, all of which shall be consistent with the terms of the Loan Documents; provided that Borrower shall not be required to execute any documents or instruments which would increase any Borrower's or Payment Reserve Provider's obligations, or decrease any Borrower's or Payment Reserve Provider's rights, under the Loan Documents.

Section 7.16. Intentionally Omitted.

Section 7.17. Fund Leases.

(a) The PropCo will comply in all material respects with the terms and conditions of each Fund Lease on PropCo's part to be performed or observed. The PropCo will not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, will impair the Fund Lease or is reasonably likely to be grounds for declaring a forfeiture of the Fund Lease.

(b) The PropCo shall enforce in a commercially reasonable manner each Fund Lease and will not, without the prior written consent of Agent (to be given or withheld in Agent's sole and absolute discretion), terminate, modify, cancel, change, supplement, materially amend or modify the applicable Fund Lease except as otherwise permitted pursuant to the terms of this Agreement, or waive, excuse or in any way release or discharge the applicable Retail Property Owner of or from any of the material covenants and conditions to be performed or observed by the applicable Retail Property Owner under the applicable Fund Lease. The PropCo hereby expressly covenants with Agent not to cancel, surrender, materially amend, modify or alter in any material respect the terms of any Fund Lease without Agent's prior written consent. Upon the occurrence and during the continuance of an Event of Default, the PropCo hereby assigns to the

Agent, as further security for the payment of the Term Loans and for the performance and observance of the terms, covenants and conditions of this Loan Agreement, all of the rights, privileges and prerogatives of the PropCo, as tenant under each Fund Lease, to surrender the leasehold estate created by such Fund Lease or to terminate, cancel, modify, change, supplement, alter or amend such Fund Lease, and any such surrender of the leasehold estate created by such Fund Lease or termination, cancellation, modification, change, supplement, alteration or amendment of such Fund Lease without the prior written consent of Agent shall be void and of no force and effect.

(c) The PropCo will give Agent prompt (and in all events within five (5) Business Days) written notice of any default under any Fund Lease or of the receipt by PropCo of any notice of default from the applicable Retail Property Owner. The PropCo will promptly (and in all events within five (5) Business Days) furnish to Agent copies of all information furnished to such Retail Property Owner by the terms of the Fund Lease or the provisions of this Section. The PropCo will provide to Agent an exact copy of any written notice, material notice or material communication, plan, specification or other instrument or document received or given by the PropCo in any way relating to or affecting the Fund Lease which may concern or affect the estate of such Retail Property Owner or the PropCo thereunder in or under the Fund Lease or in the real estate thereby demised.

(d) Agent shall have the right upon PropCo's failure, but not the obligation, to perform any obligations of the PropCo under the terms of any Fund Lease but only to the extent that the applicable Retail Property Owner has consented to such rights of Agent under the applicable Fund Lease. All reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred by Agent, shall be treated as an advance secured by this Agreement, shall bear interest thereon at the Default Rate from the date of payment by Agent until paid in full and shall be paid by the PropCo to Agent within twenty (20) days after demand. No performance by Agent of any obligations of the PropCo shall constitute a waiver of any default arising by reason of the PropCo's failure to perform the same. If Agent shall make any payment or perform any act or take action in accordance with this Section, Agent will notify the PropCo of the making of any such payment, the performance of any such act, or the taking of any such action. In any such event, subject to the rights of lessees, sublessees and other occupants under the Fund Lease, Agent and any person designated by Agent shall have, and are hereby granted, the right to enter upon the applicable Retail Property, at any time and from time to time for the purpose of taking any such action but only if the applicable Retail Property Owner has consented to such rights of Agent under the applicable Fund Lease.

(e) Unless Agent shall otherwise consent in writing, each Fund Lease entered into after the date of this Agreement shall contain a provision providing that the fee and leasehold estates in the applicable Retail Property shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in such Retail Property Owner or in the PropCo, or in a third party, by purchase or otherwise.

(f) Intentionally Omitted.

(g) Unless Agent has agreed otherwise in writing in its sole and absolute discretion, the PropCo shall not exercise any option to extend, renew, reduce or terminate the term of any Fund Lease except in accordance with its terms or as permitted pursuant to this Agreement.

(h) Each Operator Sublease shall provide that in the event of any action for the enforcement of the Assignment of Leasehold as to the applicable Fund Lease, such Operator Sublease shall not terminate or be terminable by the Operator by reason of the enforcement action and in that event the lessee under such Operator Sublease shall attorn to the new lessee under such Fund Lease.

(i) The PropCo hereby assigns, transfers and sets over to Agent all of the PropCo's claims and rights to the payment of damages arising from any rejection by the applicable Retail Property Owner of the applicable Fund Lease under the Bankruptcy Code. The PropCo shall promptly notify Agent in writing (and in any event within ten (10) days) of any claim, suit action or proceeding relating to the rejection of such Fund Lease. Agent is hereby irrevocably appointed as the PropCo's attorney-in-fact, coupled with an interest, with exclusive power to file and prosecute, to the exclusion of the PropCo, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of such Retail Property Owner under the Bankruptcy Code during the continuance of any default.

(j) The PropCo shall not, without Agent's prior written consent, elect to treat any Fund Lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made without Agent's prior written consent shall be void.

(k) If pursuant to Section 365(h)(1)(B) of the Bankruptcy Code, the PropCo seeks to offset against the rent reserved in any Fund Lease the amount of any damages caused by the non-performance by the applicable Retail Property Owner's obligations under such Fund Lease after the rejection by such Retail Property Owner of such Fund Lease under the Bankruptcy Code, the PropCo shall, prior to effecting such offset, notify Agent of its intention to do so, setting forth the amounts proposed to be so offset and the basis therefor..

(l) If any action, proceeding, motion or notice shall be commenced or filed in respect of a Retail Property in connection with any case under the Bankruptcy Code in which the Real Property Owner is Debtor, after the occurrence and during the continuation of any Event of Default, Agent shall have the option, to the exclusion of Borrowers, exercisable upon written notice from Agent to the PropCo, to conduct and control any such litigation with counsel of Agent's choice. Agent may proceed in its own name or in the name of the PropCo in connection with any such litigation, and Borrowers agree to execute any and all powers, authorizations, consents and other documents required by Agent in connection therewith. During the continuance of an Event of Default, Borrowers shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the applicable Fund Lease in any such case under the Bankruptcy Code without the prior written consent of Agent, which, consent or approval shall be provided in a timely fashion and shall not be unreasonably withheld or conditioned.

(m) Borrowers shall promptly, but in no event later than (1) Business Day after obtaining actual knowledge thereof, notify Agent of any filing by or against the applicable Retail Property Owner of a petition under the Bankruptcy Code. Borrowers shall thereafter forthwith



give written notice of such filing to Agent, setting forth any information available to Borrowers as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Borrowers shall promptly deliver to Agent following receipt any and all notices, summonses, pleadings, applications and other documents received by Borrowers in connection with any such petition and any proceedings relating thereto.

(n) If there shall be filed by or against the PropCo a petition under the Bankruptcy Code, and the PropCo, as the lessee under any Fund Lease, shall determine to reject such Fund Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrowers shall give Agent not less than thirty (30) days' prior notice of the date on which Borrowers shall apply to the bankruptcy court for authority to reject such Fund Lease. Agent shall have the right, but not the obligation, to serve upon Borrowers within such thirty (30)-day period a notice stating that (Agent demands that the PropCo assume and assign such Fund Lease to Agent pursuant to Section 365 of the Bankruptcy Code and (ii) Agent covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance under such Fund Lease. If Agent serves upon the PropCo the notice described in the preceding sentence, Borrowers shall not seek to reject such Fund Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Agent of the covenant provided for in clause (ii) of the preceding sentence.

(o) Effective upon the entry of an order for relief in respect of Borrower under the Bankruptcy Code, Borrower hereby assigns and transfers to Agent, in the event Borrower fails to promptly file a motion under Section 364(d)(4) to extend Borrower's time to assume or reject the Fund Lease, then in such event, a non-exclusive right to apply to the Bankruptcy Court under Section 365(d)(4) of the Bankruptcy Code for an order extending the period during which the applicable Fund Lease may be rejected or assumed.

(p) To the extent any purchase option exists under any Fund Lease, Borrower hereby agrees that upon the occurrence and during the continuation of an Event of Default, Agent shall have the right to exercise any option to purchase the applicable Retail Property held by Borrower as lessee under such Fund Lease, and Borrower hereby expressly authorizes and appoints Agent its attorney-in-fact to exercise any such option in the name of and upon behalf of Borrower to so exercise such option if Borrower fails to exercise as herein required, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest.

(q) Borrower shall not, without the prior consent of Agent, (i) surrender the leasehold estate created by any Fund Lease or terminate or cancel any Fund Lease or modify, change, supplement, alter or amend any Fund Lease, either orally or in writing, or (ii) consent to, acquiesce in, or fail to object to, any attempt by the PropCo, as debtor in possession or by a trustee for the PropCo, to sell or transfer the fee estate of the PropCo free and clear of such Fund Lease under section 363(f) of the Bankruptcy Code or otherwise. Borrower shall object to any such attempt by the applicable Retail Property Owner, as debtor in possession or by a trustee for such Retail Property Owner, to sell or transfer the fee estate of such Retail Property Owner free and clear of such Fund Lease under section 363(f) of the Bankruptcy Code or otherwise, and in such event shall affirmatively assert and pursue its right to adequate protection under section 363(e) of the Bankruptcy Code.

Section 7.18. Intentionally Omitted.

Section 7.19. Completion Documentation. Upon the completion of a Project at any Retail Property, the Borrowers shall deliver such documentation as may be reasonably required by Agent based upon the applicable Construction Budget including, to the extent in Borrower's possession and control: (i) copies of all material contract documents, as well as required mark-ups made by the applicable contractor to indicate the as-built conditions and warranties, (ii) substantial completion certificates, (iii) final certification for payment, (iv) all final Lien Waiver and (v) a temporary or final certificate of occupancy or other evidence of permitted occupancy for each completed Project, and related schedules.

Section 7.20. Operator Subleases. The PropCo shall enter into an Operator Sublease for each Retail Property within thirty (30) days after substantial completion of such Retail Property.

## **ARTICLE VIII.**

### **NEGATIVE COVENANTS**

So long as any Obligation shall remain unpaid, each Borrower covenants and agrees that, without the prior written consent of the Agent, it will not:

Section 8.1. Impairment of Rights. Undertake any action or engage in any transaction or activity, to knowingly impair the Agent's and Lenders' rights hereunder.

Section 8.2. Restrictions on Debt. Create, incur, assume, guarantee or be or remain liable, contingently or otherwise, with respect to any Debt other than the following ("Permitted Debt"):

- (a) Debt to the Lenders arising under any of the Loan Documents;
- (b) current liabilities incurred in the ordinary course of business, including any equipment financing/point of sale system) including as incurred through the obtaining of credit and for credit on an open account basis customarily extended and in fact extended in connection with normal purchases of goods and services (excluding for the avoidance of doubt merchant cash advances or any sale of receivables);
- (c) Intercompany Indebtedness;
- (d) Issuance of debentures to DASNY, the subordination provisions of which are in form and substance as specified in the Fund's Amended and Restated Limited Partnership Agreement as in effect on the Closing Date or amended with the consent of Agent;
- (e) Debt in respect of Taxes, assessments, governmental charges or levies and claims for labor, materials and supplies to the extent that payment therefor shall not at the time be required to be made in accordance with the provisions of Section 3.3 (*Taxes*);
- (f) Debt in respect of judgments or awards if less than or equal to \$500,000 that have been in force for less than the applicable period for taking an appeal so long as execution is

not levied thereunder or in respect of which any Borrower shall at the time in good faith be prosecuting an appeal or proceedings for review and in respect of which a stay of execution shall have been obtained pending such appeal or review; and

(g) endorsements for collection, deposit or negotiation and warranties of products or services, in each case incurred in the ordinary course of business.

For the avoidance of doubt, unsecured expenses and operational and other obligations incurred by a Borrower in connection with the Property, the Collateral and/or in connection with such Borrower's obligations under the Loan Documents, including obligations for capital improvements and obligations under contracts, Permitted Liens, any Fund Leases, any Operator Sublease, Material Contracts and other agreements entered into in accordance with the Loan Documents, shall not constitute Debt.

Section 8.3. [Reserved]

Section 8.4. SECTION 8.4.Restrictions on Liens. (i) Create or incur or suffer to be created or incurred or to exist any Lien upon any of its Property, or upon the income or profits therefrom; (ii) transfer any of such Property or the income or profits therefrom for the purpose of subjecting the same to the payment of Debt or performance of any other obligation in priority to payment of its general creditors; (iii) acquire, or agree or have an option to acquire, any Property upon conditional sale or other title retention or purchase money security agreement, device or arrangement; (iv) suffer to exist for a period of more than thirty (30) days after the same shall have been incurred any Debt or claim or demand against it that if unpaid might by law or upon bankruptcy or insolvency, or otherwise, be given any priority whatsoever over its general creditors; or (v) sell, assign, pledge or otherwise transfer any accounts, with or without recourse; provided that notwithstanding anything else in this Agreement, the Borrowers may create or incur or suffer to be created or incurred or to exist (the "Permitted Liens"):

(a) the Liens and security interests created by the Loan Documents;

(b) Liens to secure Taxes, assessments and other government charges in respect of obligations not yet due or delinquent; provided that if at any time any obligations relating to the foregoing shall become delinquent, any Lien securing such obligation shall immediately be in violation of this Section 8.4(a) unless the same are being contested in good faith;

(c) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance, pensions or other social security obligations or to secure the performance of tenders, bids, contracts (other than for the repayment or guarantee of borrowed money or purchase money obligations), statutory obligations and other similar obligations, incurred in the ordinary course of business;

(d) encumbrances on real estate consisting of easements, covenants, rights of way, zoning restrictions, restrictions on the use of Real Property thereto;

(e) Liens of carriers, warehousemen, bailees, and other similar Liens arising in the ordinary course of business provided the same have been bonded or discharged or diligently

contested in good faith (or which proceedings are sufficient to prevent imminent foreclosure of such Liens);

- (f) the rights of any Operator under its Operator Sublease;
- (g) the rights of any Retail Property Owner under its Fund Lease;
- (h) the rights of lessors as secured parties under any equipment financing, the documents evidencing the same and any financing statements filed as evidence of such lessor's or secured parties' rights, and
- (i) inchoate mechanics' or materialmen Liens arising under applicable law.

Section 8.5. Mergers and Acquisitions. (a) Merge, reorganize or consolidate with any Person, or liquidate, wind up its affairs or dissolve itself, in each case whether in a single transaction or in a series of related transactions; (b) conduct business under any fictitious name except for any fictitious name shown in the Information Certificate; (c) change its federal employer identification number; (d) change its legal name, state of incorporation or formation, organizational identification number or structure without having first provided at least fourteen (14) days prior written notice to Agent and complying with all reasonable requirements of Agent in regard thereto; (e) relocate its chief executive office or principal place of business without having first provided at least fourteen (14) days prior written notice to Agent; (f) create or acquire any Subsidiary, other than an Excluded Subsidiary, without the prior consent of Agent; or (g) amend, modify or otherwise change in any material respect its Organizational Documents without Agent's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed).

Section 8.6. Related Party Transactions. Except as set forth on Schedule 8.6 hereto, undertake any action or engage in any transaction or activity with any Affiliate, without the prior written approval of the Agent (which approval shall not be unreasonably withheld, conditioned or delayed), other than (a) those contemplated or otherwise specifically permitted by the Loan Documents, (b) so long as (i) such transaction is for the sale of goods or services rendered in the ordinary course of business upon fair and reasonable terms, no less favorable to such Person than such Person could obtain in a comparable arms-length transaction with an unrelated third party, and (ii) no Event of Default shall have occurred and remain outstanding at the time such transaction occurs, or would occur immediately after giving effect to such transaction, (c) the payment of reasonable fees to directors of a Borrower who are not employees of such Borrower, and compensation, employment, termination and other employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of any Borrower, solely to the extent such payments have been previously disclosed in writing to Agent, and (d) transactions existing on the Closing Date.

Section 8.7. Restricted Payments. Make any Restricted Payment other than a Restricted Payment from one Borrower to another Borrower.

Section 8.8. Restricted Investments. (a) purchase or acquire, or make any commitment for, any equity interest or any evidence of Debt or obligations or other securities of, or any interest in, any Person, including the establishment or creation of or statutory division into a Subsidiary or

enter into any joint ventures, (b) make or commit to make any Acquisitions, or any other acquisition of all or substantially all of the assets of another Person, or of any business or division of any Person, including by way of merger, consolidation or other combination, or (c) make or commit to make any advance, loan, extension of credit or capital contribution to, or assume the debt of, purchase or acquire any other debt or interest in, or make any other investment in, any Person including any Affiliate of any Borrower (the items described in clauses (a), (b) and (c) are referred to as “Investments”), except for: (i) Investments in cash and Cash Equivalents and checking and demand deposit accounts maintained in the ordinary course of business; (ii) Permitted Debt; (iii) prepaid expenses and deposits for the Fund Lease or in connection with the provision of goods or services, in each case incurred in the ordinary course of business; (iv) accounts created and trade debt extended in the ordinary course of business; (v) loans to Operators under Reimbursement Agreements evidenced by Operator Notes, but in the case of loans or advances to Operators who are not receiving proceeds of Term Loans hereunder, such loans shall not exceed \$100,000 to any Operator.

Section 8.9. Dispositions. Make any Disposition other than Permitted Dispositions.

Section 8.10. Power of Attorney. Execute any other document, such as a Power of Attorney, or similar instrument, in favor of any person with respect to any portion of the Collateral.

Section 8.11. Financing Transactions. Enter into the following agreements:

(a) the sale of any debt securities by any Borrower, unless the Agent has provided prior written consent;

(b) any merchant cash agreement, forward sale agreement or other contractual arrangement whereby a third party is granted any rights with respect to any Bank Account (including direct debit or ACH), or future receivables; or

(c) other than as otherwise permitted hereunder, any other source of financing by a Borrower except to the extent the Obligations are repaid concurrently upon the consummation thereof.

Section 8.12. Intentionally Omitted.

Section 8.13. Conduct of Business. Suspend or otherwise discontinue all or any material part of its business operations for any other reason; conduct any business outside of the State of New York; or engage in any business other than the business engaged in by it on the Closing Date.

Section 8.14. Intentionally Omitted.

Section 8.15. Tax and Accounting Matters. File or consent to the filing of any consolidated income tax return with any Person other than another Borrower; make any significant change in accounting treatment, accounting methods or reporting practices, except as required by GAAP; or establishes a fiscal year different than the Fiscal Year.

Section 8.16. Intellectual Property. (a) Allow any of its material intellectual property to be abandoned, forfeited or dedicated to the public or (b) suffer any material claim of infringement

unless Borrowers have notified Agent of such claim within ten (10) Business Days, and such claim is dismissed within sixty (60) Business Days from initiation thereof or such Borrower has provided evidence satisfactory to Agent that such proceedings are without merit and is diligently pursuing a dismissal of such claim.

Section 8.17. Investment Accounts. Open or maintain any investment account, securities account or commodity account.

Section 8.18. Inconsistent Agreements. Enter into any contract or agreement which would violate the terms hereof or any other Loan Document, or enter into any agreement with covenants more restrictive than the covenants set forth in the Loan Documents unless the Loan Documents are concurrently modified with the execution and delivery of such other agreement to include such covenants.

Section 8.19. Issuance of Equity Interests. Issue any membership interests in the PropCo or the OpCo. For avoidance of doubt, there are no restrictions on the issuance of Equity Interests by the Fund.

Section 8.20. Modifications of Debt and Certain Other Agreements; Etc.

(a) Prior to the payment in full of the Obligations, amend, modify or otherwise change (or knowingly permit the amendment, modification or other change in any manner of) any of the provisions of any of its Intercompany Indebtedness, or of any instrument or agreement (including, without limitation, any purchase agreement, indenture, loan agreement or security agreement) evidencing such Intercompany Indebtedness if such amendment, modification or change would shorten the final maturity or average life to maturity of, or require any payment to be made earlier than the date originally scheduled on, such Intercompany Indebtedness, would increase the interest rate applicable to such Intercompany Indebtedness, would change the subordination provision, if any, of such Intercompany Indebtedness, or would otherwise be materially adverse to the Lenders or the issuer of such Intercompany Indebtedness in any respect;

(b) During the continuance of an Event of Default hereunder, (i) make any voluntary or optional payment (including, without limitation, any payment of interest in cash that, at the option of the issuer, may be paid in cash or in kind), prepayment, redemption, defeasance, sinking fund payment or other acquisition for value of any of its Intercompany Indebtedness (including, without limitation, by way of depositing money or securities with the trustee therefor before the date required for the purpose of paying any portion of such Intercompany Indebtedness when due), (ii) refund, refinance, replace or exchange any Intercompany Indebtedness without the prior consent of Agent.

Section 8.21. Limitations on Negative Pledges. Enter into, incur or permit to exist, directly or indirectly, any agreement, instrument, deed, lease or other arrangement that prohibits, restricts or imposes any condition upon the ability of any Borrower to create, incur or permit to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, or that requires the grant of any security for an obligation if security is granted for another obligation, except the following: (i) this Agreement and the other Loan Documents, (ii) restrictions or conditions imposed by any agreement relating to secured Debt solely to the extent permitted under

this Agreement or any Loan Document, if such restrictions or conditions apply only to the Property securing such Debt, (iii) any customary restrictions and conditions contained in agreements relating to the sale or other disposition of Property pending such sale or other disposition; provided that such restrictions and conditions apply only to the Property to be sold or disposed of and such sale or disposition is permitted hereunder, (iv) Permitted Liens, (v) Permitted Debt; (vi) Intercompany Indebtedness (vii) corporate restrictions; (viii) Requirements of Law related to any Cannabis License and (ix) customary provisions in leases, including without limitation, restricting the assignment or sublet thereof.

Section 8.22. Modifications to Pledged Equity. Undertake any action or engage in any transaction or activity that dilutes the Pledged Shares below 100% voting interests in the issuing Borrower of such Pledged Shares.

Section 8.23. Location of Collateral, Equipment and Fixtures. Permit any Operator to transfer or move any Collateral, equipment, and/or fixtures from any Retail Property, including without limitation to any Affiliate of any Person that is not a Borrower, except as may be necessary in the ordinary course of business of the Operator.

## ARTICLE IX.

[RESERVED]

## ARTICLE X.

### EVENTS OF DEFAULT

Section 10.1. Events of Default. If any of the following events (“Events of Default”) shall occur:

(a) Payment Failure. Any Borrower shall fail to pay the principal amount of or interest on any Obligation within five (5) Business Days of when due, whether due on demand, upon acceleration or otherwise (except for payment due at stated maturity, as to which the five (5) Business Days grace period shall not apply), provided it shall not be an Event of Default hereunder for failure to pay any Obligation if funds are available for payment of such Obligation in the Payment Reserve or P + I Reserve and (i) such funds are applied to payment of such Obligation within fifteen (15) Business Days of the original due date or (ii) through an act or omission of Agent, such funds are not applied to the payment of such Obligation.

(b) Breach of Certain Covenants. Any breach by a Borrower of the covenants set forth in Section 7.3 (*Use of Proceeds*) or **Article VIII** (*Negative Covenants*).

(c) Other Breaches. Any breach by a Borrower of any of the covenants or other provisions of this Agreement not identified in (a) and (b) above, which breach is not remedied within thirty (30) days of Borrower’s knowledge thereof; provided, however, if such breach is susceptible of cure but cannot be cured within such thirty (30) day period and provided, further, that Borrower shall have commenced to cure such breach within such thirty (30) day period and thereafter diligently proceeds to cure the same, such thirty (30) day period shall be extended for

such time as is necessary for Borrower to cure such breach, such additional period not to exceed and additional thirty (30) days.

(d) Payment Reserve. The failure by the Borrowers to satisfy the Replenishment Requirements at least once every twelve (12) calendar months.

(e) Cross-Default. A Borrower shall default or fail to perform any material obligations under (i) any Material Contract (other than a Fund Lease), the result of which is reasonably likely to have a Material Adverse Effect; or (y) any instrument or agreement evidencing or creating Debt, and such default or failure continues after the applicable grace period, which would give rise to a right to accelerate such Debt.

(f) Fund Leases. The PropCo shall, at any time after December 31, 2023, be in default of, or have failed to timely perform its obligations under, Fund Leases representing at least twenty-five percent (25%) of the Fund's total rental obligations under all Fund Leases, after giving effect to any applicable cure period thereunder, if such defaults or failures give each applicable landlord the right to terminate the corresponding Fund Lease, excluding any such default or failure that is being contested by the PropCo in good faith.

(g) Sale of Assets. A Borrower shall enter into any agreement or arrangement to sell, dispose, assign, exchange, gift, lease, pledge, hypothecate or otherwise transfer, directly or indirectly, in one transaction or a series of transactions, all or substantially all of its assets of such Borrower (expressly excluding Permitted Dispositions) in violation of this Agreement without prior written consent of the Agent;

(h) Failure to Perform. Any Borrower shall fail to perform or observe any other material term, covenant or agreement contained in any other Loan Document (not otherwise addressed in this Section 10.1) and such failure continues unremedied for a period of twenty (20) days thereafter; after notice from Agent; provided, however, that if such Default is non-monetary and susceptible of cure but cannot reasonably be cured within such twenty (20) day period and provided, further, that such Borrower shall have commenced to cure such Default within such twenty (20) day period and thereafter diligently and expeditiously proceeds to cure the same, such twenty (20) day period shall be extended for such time as is reasonably necessary for such Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days; or

(i) Insolvency. A Borrower shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against any Borrower under the Bankruptcy Code or any other Debtor Law seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any Debtor Laws, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its Property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of ninety (90) days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee,



custodian or other similar official for, it or for any substantial part of its Property) shall occur; or any Borrower shall take any corporate action to authorize any of the actions set forth above in this subsection (h);

(j) Termination or Invalidation of Agreements. Any Collateral Document, any Obligor Obligation Document, the Payment Reserve Side Letter or any other Loan Document, or any interest of the Agent thereunder, shall for any reason be terminated, invalidated, or asserted to be void or unenforceable; any Borrower shall challenge in any action, suit or other proceeding the validity or enforceability of any of the Loan Documents, the legality or enforceability of any of the Obligations or the perfection or priority of any Lien granted to Agent, or any of the Loan Documents ceases to be in full force or effect for any reason other than a full or partial waiver or release by Agent in accordance with the terms hereof.

(k) Intentionally Omitted;

(l) Change in Law. A Change in Law shall occur.

(m) Loss of Material Contracts or Permits. The loss of any Material Contract necessary for the operation of any Retail Property in accordance with applicable law.

(n) Judgment. One or more judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of money exceeding \$1,000,000 in the aggregate (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has been notified and has not denied coverage) shall be rendered against any Borrower and remain unsatisfied and (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement or (ii) there shall be a period of sixty (60) consecutive days after entry thereof during which (A) a stay of enforcement thereof is not be in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal.

(o) Continuation of Business. Any Borrower is enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting, or otherwise ceases to conduct for any reason whatsoever, all or any material part of its business for more than forty-five (45) days.

(p) Liquidation; Authorized Shares. Borrowers shall change (i) the number of authorized or outstanding shares of its common stock; or (ii) the Borrowers attempt to liquidate or dissolve itself, without the prior written consent of the Agent;

(q) Material Adverse Effect. There occurs and continues to occur, any event that has caused a Material Adverse Effect;

(r) Intentionally Omitted;

(s) Intentionally Omitted.

(t) Change of Control. Any Change of Control occurs with respect to the Borrowers.

Then, and in any such event, the Agent may exercise its rights set forth in Section 10.2 (*Remedies*) hereof; provided however, that in the case of any Default pursuant to subsection (i) (*Insolvency*) of this Section 10.1, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrowers.

Section 10.2. Remedies. Upon the occurrence of an Event of Default hereunder, Agent may, in its discretion, and Agent shall, at the direction of Required Lenders declare the Outstanding Balance and all other Obligations or amounts payable under this Agreement or any other Loan Document to be forthwith due and payable, whereupon the Obligations, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrowers and Payment Reserve Provider and all interest on and principal of all other Debt owed by the Borrowers to the Lenders shall likewise become and be forthwith due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrowers. Further, upon the occurrence of an Event of Default, the Agent, acting on behalf of the Lenders will have immediate rights to, in each case, without notice to or demand of any kind upon any Borrower (i) foreclose on the Collateral under each or any Collateral Document without any approval or additional action of any Borrower; (ii) seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of its remedies, with respect to such appointment without prior notice or hearing as to such appointment; (iii) exercise exclusive control over the Bank Accounts in accordance with the terms of the DACAs; (iv) cease advancing any money or extending any credit to or for the benefit of the Borrowers under this Agreement or under any other agreement between Borrowers and Agent or any Lender; (v) set off any cash of any Borrower in the possession of Agent or any lender and apply the balances therein to the payment of the Obligations, and (vi) exercise any and all of its other rights and remedies under applicable law, the Uniform Commercial Code, at law or equity generally hereunder and under the other Loan Documents including the right to foreclose the security interests granted herein and to realize upon any Collateral or any other assets on which Agent has a Lien pursuant to the Loan Documents by any available judicial procedure or to take possession of and sell any or all of the Collateral or any other assets on which Agent has a Lien pursuant to the Loan Documents with or without judicial process. The Borrowers hereby waive any right to challenge or object to the foregoing and shall cause the Borrowers to cooperate with the Agent and promptly provide such documentation, access, and other assistance as Agent may request in order to effectuate the foregoing or enforce its rights hereunder.

## **ARTICLE XI.**

**[RESERVED]**

## **ARTICLE XII.**

## **MISCELLANEOUS**

Section 12.1. Survival of Representations and Warranties. All representations and warranties in each Loan Document shall survive the making of the Term Loan, and shall continue

after the Maturity Date until all Obligations are paid in full, and any investigation at any time made by or on behalf of the Agent shall not diminish the Lenders' right to rely thereon.

Section 12.2. Amendments, Etc. No amendment or waiver of any provision of this Agreement, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 12.3. Notices, Etc. All notices and other communications provided for hereunder shall be in writing and sent by (i) by registered or certified mail, postage prepaid, return receipt requested, (ii) delivered by hand, (iii) sent by a reputable overnight courier, or (iv) sent as a .pdf attachment to an e-mail (provided that any Notice sent by e-mail is also delivered by one of the other means for Notices set forth in this Section 12.3). Any Notice shall be deemed to have been received: (a) three (3) days after the date such Notice is mailed, (b) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day), (c) on the next Business Day if sent by an overnight commercial courier, or (d) in the case of e-mail, either (x) as of the date of the e-mail, if such e-mail was sent prior to 4 P.M. EST on a Business Day and such e-mail was not rejected by the recipient's e-mail server, or (y) on the Business Day immediately succeeding the date of the e-mail, if such e-mail was sent after 4 P.M. EST or on a day that is not a Business Day and such e-mail was not rejected by the recipient's e-mail server (provided, that in all cases a copy of any Notice sent by e-mail is also sent to the intended addresses by one of the other means for Notices set forth in this Section 12.3), in each case addressed to the parties as follows: if to the Borrowers, at their address at 100 Wall Street, 18th Floor, New York, NY 10005, Attention: Ateesh S. Chanda, email: [achanda@sei-ventures.com](mailto:achanda@sei-ventures.com), with a copy to Greenberg Traurig LLP, One Vanderbilt Avenue, New York, NY 10017, Attention Howard R. Shapiro, Esq. email: [howard.shapiro@gtlaw.com](mailto:howard.shapiro@gtlaw.com); if to the Payment Reserve Provider at its address at 515 Broadway, Albany, NY 12207, Attention: Charlie Williams, email [cwilliams@dasny.org](mailto:cwilliams@dasny.org) and with a copy to R. Nadine Fontaine, Esq., email: [nfontaine@dasny.org](mailto:nfontaine@dasny.org); if to the Agent at its address at Chicago Atlantic Admin, LLC, 420 North Wabash Avenue, Suite 500, Chicago, IL 60611, Attention: Peter Sack, email: [psack@chicagoatlantic.com](mailto:psack@chicagoatlantic.com) with a copy to Reed Smith LLP, Three Logan Square, 1717 Arch Street, Suite 3100, Philadelphia, PA 19103, Attention: James S. Lawlor, email: [jlawlor@reedsmith.com](mailto:jlawlor@reedsmith.com); or as to the Borrowers or the Lenders, or the Agent at such other address as shall be designated by such party in a written notice to the other parties. Notice for any party may be given by its respective counsel. For the avoidance of doubt, information required to be furnished to the Agent pursuant to **Article VII** hereof shall not require a copy to be delivered by Borrowers to Agent's counsel.

Section 12.4. No Waiver; Remedies. No failure on the part of the Agent or the Lenders to exercise, and no delay in exercising, any right under any Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 12.5. Costs and Expenses. Within ten (10) Business Days of written notice from Agent, the Borrowers agree to pay or reimburse Agent for all reasonable out-of-pocket costs, fees and expenses incurred by Agent in connection with this Agreement, including: (a) Taxes and

insurance premiums required to be paid by a Borrower under the Loan Documents that are paid or advanced by Agent or any Lender; (b) filing, recording, publication and search fees paid or incurred by Agent or any Lender, including all recording fees and Taxes; (d) the costs, fees (including attorneys', paralegals', auctioneers', appraisers' or consultants' fees) and expenses incurred by Agent or any Lender (i) to inspect, copy, audit or examine the books of any Borrower or inspect, count or appraise any Collateral or obtain any quality of earnings report, (ii) monitor compliance with this Agreement and the other Loan Documents (as to which the Agent's fee shall be as set forth in Fee Letter), (iii) to correct any Default or Event of Default or enforce any provision of any of the Loan Documents, whether or not litigation is commenced, (iv) in connection with any restructuring, repayment, refinancing or "workout" of the transactions contemplated by this Agreement or any other Loan Document, and of obtaining performance under this Agreement or any other Loan Document, (v) in gaining possession of, maintaining, handling, protecting, preserving, insuring, storing, shipping, preparing for sale, advertising for sale, selling or foreclosing a Lien upon any of the Collateral, whether or not a sale is consummated, (vi) in collecting any Accounts (as defined in the Security Agreement) or recovering any of the Obligations, (vii) in structuring, drafting, reviewing, negotiating or preparing any of the Loan Documents or any amendment, modification or waiver of any of the Loan Documents or (viii) in defending the validity, priority or enforceability of Liens (collectively the "Lender Expenses"); provided, however, in each case, Borrowers shall not be liable for the payment or reimbursement of any such costs and expenses to the extent the same arise by reason of the gross negligence or willful misconduct or breach of the Loan Documents of or by Agent, any Lender or any Indemnitee. The payment or reimbursement of reasonable out-of-pocket legal fees incurred by Agent on or before the Closing Date shall be paid to counsel by the Agent, out of the loan proceeds on the Closing Date and such reasonable out-of-pocket legal fees shall be deducted from the Initial Term Loan.

Section 12.6. Indemnification. The Borrowers shall indemnify the Agent, each Lender and their respective officers, directors, agents, employees (and the successors and assigns of the foregoing) (each such Person being called an "Indemnitee") from and against any and all Losses, expressly excluding any special, consequential, punitive, indirect or exemplary damages or other similar amounts (unless such damages are charged to or required to be paid by Agent, Lender or any Indemnitee to a third party and the same do not arise from the gross negligence, willful misconduct, fraud, illegal acts or breach of the Loan Documents by Agent, Lender or any Indemnitee) directly relating to or directly arising out of (i) any actual or prospective claim, litigation, investigation or proceeding in any way relating to, arising out of, in connection with or by reason of any of the following, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, litigation or proceeding): (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other document delivered in connection with the transactions contemplated thereby or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) or the consummation of the transactions contemplated thereby, (b) the existence of, perfection of, a Lien upon or the sale or collection of or other realization upon any Collateral, (c) the breach of any representation, covenant or warranty under this Agreement or any other Loan Document, or (d) the failure of any Borrower to observe, perform or discharge any of such Borrower's cost or expense incurred by any Indemnitee in connection with any investigation, litigation, arbitration or other judicial or non-judicial proceeding, whether or not such Indemnitee is party thereto or (e)

any credit extension or the use or proposed use of the proceeds thereof. Notwithstanding anything to the contrary in any of the Loan Documents, the obligations of each Borrower with respect to each indemnity given by it in this Agreement or any of the other Loan Documents in favor of Agent and each Lender shall survive the payment in full of the Obligations and termination of the Loan Documents; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such Losses (A) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, illegal acts, fraud, bad faith or willful misconduct of such Indemnitee, (B) result from a claim brought by the Borrowers or any other Borrower against an Indemnitee for a material breach in bad faith of such Indemnitee's funding obligations hereunder, if the Borrowers or such Borrower has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction, (C) any dispute solely among Indemnitees, and (D) resulting from acts, omissions or matters first occurring from or after the date of any foreclosure or any other transfer of title to the Collateral to Agent or its nominee or affiliate. This Section 12.6 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

Section 12.7. Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, the Agent, on behalf of the Lenders is hereby authorized at any time and from time to time, to the fullest extent permitted by Requirements of Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Debt at any time owing by the Lenders to or for the credit or the account of the Borrowers or any other Borrower against any and all of the obligations of the Borrowers now or hereafter existing under any Loan Document. The Agent, on behalf of the Lenders, agrees to promptly notify the Borrowers after any such set-off and application made by the Lenders, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Lenders under this Section 12.7 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Lenders may have.

Section 12.8. Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrowers and the Lenders and thereafter shall be binding upon and inure to the benefit of the Borrowers, the Lenders and their respective successors and assigns.

Section 12.9. Assignments.

(a) This Agreement and the other Loan Documents shall be binding upon and inure to the benefit of each Borrower, the Agent and each Lender and their respective successors and assigns; provided, however, that none of the Borrowers may assign or transfer any of its rights hereunder or under the other Loan Documents without the prior written consent of the Agent and any such assignment without Agent's prior written consent shall be null and void. Each Lender may assign to one or more other lenders or other entities all or a portion of any funded Term Loan held by it (but not its agreement to fund any Term Loan) to any Eligible Assignee. Any such assignment shall be subject to execution and delivery of an Assignment and Acceptance Agreement by the applicable Lender and an assignee. Upon such execution and delivery, from and after the effective date specified therein, (A) the assignee thereunder shall become a "Lender" hereunder and, in addition to the rights and obligations hereunder held by it immediately prior to such effective date, have the rights and obligations hereunder that have been assigned to it pursuant to such Assignment and Acceptance Agreement and (B) the assigning Lender thereunder shall, to

the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance Agreement, relinquish its rights and be released from its obligations under this Agreement.

(b) The lender party to each such assignment shall execute and deliver to Agent, an Assignment and Acceptance Agreement in the form of Exhibit E, via an electronic settlement system acceptable to Agent (or, if previously agreed with Agent, manually), and shall pay to Agent a processing and recordation fee of Three Thousand Dollars (\$3,000) (which fee may be waived or reduced in the sole discretion of Agent).

(c) Participations. Any Lender may at any time grant to any Person participating interests in its Commitment or the obligations owing to such Lender hereunder (a “Participant”), provided that no Person who would not be an Eligible Assignee by operation of clause (i) or (ii) of the definition of “Eligible Assignee” shall be a Participant. No Participant shall have any rights or benefits under this Agreement or any other Loan Document. In the event of any such grant by a Lender of a participating interest to a Participant, such Lender shall remain responsible for the performance of its obligations hereunder, and the Borrower and the Agent shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement pursuant to which any Lender may grant such a participating interest shall provide that such Lender shall retain the sole right and responsibility to enforce the obligations of the Borrower hereunder including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement; provided however, such Lender may agree with the Participant that it will not, without the consent of the Participant, agree to (i) increase such Lender’s Commitment, (ii) extend the date fixed for the payment of principal on the Term Loan or a portion thereof owing to such Lender, or (iii) reduce the rate at which interest is payable thereon. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant’s interest in the Term Loan or other obligations under the Loan Documents (the “Participant Register”) and any attempted sale of a participation that is not recorded in accordance with this Section 12.9(c) shall be null and void; provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(d) Information to Assignee, Etc. A Lender may furnish any information concerning the Property and its operations, Borrower in the possession of such Lender from time to time to assignees and Participants (including prospective assignees and any Related Party thereof); provided, however, that such Lender may not disclose or disseminate Borrower’s financial statements (or extracts thereof or information contained in such financial statements) to any other Person or entity outside of such Lender’s organization (other than to any Related Party)

without the prior written consent of the Borrower (which consent shall not be unreasonably withheld). In connection with such negotiation, execution and delivery, the Borrower authorizes the Agent and Lenders to communicate all information and documentation related to the Term Loan (whether to Borrower or to any assignee, legal counsel, appraiser or other necessary party) directly by e-mail, fax, or other electronic means used to transmit information.

(e) Cooperation; Costs and Expenses. In connection with any such sale, syndication, assignment or participation, Borrower further agrees that it shall be responsible for its own costs and expenses of legal counsel in connection with such transaction and that the Loan Documents and other related documents shall be sufficient evidence of the obligations of Borrower to each purchaser, assignee or participant and upon written request by the Agent, Borrower shall enter into such amendments or modifications to the Loan Documents and other related documents as may be reasonably necessary in order to evidence any such sale, syndication, assignment or participation; provided that Borrower shall not be required to execute any documents or instruments which would increase Borrower's obligations, or decrease Borrower's rights, under the Loan Documents.

(f) Register. The Agent, acting solely for this purpose as a non-fiduciary Agent of the Borrower, shall maintain at its principal office a copy of each Assignment and Acceptance Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(g) This Section 12.9 shall be construed so that the Term Loan or any other interests under this Agreement are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any other relevant or successor provisions of the Code or such regulations).

Section 12.10. Subordination of Intercompany Indebtedness. The Borrowers hereby agree that all present and future Debt of (i) any Borrower to any another Borrower ("Intercompany Indebtedness") or (ii) any Borrower to DASNY shall be subordinate and junior in right of payment and priority to the Obligations, and each Borrower agrees not to make, demand, accept or receive any payment in respect of any present or future Intercompany Indebtedness, including any payment received through the exercise of any right of setoff, counterclaim or cross claim, or any collateral therefor, unless and until such time as the Obligations shall have been paid in full; provided that, so long as no Event of Default shall be continuing, the Borrowers may make and receive such payments in respect of Intercompany Indebtedness as shall be customary in the ordinary course of the Borrowers' business. For avoidance of doubt, without in any way limiting the foregoing, no payments may be made in respect of Intercompany Indebtedness or Debt owed by a Borrower to DASNY in any Insolvency Event, or any receivership, liquidation, reorganization, dissolution or other similar proceedings relative to any Borrower or to its

businesses, properties or assets, until the Lenders shall have received payment in full of all of the Obligations.

Section 12.11. Limitation on Agreements. All agreements between the Borrowers, Agent or the Lenders, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of demand being made in respect of an amount due under any Loan Document or otherwise, shall the amount paid, or agreed to be paid, to the Lenders for the use, forbearance, or detention of the money to be loaned under any Loan Document or otherwise or for the payment or performance of any covenant or obligation contained herein or in any other Loan Document exceed the Highest Lawful Rate. If, as a result of any circumstance whatsoever, fulfillment of or compliance with any provision hereof or of any of such documents at the time performance of such provision shall be due or at any other time shall involve exceeding the amount permitted to be contracted for, taken, reserved, charged or received by the Lenders under applicable usury or similar law, then, ipso facto, the obligation to be fulfilled or complied with shall be reduced (firstly, by reducing the stated interest rate and thereafter, if and to the extent required, by reducing any other amount comprising interest) to the limit prescribed by such applicable usury or similar law, and if, from any such circumstance, the Lenders shall ever receive interest or anything which might be deemed interest under applicable law which would exceed the Highest Lawful Rate, such amount which would be excessive interest shall be applied to the reduction of the amounts owing on other obligations of the Borrowers to the Lenders under any Loan Document and not to the payment of interest, or if such excessive interest exceeds the amounts owing on other obligations of the Borrowers to the Lenders under any Loan Document, as the case may be, such excess shall be refunded to the Borrowers. All sums paid or agreed to be paid to the Lenders for the use, forbearance, or detention of the indebtedness of the Borrowers to the Lenders shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full of the principal (including the period of any renewal or extension thereof) so that the interest on account of such indebtedness shall not exceed the Highest Lawful Rate. In the event that any rate of interest under any Loan Document is reduced due to the effect of this Section 12.11 and there is a subsequent increase in the Highest Lawful Rate, such interest rate shall, automatically without any action of the Borrowers or Lenders, be increased to the then applicable Highest Lawful Rate. The terms and provisions of this Section 12.11 shall control and supersede every other provision of all Loan Documents.

Section 12.12. Severability. In case any one or more of the provisions contained in any Loan Document to which the Borrowers is a party or in any instrument contemplated thereby, or any application thereof, shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained therein, and any other application thereof, shall not in any way be affected or impaired thereby.

Section 12.13. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed entirely within such state.

Section 12.14. SUBMISSION TO JURISDICTION; WAIVERS. THE BORROWERS AND THE LENDERS IRREVOCABLY AND UNCONDITIONALLY:



(A) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF ANY STATE IN WHICH A BORROWER OPERATES, INCLUDING BUT NOT LIMITED TO THE STATE OF NEW YORK AND APPELLATE COURTS THEREOF OR, AT THE OPTION OF THE AGENT, ANY COURT IN WHICH IT ACTING IN ITS SOLE DISCRETION DEEMS IT NECESSARY OR APPROPRIATE TO INITIATE LEGAL OR EQUITABLE PROCEEDINGS IN ORDER TO EXERCISE, PRESERVE, PROTECT OR DEFEND ANY OF LENDERS' RIGHTS AND REMEDIES HEREUNDER OR OTHERWISE OR TO EXERCISE, PRESERVE, PROTECT OR DEFEND ANY LIEN, AND THE PRIORITY THEREOF, AGAINST ANY COLLATERAL;

EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE AGENT, THE LENDERS OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK AND ANY APPELLATE COURT FROM ANY THEREOF OR ANY OTHER FORUM REASONABLY SELECTED BY AGENT.

(B) WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

(C) AGREES THAT SERVICE OF PROCESS IN ANY SUCH LEGAL ACTION OR PROCEEDING MAY BE EFFECTED BY DELIVERY OF A COPY THEREOF (BY REGISTERED OR CERTIFIED MAIL OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL POSTAGE PREPAID) TO THE ADDRESS SET FORTH IN SECTION 12.3 (*NOTICES, ETC.*) HEREOF OR AT SUCH OTHER ADDRESS OF WHICH THE OTHER PARTIES HERETO SHALL HAVE BEEN NOTIFIED IN WRITING PURSUANT TO SECTION 12.3 (*NOTICES, ETC.*).

(D) THE BORROWERS AND THE LENDERS WAIVE THEIR RIGHT TO JURY TRIAL WITH RESPECT TO ANY LEGAL ACTION ARISING UNDER THIS AGREEMENT.

Section 12.15. WAIVER OF DEFENSE OF ILLEGALITY. EACH BORROWER HEREBY IRREVOCABLY WAIVES ANY DEFENSE BASED ON FEDERAL LAW OR THAT THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT ARE VOID AS AGAINST PUBLIC POLICY OR BASED ON ILLEGALITY UNDER FEDERAL LAW, INCLUDING WITHOUT LIMITATION ANY FEDERAL CANNABIS LAWS. EACH PARTY HERETO ACKNOWLEDGES THAT NEW YORK HAS ENACTED LEGISLATION REGARDING THE LEGAL USE OF CANNABIS, PARTICULARLY MARIJUANA, WHICH

MAY BE IN CONFLICT WITH FEDERAL LAWS. EACH PARTY EXPRESSLY WAIVES THE RIGHT TO PRESENT ANY DEFENSE RELATED TO THE FEDERAL ILLEGALITY OF CANNABIS AND AGREES THAT SUCH DEFENSE SHALL NOT BE ASSERTED, AND WILL NOT APPLY, IN ANY DISPUTE OR CLAIM ARISING OUT OF THIS AGREEMENT.

Section 12.16. Lenders' Liability for Collateral. Each Borrower hereby agrees that: (a) so long as each Lender complies with its obligations, if any, under the Code and Requirements of Law, such Lender shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the Borrowers; except in each case, to the extent such liability has resulted, directly or indirectly, from the gross negligence or willful misconduct or breach of the Loan Documents by Agent or any Lender.

Section 12.17. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

Section 12.18. Confidentiality. Each of the parties to this Agreement shall hold all non-public information relating to any party obtained pursuant to the requirements of this Agreement or in connection with any other Loan Document or diligence relating thereto ("Confidential Information") confidential in accordance with its customary procedure for handling confidential information of this nature and (in the case of a Lender that is a bank) in accordance with safe and sound banking practices; provided that Confidential Information may be disclosed by any party: as required by applicable law;

(b) requested by any governmental or regulatory agency or representative thereof;

(c) pursuant to legal or regulatory process;

(d) in connection with the enforcement of any rights or exercise of any remedies by Agent or Lender under this Agreement or any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document;

(e) to each party's attorneys, professional advisors, accountants, independent auditors, clients, service providers or Affiliates who will be informed of the confidential nature of such information;

(f) in connection with:

(i) the establishment of any special purpose funding vehicle with respect to the Term Loans,

(ii) any pledge permitted hereunder,

(iii) any prospective assignment of, or participation in, its rights and obligations pursuant to Section 12.9, to prospective assignees or participants, as the case may be (it being understood that each such Persons will be informed of the confidential nature of such information and shall have been instructed to keep such information confidential on the same terms as this Section 12.18); and

(iv) any actual or proposed credit facility for loans, letters of credit or other extensions of credit to or for the account of Agent or such Lender or any of its Affiliates, to any Person providing or proposing to provide such loan, letter of credit or other extension of credit or any agent, trustee or representative of such Person (it being understood that each such Persons will be informed of the confidential nature of such information and shall have been instructed to keep such information confidential on the same terms as this Section 12.18); or

(g) to any rating agency;

(h) with the consent of all other parties;

(i) to the extent required, or to the extent counsel to any party reasonably determines is required to be disclosed in connection with any public filing by any party;

(j) in connection with the Promotional Rights (as defined below);

(k) provided that in the case of clause (e) hereof, the Person to whom Confidential Information is so disclosed is advised of and has been directed to comply with the provisions of this Section 12.18.

Notwithstanding the foregoing, each party shall have the right to publicize, for general marketing and related promotional purposes, with the prior written consent of the other parties, its relationship to one another and the fact that the Lenders have extended the Loan to Borrowers (collectively, the “Promotional Rights”) and, in connection therewith, each Borrower hereby grants to Agent and each Lender a royalty free, non-exclusive limited license to use such Borrower’s name, trade name, trademarks, logos, trade dress and other identifying intellectual property, now existing or hereafter acquired, in any literature, advertisements, websites, promotional or other marketing materials now or hereafter used by Agent or Lender.

Notwithstanding the foregoing, no party shall have any obligation to keep information confidential if such information: (i) is or becomes public from a source other than from any party to this Agreement, or one of its Affiliates, consultants or legal or financial advisors in breach of this Agreement, (ii) is, was or becomes known on a non-confidential basis (to the best of such party’s knowledge after reasonable inquiry) to or discovered by such party or any of its Affiliates, consultants or legal or financial advisors independently from communications by or on behalf of any party, or (iii) is independently developed by any party without use of such confidential information, provided that the source of such information was not known to be bound by a confidentiality agreement with (or subject to any other contractual, legal or fiduciary obligation of confidentiality to) the relevant party.

EACH PARTY ACKNOWLEDGES THAT CONFIDENTIAL INFORMATION (AS DEFINED IN THIS SECTION 12.18) FURNISHED TO IT PURSUANT TO THIS

AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING ANY PARTY TO THIS AGREEMENT AND ITS RESPECTIVE RELATED PARTIES OR ITS RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING WAIVERS AND AMENDMENTS, FURNISHED BY THE PARTIES PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH PARTY REPRESENTS TO ONE ANOTHER THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

Section 12.19. Press Releases, etc. Each party to this Agreement will not, and will not permit any of its respective subsidiaries, directly or indirectly, to publish any press release or other similar public disclosure or announcements (including any marketing materials) regarding this Agreement, the other Loan Documents, or any of the transactions, without the consent of Agent and Borrowers, which consent shall not be unreasonably withheld; provided, however, that Borrowers shall be permitted to publicly disclose the foregoing if required to do so under U.S. securities laws.

### **ARTICLE XIII.**

#### **RIGHTS AND DUTIES OF AGENT.**

Section 13.1. Appointment and Authority. Each of the Lenders hereby irrevocably appoints Chicago Atlantic Admin, LLC to act on its behalf as the Agent hereunder and under the other Loan Documents and, in the absence of other written instructions from Lenders pursuant to the terms of the Loan Documents received from time to time by Agent, and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to or required of the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this **Article XIII** are solely for the benefit of the Agent and the Lenders, and neither the Borrowers nor any other party to this Agreement shall have rights as a third-party beneficiary of any of such provisions. Anything contained in any of the Loan Documents to the contrary notwithstanding, Agent, each other Lender and each Borrower hereby agree that (a) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Pledge Agreement or any other Loan Documents, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Agent, on behalf of Lenders in accordance with the terms hereof, and all powers, rights and remedies under the Loan Documents may be exercised solely by Agent, and (b) in the event of a foreclosure by Agent on any of the Collateral pursuant to a public or private sale or other disposition, Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition

and Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations (including Obligations owed to any other Lender) as a credit on account of the purchase price for any Collateral payable by Agent at such sale or other disposition.

Section 13.2. Agent. (i) is acting solely on behalf of the Lenders (except to the limited extent provided in Section 12.9(f) (*Assignments*) with respect to the Register), with duties that are entirely administrative in nature, notwithstanding the use of the defined term “Agent”, “agent”, and similar terms in any Loan Document to refer to Agent, which terms are used for title purposes only, (ii) is not assuming and shall not have any actual or implied obligations, functions, responsibilities, duties, under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Person, and each Lender, by accepting the benefits of the Loan Documents, hereby waives and agrees not to assert any claim against Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) and (ii) above.

Each Lender expressly acknowledges that neither Agent, nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates have made any representations or warranties to it and that no act by Agent hereafter taken, including any review of the affairs of a Borrower or any Affiliate of a Borrower, shall be deemed to constitute any representation or warranty by Agent to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into the business, operations, property, financial and other condition and creditworthiness of Borrowers and their Affiliates and made its own decision to make its Term Loans hereunder. Each Lender also represents that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Borrowers and their Affiliates. Except for notices, reports and other documents expressly required to be furnished to Lenders by Agent hereunder, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Borrower or any Affiliate of any Borrower that may come into the possession of Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

Section 13.3. Rights as a Lender. The Persons serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it was not the Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Persons serving as Agent hereunder in each of the Agent’s individual capacity.

Section 13.4. Loan Information.

(a) At the Lenders' request from time to time, Agent shall provide Lenders with any available financial and nonfinancial information in Agent's possession on Borrower, any other Borrowers and endorsers of the Term Loan, and all security for the Term Loan. Agent shall maintain records pertaining to the Term Loan. At all reasonable times, Agent shall permit the Lenders, at Lenders' sole expense, to inspect and copy all such writings and records relating to the Term Loan. Agent shall provide to Lenders, promptly upon receipt by Agent, copies of all reports and other information required to be provided by Borrower to Agent under this Agreement and any other material information otherwise received by Agent with respect to Borrower.

(b) Nothing contained in this section shall impose any liability upon Agent for its failure to provide Lenders any of such information or financial statements except for Agent's own bad faith, willful misconduct, or gross negligence; and provided further, that Agent shall not be obligated to provide Lenders with any information in violation of Requirements of Law or any contractual restrictions on the disclosure thereof.

(c) Agent shall have no responsibility to Lenders for any errors or omissions in any such reports, financial statements, or other information.

(d) Agent may take any action with respect to the Term Loan which in its reasonable discretion it deems proper. Agent shall not be liable for any error of judgment or for any action taken or omitted by it, except to the extent caused by its gross negligence or willful misconduct that causes actual damage to Lenders.

(e) Agent (1) may consult with legal counsel (including but not limited to counsel for Borrower), independent public accountants, and other experts selected by Agent and shall not be liable for any action taken or omitted in good faith in accordance with the advice of such counsel, accountants, or experts; and (2) shall incur no liability for acting upon any notice, consent, certificate, or other instrument or writing (which may be by facsimile or electronic mail) believed by Agent to be genuine and believed by Agent to be signed or sent by the proper party. Except as otherwise specifically provided in this Agreement, Agent shall not be compelled to do any acts hereunder or under any Loan Document or to take any action towards the execution or enforcement of the powers created under this Agreement or any Loan Document, or to prosecute or defend any suit in respect hereof or thereof.

Section 13.5. Enforcement of Loan. Except as specifically provided in this Agreement, it is understood and agreed that Agent may, in its sole discretion and without prior notice to or consent of the Lenders, (i) agree to the modification, waiver or release of any term or provision of the Loan Documents, (ii) give or withhold consents or approvals to any actions or failures to act by Borrower, (iii) exercise or refrain from exercising, or waive, any rights or powers or take or refrain from taking any actions which may be vested in Agent or which Agent may be entitled to take or assert under the Loan Documents, and (iv) take such other and further action as Agent may deem necessary for the effective administration of the Term Loan; provided, however, that no such waiver, amendment, supplement (including any additional Loan Document) or consent shall, unless in writing and signed by all the Lenders directly and adversely affected thereby, do any of the following:

(a) change the stated Maturity Date or postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to Agent under this Agreement or under any other Loan Document;

(b) reduce the principal of, or the rate of interest specified herein on, any portion of the Term Loan, or any fees or other amounts payable under any Loan Document; provided, however, that Agent may waive any obligation of Borrower to pay interest at the rate specified in Section 2.2 (*Interest*);

(c) release (A) the liability of any Borrower or (B) any Liens in favor of Agent on all or substantially all of the Collateral under the Loan Documents;

(d) reduce the amount of principal payable upon acceleration of the Maturity Date;

(e) impair the right of the Lenders to receive payment of principal, interest, fees or expenses when due;

(f) subordinate the Term Loans or the Lenders' interests therein; or

(g) amend this Section 13.5 or the definition of "Required Lenders".

Section 13.6. Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder, except with respect to any Default or Event of Default in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent has received notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that Agent receives such a notice, Agent shall give notice thereof to Lenders. Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by Required Lenders (or, if so specified by this Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement); provided that unless and until Agent shall have received such directions, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as Agent shall deem advisable in the best interests of the Lenders.

Section 13.7. Nature of Duties of Agent. Agent shall have no duties or responsibilities to the Lenders except as expressly set forth in this Agreement, and no implied covenants, functions, responsibilities, duties, obligations, or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Agent's duties hereunder shall be mechanical and administrative in nature. Agent shall not have by reason hereof a fiduciary relationship with respect to the Lenders. Agent agrees to be bound by Lenders' determinations made in connection with the Loan Documents so long as such determinations are made in good faith and in the absence of willful misconduct. Unless indemnified to the satisfaction of Agent against loss, cost, liability, and expense, Agent shall be under no duty to enforce any rights, remedies, powers, or privileges with respect to any enforcement of the obligations of Borrower under the Loan Documents and shall not be compelled to do any act hereunder or thereunder or to take any action toward the exercise or enforcement of the powers created by this Agreement or any of the Loan Documents, or to prosecute or defend any suit in respect hereof or thereof. Agent may execute any of its duties

under this Agreement and the other Loan Documents by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

Section 13.8. Standard of Care; Erroneous Payments. In making and handling the Term Loan, Agent will exercise the same care as a commercially reasonable agent would exercise, but Agent shall have no further responsibility to the Lenders except as expressly provided herein. In no event shall the Agent be responsible or liable for any failure(s) or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services. The Agents shall not be liable for any apportionment or distribution of payments made in good faith, and if any such apportionment or distribution is subsequently determined to have been made in error, and the sole recourse of any Lender to whom payment was due but not made shall be to recover from other Lenders any payment in excess of the amount which they are determined to be entitled. Money held by the Agent in trust hereunder need not be segregated from other funds except to the extent required by law. Agent shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing.

Section 13.9. Indemnification of Agent by the Lenders. To the extent that any Agent is not reimbursed and indemnified by Borrower, and whether or not Agent has made demand on Borrower for the same, the Lenders will, within five (5) days of written demand by Agent, reimburse Agent for and indemnify Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, client charges and expenses of counsel or any other advisor to Agent), advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against Agent in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by Agent under this Agreement or any of the other Loan Documents, in proportion to the Lenders' pro rata share, including, without limitation, advances and disbursements made; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements for which there has been a final non-appealable judicial determination that such liability resulted from Agent's gross negligence or willful misconduct. The obligations of the Lenders under this Section 13.8 shall survive the payment in full of the Term Loan and the termination of this Agreement.

Section 13.10. Collateral.

(a) Each Lender appoints Agent as its agent and as sub-agent for the purpose of perfecting all Liens with respect to the Collateral, including with respect to assets which, in accordance with Article 8 or Article 9, as applicable, of the Uniform Commercial Code of any applicable state can be perfected only by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent and



take such other actions as agent or sub-agent in accordance with Agent's instructions to the extent, and only to the extent, so authorized or directed by Agent.

(b) Each Lender acknowledges that the Term Loans, all other Obligations and all interest, fees and expenses hereunder constitute one indebtedness, secured by all of the Collateral. Each Lender hereby directs, in accordance with the terms of this Agreement and the other Loan Documents, as applicable, Agent to release any Lien held by Agent in connection with this Agreement and the other Loan Documents against all of the Collateral upon the payment in full of the Obligations and termination of this Agreement.

Section 13.11. Successor Agent. Agent may resign as Agent upon twenty (20) days' notice to Lenders and Borrowers. If Agent shall resign as Agent in its applicable capacity under this Agreement and the other Loan Documents, then Required Lenders shall appoint a successor agent, whereupon such successor agent shall succeed to the rights, powers and duties of Agent in its applicable capacity, and the term "Agent" shall mean such successor agent effective upon such appointment and approval, and the former Agent's rights, powers and duties as Agent in its applicable capacity shall be terminated, without any other or further act or deed on the part of such former Agent or any of the parties to this Agreement or any holders of the Term Loans. If no applicable successor agent has accepted appointment as Agent in its applicable capacity by the date that is twenty (20) days following such retiring Agent's notice of resignation, such retiring Agent's resignation shall nevertheless thereupon become effective and Lenders shall assume and perform all of the duties of Agent hereunder until such time, if any, as Required Lenders appoint a successor agent as provided for above. After any retiring Agent's resignation as Agent, the provisions of this **Article XIII** shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement and the other Loan Documents. Notwithstanding the foregoing, Chicago Atlantic Admin LLC may resign as Agent, and choose a successor for such capacity, without notice to, or the consent of, Lenders (including Required Lenders) if such successor is an Affiliate of Chicago Atlantic Admin LLC.

Section 13.12. Borrowers Not Beneficiaries. The provisions of this **Article XIII** are solely for the benefit of Agent and Lenders, may not be enforced by any Borrower, and may be modified or waived without the approval or consent of the Borrowers.

Section 13.13. Intercreditor and Subordination Agreements. Lenders hereby (a) authorize Agent to execute and deliver any intercreditor agreement or subordination agreement on behalf of Agent and Lenders and to perform its obligations thereunder and (b) agree to be bound by the provisions of such documents.


**[*Signature Page Follows*]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.


**BORROWERS:**

**NEW YORK SOCIAL EQUITY CANNABIS  
INVESTMENT FUND L.P., by:**


**SOCIAL EQUITY IMPACT  
VENTURES GP I, LLC, its general  
partner**

By:   
Name: William C. Thompson, Jr.  
Title: Principal

**NYSECIF LEASING COMPANY, LLC, as  
PropCo**

By:   
Name: William C. Thompson, Jr.  
Title: President

**NYSECIF OPERATING COMPANY, LLC, as  
OpCo**

By:   
Name: William C. Thompson, Jr.  
Title: President

**AGENT:**

**CHICAGO ATLANTIC ADMIN, LLC**

By: \_\_\_\_\_

Name: Peter Sack

Title: Authorized Signatory

**SOLE ARRANGER:**

**CHICAGO ATLANTIC CREDIT ADVISERS,  
LLC**

By: \_\_\_\_\_

Name: Peter Sack

Title: Authorized Signatory

**LENDER:**

**CHICAGO ATLANTIC REAL ESTATE  
FINANCE, INC.**

By: \_\_\_\_\_

Name: Peter Sack

Title: Authorized Signatory

**Schedule 1.1**

Commitment Amount

<b>Lender</b>	<b>Commitment Amount</b>
Chicago Atlantic Real Estate Finance, Inc.	\$ 50,000,000.00
<b>Total:</b>	\$ 50,000,000.00

**SCHEDULE 6.6(c)**

**Property**

<b>Address</b>	<b>Document</b>	<b>Interest Held</b>	<b>Consent</b>
248 W. 125 <sup>th</sup> Street, NY, NY	Lease dated December 9, 2022 between 246 West LLC and NYSECIF Operating Company, LLC	Leasehold	None
144 Bleecker Street, NY, NY	Lease dated December 22, 2022 between 144 Bleecker Street LLC and NYSECIF Operating Company, LLC, as amended by First Amendment to Lease dated January 3, 2022 [sic – should be 2023]	Leasehold	None
997 Central Avenue, Albany, NY	Lease dated December 28, 2022 between GX470 Associates, LLC and NYSECIF Operating Company, LLC	Leasehold	None
162-03 Jamaica Ave., Jamaica, Queens, NY	Lease dated December 30, 2022 between 162 <sup>nd</sup> Street Realty LLC and NYSECIF Operating Company, LLC	Leasehold	None
119-121 East State Street, Ithaca, NY	Lease dated December 30, 2022 between Trader K's, LLC and NYSECIF Operating Company, LLC, as amended by First Amendment to Lease dated February 17, 2023	Leasehold	None
32-62 Steinway Street, Astoria, Queens, NY	Lease dated December 30, 2022 between Soundview Realty NY LLC and NYSECIF Operating Company, LLC	Leasehold	None
925 Hunts Point Avenue, Bronx, NY	Lease dated January 6, 2023 between BDG Sufka LLC and NYSECIF Operating Company, LLC	Leasehold	None
182 Fifth Avenue, NY, NY	Lease dated January 26, 2023 between 182 Fifth Avenue LLC and NYSECIF Operating Company, LLC	Leasehold	None
33 Union Square, NY, NY	Lease dated March 3, 2023 between Decker Associates LLC and NYSECIF Operating Company, LLC	Leasehold	None
740 Hoosick Road, Troy, NY	Lease dated March 22, 2023 between Johnston Associates, LLC and NYSECIF Operating Company, LLC	Leasehold	None
7479 Highway 11, Potsdam, NY	Lease dated March 22, 2023 between Patience Realty, LLC and NYSECIF Operating Company, LLC	Leasehold	None
501 State Street, Schenectady, NY	Lease dated March 24, 2023 between 501 State Street Assoc., LLC and NYSECIF Operating Company, LLC	Leasehold	None

<b>Address</b>	<b>Document</b>	<b>Interest Held</b>	<b>Consent</b>
42-15 Bell Boulevard, Bayside, NY	Lease dated March 28, 2023 between Lemberg Foundation Inc. and NYSECIF Operating Company, LLC	Leasehold	None
4658 Onondaga Blvd, Syracuse, NY	Lease dated April 10, 2023 between Clearmideo, LLC and NYSECIF Operating Company, LLC	Leasehold	None
481 Broadway, NY, NY	Lease dated April 28, 2023 between 481 Realty Corp. and NYSECIF Operating Company, LLC	Leasehold	None
57-01 Myrtle Ave., Ridgewood, NY	Lease dated May 3, 2023 between 5701 Myrtle Operating LLC and NYSECIF Operating Company, LLC	Leasehold	None
3022 Veterans Road W, Staten Island, NY	Lease dated May 19, 2023 between Veterans Rd 11 and NYSECIF Operating Company, LLC	Leasehold	None
157 West 72 <sup>nd</sup> Street, NY, NY	Lease dated June 20, 2023 between 157 West 72 <sup>nd</sup> Street LLC and NYSECIF Operating Company, LLC	Leasehold	None

Schedule 6.13 - Insurance

Named Insured	Coverage	Carrier	Company/Carrier AM Best Rating	Effective Expiration		Policy Number	Limits of Liability	Deductible
NYSECIF Operating Company, LLC; New York Social Equity Cannabis Investment Fund, LP; NYSECIF Leasing Company, LLC	General Liability (Owners Interest)	Allied World Surplus Lines Ins Co.	A Rated AMBEST#011719	3/17/2023	3/17/2026	5066-1099-00	\$1,000,000 Each Occurrence/ \$2,000,000 Aggregate	\$10,000 BI/PD Per Occur.
NYSECIF Operating Company, LLC; New York Social Equity Cannabis Investment Fund, LP; NYSECIF Leasing Company, LLC	Excess Liability (Owners Interest) Layer #1	Allied World Surplus Lines Ins Co.	A Rated AMBEST#011719	3/17/2023	3/17/2026	5067-0593-00	\$5,000,000 Each Occurrence/ \$5,000,000 Aggregate	\$0
NYSECIF Operating Company, LLC; New York Social Equity Cannabis Investment Fund, LP; NYSECIF Leasing Company, LLC	Excess Liability (Owners Interest) Layer #2	Vantage Risk Specialty Ins Co.	A- Rated AMBEST#023285	5/5/2023	3/17/2026	EX000020322	\$5,000,000 Each Occurrence/ \$5,000,000 Aggregate	\$0
NYSECIF Operating Company, LLC; New York Social Equity Cannabis Investment Fund, LP; NYSECIF Leasing Company, LLC	General Liability	HDI Global Specialty SE	A+ Rated AMBEST#086486	4/20/2023	4/20/2024	CAS001152/200	\$1,000,000 Each Occurrence/ \$2,000,000 Aggregate	\$10,000 BI/PD Per Occur.
NYSECIF Operating Company, LLC; New York Social Equity Cannabis Investment Fund, LP; NYSECIF Leasing Company, LLC	Excess Liability - Layer #1	Burlington Insurance Company	A Rated AMBEST#000709	4/20/2023	4/20/2024	598BE08005	\$5,000,000 Each Occurrence/ \$5,000,000 Aggregate	\$0
NYSECIF Operating Company, LLC; New York Social Equity Cannabis Investment Fund, LP; NYSECIF Leasing Company, LLC	Excess Liability - Layer #2	Westfield Insurance Company	A Rated AMBEST#002382	4/20/2023	4/20/2024	XSL-319041X-00	\$5,000,000 Each Occurrence/ \$5,000,000 Aggregate	\$0
NYSECIF Operating Company, LLC <sup>1</sup>	Vacant Building General Liability	Westchester	A.M. Best Rating - A++	12/9/2022	12/9/2023	FSF16818586001	\$1,000,000 Each Occurrence/ \$2,000,000 Aggregate	\$500
NYSECIF Operating Company, LLC	Vacant Building General Liability (\$10M x \$2M)	Scottsdale	A.M. Best Rating - A+	12/9/2022	12/9/2023	XBS0174661	\$10,000,000 Each Occurrence/ \$10,000,000 Aggregate	
NYSECIF Operating Company, LLC	Lessor's Risk Only General Liability (Bleeker St.) (Pop-up Coverage)	Scottsdale	A.M. Best Rating - A+	1/23/2023	7/23/2023	CPS7722398	\$1,000,000 Each Occurrence/ \$2,000,000 Aggregate	

<sup>1</sup> Please note the highlighted insurance policies may be terminated in the next few days (they are duplicative of other policies).



**Schedule 6.22 - Litigation**

None

Schedule 6.24 – Material Contracts<sup>1</sup>

1. Investment Management Agreement, dated January 1, 2023, among New York Social Equity Cannabis Investment Fund, L.P., NYSECIF Operating Company, LLC (as “**NYSECIF LLC**”), Social Equity Impact Ventures GP I, LLC (as “**SEIV GP I LLC**”) and SWS Capital Management, LLC
2. Agency Construction Management Agreement, dated December 15, 2022, between Social Equity Servicing Corporation, a subsidiary of the Dormitory Authority of the State of New York (as “**SESC**”) and NYSECIF LLC
3. Interim Lease Servicing Agreement, dated December 6, 2022, among Social Equity Servicing Corporation and NYSECIF LLC (“**Interim Lease Servicing Agreement**”), as amended pursuant to a First Amendment to the Interim Lease Servicing Agreement effective March 6, 2023 (“**First Amendment**”), as further amended by that certain Second Amendment to the Interim Lease Servicing Agreement effective May 5, 2023, and as will be further amended by that certain Third Interim Lease Servicing Agreement (which Third Amendment is currently in process but not yet signed).
4. Lease Servicing Agreement by and among Social Equity Servicing Corporation (a subsidiary of the Dormitory Authority of the State of New York and NYSECIF Leasing Company, LLC (which is currently in the process of being negotiated but not yet signed).
5. Individual Standby Letter of Credit Reimbursement Agreement, dated January 27, 2023, between SEIV GP I LLC and Valley National Bank<sup>2</sup>
6. AnamiTech Services Agreement, dated April 28, 2023, between AnamiTech and NYSECIF LLC
7. Point of Sale System Agreement, dated May 1, 2023, between NYSECIF LLC and Courier Plus, Inc. d/b/a Dutchie
8. Ideals Virtual Data Room, Order No. US SO 3000 – Professional Subscription - Invoice, dated January 12, 2023
9. Master Contract for Design-Build Work, Contract No. 220960, dated January 5, 2023, by Murnane Building Contractors, Inc. (as “**MBC Inc.**”) and NYSECIF LLC
10. Work Order No.: 01, Contract No.: 220960, dated June 20, 2023, naming MBC Inc., as Contractor
11. Master Contract for Design-Build Work, Contract No. 220961, dated January 5, 2023, by SEI Design Group Architects, DPC (“**SEIDG Architects**”) and NYSECIF LLC

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<sup>1</sup> Inclusion of a contract in the schedule does not mean it is in fact a Material Contract.

<sup>2</sup> This LOC will be terminated after closing.

12. Amendment to Master Contract for Design-Build Work, Contract No. 220961, dated March 16, 2023, by SEIDG Architects, DPC and NYSECIF LLC
13. Second Amendment to Master Contract for Design-Build Work, Contract No. 220961, dated May \_\_, 2023, by SEIDG Architects, DPC and NYSECIF LLC
14. Master Contract for Design-Build Work, Contract No. 220962, dated January 5, 2023, by and between NYSECIF LLC, an affiliate of the New York Social Equity Cannabis Investment Fund, LP (as "NYSECIF LP") and Forte Construction Corp. (as "FC Corp.")
15. Amendment to Master Contract for Design-Build Work, Contract No. 220962, dated May 31, 2023, by and between NYSECIF LP and FC Corp.
16. Master Contract for Design-Build Work, Contract No. 220969, dated January 5, 2023, by and between NYSECIF LP and Grow America Builders LLC (as "GAB LLC")
17. Work Order No.: 01, Contract No.: 220969, dated April 12, 2023, naming GAB LLC, as Contractor
18. Work Order No.: 02, Contract No.: 220969, dated April 12, 2023, naming GAB LLC, as Contractor
19. Master Contract for Design-Build Work, Contract No. 221009, dated January 5, 2023, by AOW Construction LLC (as "AOWC LLC") and NYSECIF LLC
20. Amendment to Master Contract for Design-Build Work, Contract No. 221009, dated March 16, 2023, by AOWC LLC and NYSECIF LLC
21. Second Amendment to Master Contract for Design-Build Work, Contract No. 221009, dated May 23<sup>rd</sup>, 2023, by AOWC LLC and NYSECIF LLC
22. Work Order No.: 01, Contract No.: 221009, dated April 12, 2023, naming AOWC LLC, as Contractor
23. Work Order No.: 02, Contract No.: 221009, dated April 12, 2023, naming AOWC LLC, as Contractor
24. [Master Contract for Design-Build Work, Contract No.: 222286, dated as of January 5, 2023 by and between NYSECIF LP and Salt Construction Management ("SCM")
25. Work Order No.: 01, Contract No.: 221012, dated April 17, 2023, naming SCM, as Contractor
26. Work Order No.: 02, Contract No.: 221012, dated April 17, 2023, naming SCM, as Contractor
27. Work Order No.: 03, Contract No.: 221012, dated June 8, 2023, naming SCM, as Contractor

28. Master Contract for Design-Build Work, Contract No. 221027, dated January 5, 2023, by ES Development & Management Corporation (as “**ESD&M Corp**”) and NYSECIF LLC
29. Amendment to Master Contract for Design-Build Work, Contract No. 221027, dated March 13, 2023, by ESD&M Corp and NYSECIF LLC
30. Second Amendment to Master Contract for Design-Build Work, Contract No. 221027, dated May \_\_\_, 2023, by ESD&M Corp and NYSECIF LLC
31. Work Order No. 01, Contract No. 221027 dated April 12, 2023, naming ESD&M Corp, as Contractor
32. Work Order No. 02, Contract No. 221027 dated May 30, 2023, naming ESD&M Corp, as Contractor
33. Master Contract for Design-Build Work, Contract No. 222286, dated as of January 5, 2023 by and between NYSECIF LP and Temeka Advertising Inc. d/b/a Temeka Group (“**TAG**”)
34. Amendment to Master Contract for Design-Build Work Master Contract No. 220962 dated as of May \_\_\_, 2023 by and between NYSECIF LP a
35. Work Order No.: 01, Contract No.: 222286, dated March 10, 2023, naming TAG, as Contractor
36. Work Order No.: 02, Contract No.: 222286, dated March 10, 2023, naming TAG, as Contractor
37. Work Order No.: 03, Contract No.: 222286, dated March 10, 2023, naming TAG, as Contractor
38. Work Order No.: 04, Contract No.: 222286, dated April 12, 2023, naming TAG, as Contractor
39. Amended and Restated Work Order No. 05, Contract No. 222286 dated May 17, 2023, (original Work Order No. 5 dated April 12, 2023), naming TAG, as Contractor
40. Work Order No.: 06, Contract No. 222286, dated April 17, 2023, naming TAG, as Contractor

Schedule 6.27 – Bank Accounts

<b>Account Holder</b>	<b>Institution</b>	<b>Account Number (last 4 digits)</b>
New York Social Equity Cannabis Investment Fund, LP	Valley National Bank	XXXXXXXX2870
NYSECIF Operating Company, LLC (Opco)	Valley National Bank	XXXXXXXX2897
NYSECIF Leasing Company, LLC (Propco)	Valley National Bank	The bank account number is in process but there is not one yet.

## Schedule 6.29

All Fund Leases set forth on Schedule 6.6 (c) are currently held by OpCo and are to be assigned to Propco post-closing.

**EXHIBIT A**  
**FORM OF FUNDING REQUEST**

From: [Borrower]

To: **CHICAGO ATLANTIC ADMIN, LLC**

Dated: [●]

Dear Sir or Madam

LOAN AGREEMENT BY AND AMONG NEW YORK SOCIAL EQUITY CANNABIS  
INVESTMENT FUND, L.P., NYSECIF LEASING COMPANY, LLC (“PropCo”) and  
NYSECIF OPERATING COMPANY, LLC (the “OpCo”), CHICAGO ATLANTIC ADMIN,  
LLC, as Agent, CHICAGO ATLANTIC CREDIT ADVISERS, LLC, as the Sole Arranger, and  
CHICAGO ATLANTIC REAL ESTATE FINANCE, INC., as Lender  
(the “Loan Agreement”)

- 1 We refer to the Loan Agreement. This is a Funding Request. Terms defined in the Loan Agreement have the same meaning in this Funding Request unless given a different meaning in this Funding Request.
- 2 We wish to borrow a Loan on the following terms:
  - (a) Borrower: [●]
  - (b) Proposed Funding Date: [●] (or, if that is not a Business Day, the next Business Day)
  - (c) Amount: [●]
- 3 We confirm that each condition specified in Section [5.2] (*Conditions Precedent to Delayed Draw Term Loans*) is satisfied on the date of this Funding Request.
- 4 The proceeds of this Loan should be credited to [account].
- 5 This Funding Request is irrevocable.

Yours faithfully,

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authorised signatory for  
[insert name of Borrower]

NOTES:

**EXHIBIT B**  
**FORM OF REIMBURSEMENT AGREEMENT**

This REIMBURSEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of [Date], 2023 by and among NYSECIF OPERATING COMPANY, LLC, a Delaware limited liability company (the “**Company**”), and [Name of Licensee], a [Licensee (as defined below)] [jurisdiction and legal form of entity] (the “**Operator**”).

**PREAMBLE**

WHEREAS, pursuant to the Marihuana Regulation and Taxation Act (“**MRTA**”), the New York State Office of Cannabis Management (“**OCM**”) is authorized to issue conditional adult-use retail dispensary licenses authorizing approved licensees (“**Licensees**”) to acquire, possess, sell and deliver cannabis to cannabis consumers under certain OCM-required conditions at pre-approved premises;

WHEREAS, pursuant to MRTA and Section 1678 of the New York State Public Authorities Law, the Dormitory Authority of the State of New York, or any subsidiary thereof (“**DASNY**”) is authorized to enter into one or more agreements with the New York Social Equity Cannabis Investment Fund, L.P. (the “**Fund**”), a private fund created pursuant to Section 99-ii of the New York State Finance Law to support the creation of conditional adult-use retail dispensaries (each, a “**CAURD**”) for operation by Licensees, formed for the sole purposes of funding the capital costs, including closely related ancillary and administrative costs, associated with establishing CAURDs for operation by Licensees, providing training and administrative support for Licensees with respect to their CAURD businesses, and providing financing to Licensees with respect to the same;

WHEREAS, the Company is a wholly-owned subsidiary of the Fund;

WHEREAS, the Operator has (i) obtained a conditional adult-use retail dispensary license (the “**Dispensary License**”) from OCM and (ii) entered into a [Sublease], dated [\_\_\_\_], 2023 (the “**Sublease**”), with [an affiliate of] the Company, pursuant to which Operator has subleased the premises at [\_\_\_\_\_] (the “**Premises**”) for the purposes of operating a CAURD at the Premises;

WHEREAS, in connection with their operations in support of the creation of CAURDs pursuant to MRTA and its regulations and the applicable provisions of the Public Authorities Law, the Fund and the Company have expended substantial resources to, among other things, source, coordinate and arrange the leasing and subleasing of various premises (including the Premises) for use by Licensees (including Operator), arrange and fund the construction and buildout of such premises (including the Premises) for operation as CAURDs, and finance equipment and other capital costs for the benefit of Licensees (including Operator) to assist such holders in the establishment and startup of such CAURDs (collectively, the “**Program**”); and

WHEREAS, as part of the Program, the Company requires Operator to reimburse the Company for all of the expenses borne by the Company in connection with financing and/or managing the: (i) leasing and subleasing of the Premises to Operator, (ii) construction and buildout of the Premises for operation as a CAURD, (iii) property management of the Premises; (iv) furnishing and equipping of the Premises, (iv) provision of other capital expenditures made to the



Premises or made for the benefit of Operator that are not otherwise referenced in the preceding clauses; (v) its allocable share of Organizational Expenses (as defined below), and (vi) its allocable share of expenses associated with the general oversight and maintenance of the Program and support of the interests of Licensees; and (vii) its allocable share of expenses associated with the establishment of systems and services for the benefit of Licensees generally in connection with the Program.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

## **SECTION 1. DEFINED TERMS**

When used in this Agreement, including any Schedule or Exhibit, the following terms shall have the following meanings:

“Account” means Operator’s deposit account having account number [\_\_\_\_\_] at Valley National Bank [or insert other approved depository bank].

“Affiliate” of any Person shall mean (a) any other Person which directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such Person, (b) any other Person which beneficially owns or holds ten percent (10%) or more of the voting control or Equity Interests of such Person, (c) any other Person of which ten percent (10%) or more of the voting control or Equity Interest of which is beneficially owned or held by such Person or (d) any officer or director of such Person.

“Agreement” means this Reimbursement Agreement, together with all Schedules and Exhibits, in each case whether now or hereafter annexed thereto.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to Operator, any Pledgor or any of their Subsidiaries from time to time concerning or relating to bribery or corruption.

“Authorized Officer” means, as to Operator, any executive officer and any other officer or similar official thereof with significant responsibility for the administration of the obligations of such Person in respect of this Agreement and the other Transaction Documents.

“Bankruptcy Code” means the United States Bankruptcy Code (11 U.S.C. Section 101 et seq.).

“Books” means all books and records relating to any Person’s existence, governance, financial condition or operations, or any of the Collateral, regardless of the medium in which any such information may be recorded.

“Business Day” means any day of the week, excluding Saturdays, Sundays and any day on which banks in Illinois are authorized or required to be closed.

“Cannabis Licenses” means each Permit required to be held by Operator or that Operator must have rights to operate its CAURD in compliance with applicable laws, including the Dispensary License.

“Capital Expenditures” means, for any period, the aggregate cost of all capital assets acquired by or on behalf of Operator during such period, as determined in accordance with GAAP.

“CAURD” shall have the meaning set forth in the Preamble.

“Change in Law” means any adverse change after the Closing Date in applicable law, including US Federal Cannabis Law or US State Cannabis Law, or the application or interpretation thereof by any Governmental Authority, (a) that would make it unlawful for the Company or any the Company to (i) continue to be a party to any Transaction Document, (ii) perform any of its obligations hereunder or under any other Transaction Document or (iii) to fund or maintain the Loans, (b) pursuant to which any Governmental Authority has enjoined the Company or any the Company from (i) continuing to be a party to any Transaction Document, (ii) performing any of its obligations hereunder or under any other Transaction Document or (iii) funding or maintaining the Loans, (c) pursuant to which any Governmental Authority requires (i) confidential information from or disclosure of confidential information about the Company, any the Company, any Affiliate thereof or any investor therein or (ii) the Company or any the Company to obtain any Permit, in each case, to (A) continue to be a party to any Transaction Document, (B) perform any of its obligations hereunder or under any other Transaction Document, (C) fund or maintain the Loans, or (d) that would result in the activities conducted by Operator or any Pledgor being Restricted Cannabis Activities

“Change of Control” means the acquisition, directly or indirectly, by any person or group of the beneficial ownership of more than 50% of the outstanding equity interests of Operator on a fully-diluted basis.

“Closing Date” means the date on which the conditions set forth in Section 3.1 have been satisfied by the Operator in the sole judgment of the Company or waived by the Company in its sole discretion.

“Company” means NYSECIF OPERATING COMPANY, LLC, a Delaware limited liability company.

“Company Expenses” means (a) all of the expenses borne by the Company or any of its Affiliates in connection with financing and/or managing the: (i) leasing and subleasing of the Premises to Operator, (ii) construction and buildout of the Premises for operation as a CAURD, (iii) property management of the Premises; (iv) furnishing and equipping of the Premises, (iv) provision of other capital expenditures made to the Premises or made for the benefit of Operator that are not otherwise referenced in the preceding clauses; (v) Organizational Expenses (as defined below), and (vi) expenses associated with the general oversight and maintenance of the Program and support of the interests of Licensees; and (vii) expenses associated with the establishment of systems and services for the benefit of Licensees generally in connection with the Program (b) Taxes and insurance premiums required to be paid by Operator under the Transaction Documents

that are paid or advanced by the Company; (c) filing, recording, publication and search fees paid or incurred by the Company, including all recording fees and Taxes and (d) the costs, fees (including attorneys', paralegals', auctioneers', appraisers' or consultants' fees) and expenses incurred by the Company (i) to inspect, copy, audit or examine the Books of Operator, (ii) monitor compliance with this Agreement and the other Transaction Documents, (iii) to correct any Default or Event of Default or enforce any provision of any of the Transaction Documents, whether or not litigation is commenced, (iv) in connection with any restructuring, repayment, refinancing or "workout" of the transactions contemplated by this Agreement or any other Transaction Document, and of obtaining performance under this Agreement or any other Transaction Document, (v) recovering any of the Obligations or (vi) in structuring, drafting, reviewing, negotiating or preparing any of the Transaction Documents or any amendment, modification or waiver of any of the Transaction Documents.

"Consolidated EBITDA" of the Operator means, for any period, the Consolidated Net Income for such period, adjusted, without duplication and to the extent deducted in determining Consolidated Net Income for such period, by (A) adding thereto (i) Consolidated Interest Expense for such period, (ii) consolidated federal, state, local or foreign income tax expense of the Operator for such period, and (iii) all amounts attributable to depreciation and amortization of the Operator, including amortization of goodwill and other intangible assets, for such period, and by (B) subtracting (i) the aggregate amount of all non-cash items, determined on a consolidated basis, to the extent such items increased Consolidated Net Income for such period, (ii) any after-tax unusual, one-time, extraordinary or non-recurring gains in such period, and (iii) any after-tax gains realized from a sale, disposal or abandonment of assets outside the ordinary course of business of the Operator in such period; provided, that, for purposes of calculating Consolidated EBITDA for any Test Period ending on or prior to [\_\_\_\_], 2024, Consolidated EBITDA shall be calculated on an Annualized Basis.

"Consolidated Interest Expense" means, for any period, the total consolidated interest expense of the Operator for such period (calculated without regard to any limitations on the payment thereof and including amortization of debt discount and deferred financing costs, capitalized interest, commitment fees, letter of credit fees and net amounts payable under hedging agreements) determined in accordance with GAAP *plus*, without duplication, the portion of Capital Lease Obligations of the Operator representing the interest factor for such period.

"Consolidated Net Income" means, for any period, the consolidated net income (or loss) of the Operator determined in accordance with GAAP, but excluding in any event (a) after-tax gains or losses realized from (i) the early extinguishment of any Indebtedness of the Operator or (ii) the sale of assets outside the ordinary course of business of the Operator; (b) gains or losses from the cumulative effect of any change in accounting principles; and (c) earnings resulting from any reappraisal, revaluation or write-up of assets.

"DASNY" shall have the meaning set forth in the Preamble.

"Debtor Relief Laws" means the Bankruptcy Code and all other liquidation, bankruptcy, assignment for the benefit of creditors, conservatorship, moratorium, receivership, insolvency, rearrangement, reorganization, or similar debtor relief laws of the United States of America or other applicable jurisdictions in effect from time to time.

“Default” means an event, act or condition the occurrence of which would, with the lapse of time or the giving of notice, or both, become an Event of Default.

“Default Rate” means, with respect to any Obligations and during any time that an Event of Default exists, a rate equal to the lesser of (i) eighteen percent (18.00%) and (ii) the maximum rate permitted by applicable law.

“Dispensary License” shall have the meaning set forth in the Preamble.

“Distribution” means, in respect of any Person, (a) any payment, distribution, dividend or transfer of cash or other assets by such Person constituting a dividend, return of capital, and other payment in respect of the Equity Interests of such Person (except distributions in such Equity Interests) and (b) any purchase, redemption or other acquisition or retirement for value of any Equity Interests of such Person or an affiliate of such Person.

“Dollars” and the sign “\$” each mean the lawful money of the United States.

“Equity Interest” means all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, partnership, limited partnership or membership interests, joint venture interests, units, limited liability company interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting.

“Event of Default” means any event or condition described in Section 7.1.

“Fixed Charge Coverage Ratio” means, as of the date of determination (a) Consolidated EBITDA for the Test Period, less the sum of (i) all unfinanced Capital Expenditures made by or on behalf of Operator in the Test Period plus (ii) all cash Taxes paid by, or due from, Operator in the Test Period (without benefit of any refund), divided by (b) the sum of (i) the aggregate principal amount of the Indebtedness of Operator paid or scheduled to be paid during the Test Period plus (ii) the aggregate of amount of the interest expense of Operator paid or to be paid during the Test Period, all determined in accordance with GAAP consistently applied.

“Financial Covenants” means, collectively, the covenants set forth in Section 5.6.

“Fiscal Year” means the fiscal year of Operator and their respective Subsidiaries, which period shall be the 12-month period ending on December 31 of each year.

“Fund” shall have the meaning set forth in the Preamble.

“GAAP” means generally accepted accounting principles in the United States in effect from time to time.

“Governmental Authority” means any nation, sovereign or government, any state or other political subdivision thereof, any agency, authority or instrumentality thereof and any entity or authority exercising executive, legislative, taxing, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing, including any central bank stock

exchange regulatory body arbitrator, public sector entity, supra-national entity (including the European Union and the European Central Bank) and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Indebtedness” means (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services (including all earn out obligations), excluding trade accounts payable arising in the Ordinary Course of Business not more than 60 days overdue, (d) all obligations of such Person as lessee under any lease of property that in accordance with GAAP is required to be capitalized on the balance sheet of the lessee, (e) all obligations of such Person to reimburse any bank or other Person in respect of amounts payable under a banker’s acceptance, (f) all obligations of such Person with respect to the redemption, repayment or other repurchase or payment in respect of any Redeemable Preferred Securities, (g) all obligations (absolute or contingent) of such Person to reimburse any bank or other Person in respect of amounts which are available to be drawn or have been drawn under a letter of credit or similar instrument, (h) all Indebtedness of others secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person (and in the event such Person has not assumed or become liable for the payment of such Indebtedness, only the lesser of the amount of such Indebtedness and the fair market value of such property shall constitute Indebtedness), (i) all Indebtedness of others guaranteed by such Person (the amount of any such guaranty shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such guaranty is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such guaranty) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto (assuming such Person is required to perform thereunder), as determined by such Person in good faith), (j) all obligations of such Person with respect to Hedging Agreements (valued as the termination value thereof computed in accordance with a method approved by the International Swap Dealers Association and agreed to by such Person in the applicable Hedging Agreement, if any), (k) all obligations of such Person under any synthetic lease, tax retention operating lease, Sale and Leaseback Transaction, asset securitization, off-balance sheet loan or other off-balance sheet financing product, (l) all obligations of such Person to purchase securities or other property arising out of or in connection with the sale of the same or substantially similar securities or property and (m) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is legally obligated with respect thereto, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Claims” means all claims, demands, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, awards, remedial response costs, expenses or disbursements of any kind or nature whatsoever (including attorneys’, accountants’, auctioneers’, consultants’ or paralegals’ fees and expenses), which may at any time be imposed on, incurred by or asserted against any Indemnitee in any way relating to or arising out of this Agreement, any other Transaction Document, or any other document contemplated by this Agreement, including any of the foregoing in any way relating to or arising out of (a) the administration, performance or

enforcement by the Company or any the Company of any of the Transaction Documents or consummation of any of the transactions described therein, (b) the breach of any representation or warranty under this Agreement or any other Transaction Document or (c) the failure of Operator to observe, perform or discharge any of Operator's covenants or duties under any of the Transaction Documents, in each case including any cost or expense incurred by any Indemnitee in connection with any investigation, litigation, arbitration or other judicial or non-judicial proceeding, whether or not such Indemnitee is a party thereto.

“Indemnitees” means the Company, its Affiliates and each of their respective officers, directors, members, managers, partners, agents and advisors.

“Initial Reimbursable Amount” shall have the meaning set forth in Section 2.2(c).

“Insolvency Proceeding” means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors or (b) any general assignment for the benefit of creditors, formal or informal moratorium, composition, marshaling of assets for creditors or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors, in each case, undertaken under any Debtor Relief Law.

“Interest Rate” means 13.00% per annum.

“Licensees” shall have the meaning set forth in the Preamble.

“Licensing Division” means OCM and each other Governmental Authority that issues Dispensary Licenses in the State of New York.

“Lien” means any lien (statutory or other) mortgage, pledge, hypothecation, assignment, security interest, encumbrance, charge, claim, restriction on transfer or similar restriction or other security arrangement of any kind or nature whatsoever, including any conditional sale or other title retention agreement and any capital or financing lease having substantially the same economic effect as any of the foregoing.

“Loans” means, collectively, the sum of all Company Expenses incurred by the Company or any of its Affiliates on behalf of Operator and/or the Program from time to time as Initial Reimbursable Amounts or Subsequent Reimbursable Amounts as set forth in Section 2.2.

“Local Cannabis Laws” means all of the laws, rules, regulations and guidance issued by the Licensing Division and other New York State Governmental Authorities pertaining to cannabis, as from time to time amended.

“Make-Whole Amount” means, with respect to any prepayment of any principal amount of the Loan pursuant to Section 2.4 or with respect to any Loans the principal of which has become or has been declared to be immediately due and payable hereunder pursuant to Section 7, an amount equal to the lesser of (x) the Discounted Value of the Remaining Interest Payments with respect to the Prepaid Principal of such Loan or (y) the maximum amount that would not result in either (i) the interest charged with respect to any Loan or any other Obligation hereunder exceeding

the maximum amount permitted under the laws of the State of New York or of any other applicable jurisdiction, or (ii) any other violation of any applicable usuary law. For such purposes:

A. “Discounted Value” means, with respect to the Remaining Interest Payments for any Loan, the amount obtained by discounting all Remaining Interest Payments with respect to the Prepaid Principal for such Loan from their respective scheduled due dates to the Settlement Date with respect to such Prepaid Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Loans is payable) equal to the sum of (x) the Reinvestment Yield with respect to such Remaining Interest Payments and (y) one half of one percent (0.50%).

B. “Prepaid Principal” means, with respect to any Loan, the principal of such Loan that is to be prepaid pursuant to Section 2.4 or has become or is declared to be immediately due and payable pursuant to Section 7, as the context requires.

C. “Reinvestment Yield” means, with respect to the Remaining Interest Payments of any Loan, the yield to maturity implied by (i) the yields reported, as of 10:00 A.M. (New York City time) on the second Business Day preceding the Settlement Date with respect to the Prepaid Principal, on the Bloomberg page designated “PX1” or any successor page for actively traded U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Remaining Interest Payments as of such Settlement Date, or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported, for the latest Business Day for which such yields have been so reported as of the second Business Day preceding the date of prepayment with respect to such Prepaid Principal, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Remaining Interest Payments as of such Settlement Date. Such implied yield will be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between (1) the actively traded U.S. Treasury security with the duration closest to and greater than the Remaining Average Life and (2) the actively traded U.S. Treasury security with the duration closest to and less than the Remaining Average Life.

D. “Remaining Average Life” means, with respect to any Remaining Interest Payments, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) such Remaining Interest Payments into (ii) the sum of the products obtained by multiplying (a) the amount of each Remaining Interest Payment by (b) the number of years (calculated to the nearest one-twelfth year) that will elapse between the Settlement Date with respect to the Prepaid Principal and the scheduled due date of such Remaining Interest Payment.

E. “Remaining Interest Payments” means, with respect to the Prepaid Principal of any Loan, all payments of interest in respect of such Prepaid Principal that would be due after the Settlement Date with respect to such Prepaid Principal through the Maturity Date; *provided* that if such Settlement Date is not a date on which interest payments are due to

be made under the terms of the Loans, then the amount of the immediately succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date hereunder.

F. “Settlement Date” means, with respect to the Prepaid Principal of any Loan, the date on which such Prepaid Principal is to be prepaid pursuant to Section 2.4 or has become or is declared to be immediately due and payable pursuant to Section 7, as the context requires.

“Management Services Contract” means any agreement or contract pursuant to which the Operator grants any Person any profit or revenue sharing with respect to the profits or revenue of the Operator.

“Material Adverse Effect” means the effect of any event, condition, action, omission or circumstance, which, alone or when taken together with other events, conditions, actions, omissions or circumstances occurring or existing concurrently therewith, (a) has, or with the passage of time is reasonably likely to have, a material adverse effect upon the business, operations, properties, prospects or condition (financial or otherwise) of Operator, (b) has or could be reasonably expected to have any material adverse effect upon the validity or enforceability of this Agreement or any of the other Transaction Documents, (c) materially impairs the ability of Operator to perform its obligations under any of the Transaction Documents, including repayment of any of the Obligations when due, or (d) materially impairs or delays the ability of the Company or any assignee of the Company to enforce or collect the Obligations in accordance with the Transaction Documents or applicable law.

“Maturity Date” means [DATE].

“Modified Make-Whole Amount” means, with respect to any Modified Make-Whole Prepayment, an amount, in respect of administrative and other expenses, equal to the lesser of (x) the product of (A) 20%, times (B) the Make-Whole Amount in respect of such Modified Make-Whole Prepayment or (y) the maximum amount that would not result in either (i) the interest charged with respect to any Loan or any other Obligation hereunder exceeding the maximum amount permitted under the laws of the State of New York or of any other applicable jurisdiction, or (ii) any other violation of any applicable usuary law.

“Modified Make-Whole Prepayment” means any prepayment of any principal amount of the Loan pursuant to Section 2.4 to the extent that either (x) the Operator funds 100% of such prepayment with cash on the balance sheet of the Operator and not with either (A) the proceeds of any Indebtedness, or (B) the proceeds of any direct or indirect issuance or sale of Equity Interests of, or any capital contribution to, the Operator or (y) the Operator funds 100% of such prepayment with the proceeds of Indebtedness so long as neither the lender providing such Indebtedness nor any of its affiliates are issued any direct or indirect Equity Interests of the Operator in connection with the incurrence of such Indebtedness.

“Monthly Installment Amount” has the meaning set forth in Section 2.3.

“MRTA” shall have the meaning set forth in the Preamble.



“Note” means a promissory note (or amended and restated promissory note) substantially in the form of Exhibit A.

“Obligations” means all indebtedness, liabilities, obligations, covenants and duties now or at any time or times hereafter owing by Operator to the Company, its assignees, the Fund, DASNY or OCM, of any kind and description, incurred pursuant to or evidenced by any of the Transaction Documents and whether direct or indirect, absolute or contingent, due or to become due or joint or several, including the principal of and interest on the Loans, all other fees, all obligations of Operator in connection with any indemnification of any Indemnitees, all obligations of Operator to reimburse the Company Expenses, and all other fees, obligations and duties now or at any time or times hereafter owing by Operator to the Company or an Affiliate thereof.

“OCM” shall have the meaning set forth in the Preamble.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Operator” means [\_\_\_\_\_], a [\_\_\_\_\_].

“Operator’s Allocable Share” shall have the meaning set forth in Section 2.2(b).

“Ordinary Course of Business” means, with respect to any Person, the ordinary course of such Person’s business, as conducted by such Person in accordance with past practices and undertaken by such Person in good faith and not for the purpose of evading any covenant or restriction in any Transaction Document.

“Organic Documents” means, with respect to any Person, its charter, certificate or articles of incorporation, bylaws, certificate or articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, investor rights agreement, right of first refusal agreement, co-sale agreement, voting trust or similar agreement or instrument governing the formation or operation of such Person.

“Organizational Expenses” shall have the meaning set forth in Section 2.2(a).

“PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“Permits” means, with respect to any Person, any authorizations, consents, permits, approvals, authorizations, licenses, registrations, certificates, concessions, grants, variances, permissions and exemptions from, and all filings, contractual obligations and registrations with, and all reports to, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject, which are required for (a) the execution, delivery and performance of the Transaction Documents, (b) the transactions contemplated by the Transaction Documents, (c) the conduct of the business of Operator and (d) the ownership (or lease) of the properties of Operator.

“Person” means an individual, partnership, corporation, limited liability company, limited liability partnership, joint stock company, land trust, business trust or unincorporated organization, or a government or agency, department or other subdivision thereof.

“Premises” shall have the meaning set forth in the Preamble.

“Program” shall have the meaning set forth in the Preamble.

“Program-Related Expenses” shall have the meaning set forth in Section 2.2.

“Real Property” means, with respect to any Person, all right, title and interest of such Person (including any leasehold estate) in and to a parcel of real property owned, leased or operated by such Person together with, in each case, all improvements and appurtenant fixtures, equipment, personal property, easements and other property and rights incidental to the ownership, lease or operation thereof.

“Restricted Cannabis Activities” means, in connection with the cultivation, distribution, sale and possession of cannabis and related products: (a) any activity that is not permitted under applicable US State Cannabis Laws; (b) notwithstanding compliance with applicable US State Cannabis Laws, any activity which a Governmental Authority asserts is unlawful under US Federal Cannabis Law; (c) distribution and sale of cannabis and related products to minors; (d) payments to criminal enterprises, gangs, cartels and Persons subject to Sanctions; (e) non-compliance with anti-terrorism laws and other applicable law relating to money-laundering; (f) diversion of cannabis and related products from states where it is legal under US State Cannabis Law to other states; (g) use of activities permitted under US State Cannabis Law as a cover or pretext for the trafficking of other controlled substances or illegal drugs or other illegal activity; (h) the commission, or making threats, of violence and the use of firearms; (i) drugged driving and other adverse public health consequences associated with the use of cannabis and related products; (j) growing cannabis and related products on public lands; and (k) directly or indirectly, aiding, abetting or otherwise participating in a common enterprise with any Person or Persons in such activities.

“Sales Tracking Software” means any point-of-sale, or other inventory or sales reporting software used by Operator.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Russia and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State or by the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state or His Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“Solvent” means, as to any Person, such Person (a) is able to pay all of its debts as such debts mature, (b) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage, (c) is not “insolvent” within the meaning of Section 101(32) of the Bankruptcy Code and (d) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any of the Transaction Documents, or made any conveyance pursuant to or in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person.

“Sublease” shall have the meaning set forth in the Preamble.

“Subsequent Reimbursable Amounts” shall have the meaning set forth in Section 2.2(d).

“Taxes” means any present or future taxes, levies, imposts, duties, fees, assessments, deductions, withholdings or other charges of whatever nature, including income, receipts, excise, property, sales, use, transfer, license, payroll, withholding, social security and franchise taxes now or hereafter imposed or levied by the United States or any other Governmental Authority and all interest, penalties, additions to tax and similar liabilities with respect thereto, but excluding, in the case of the Company or any the Company, taxes imposed on or measured by the net income or overall gross receipts of the Company or such the Company.

“Test Period” means, as of any date, the four (4) consecutive fiscal quarters of the Operator then last ended on or prior to such date.

“Transaction Documents” means, collectively, this Agreement, the Notes, the Sublease, and all other documents, instruments, certificates and agreements executed or delivered in connection with or contemplated by this Agreement or any of the Obligations.

“Transactions” means (a) the execution, delivery and performance by Operator of each Transaction Document to which it is a party, (b) the incurrence by the Company of Company Expenses on behalf of the Operator and (c) the reimbursement by Operator of such Company Expenses through the Loans hereunder.

“United States” and “U.S.” mean the United States of America.

“US Federal Cannabis Law” means any federal laws of the United States treating cannabis and related products as illegal or as controlled substances.

“US State Cannabis Law” means any Local Cannabis Law and any law enacted by any other state of the United States which legalizes cannabis and related products in some form and

which implements strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale and possession of cannabis and related products.

## **SECTION 2. REIMBURSEMENT OF COMPANY EXPENSES, TERMS OF REPAYMENT**

### **2.1 The Loans.**

(a) Subject to and upon the terms and conditions set forth herein, including all of the conditions in Section 3.1 or Section 3.2 of this Agreement, as applicable, the Company and its Affiliates has incurred and may incur Company Expenses on behalf of the Operator and/or the Program which Operator agrees to reimburse to the Company as provided herein. All such reimbursable amounts comprise Loans from the Company to Operator as follows:

(i) on the Closing Date, a Loan in the amount of the Initial Reimbursable Amount; and

(ii) after the Closing Date, Loans in the amount of Subsequent Reimbursable Amounts.

(b) Operator acknowledges and agrees that any Company Expenses advanced on behalf of the Operator (and reimbursed by the Operator as Loans hereunder) shall be advanced in the sole and absolute discretion of the Company. This Section 2.1 shall not constitute a commitment on the part of the Company to incur any Operator Expenses or make any Loans pursuant to this Section 2.1.

(c) Each Loan shall be repaid or prepaid in accordance with the provisions hereof, but once repaid or prepaid may not be re-borrowed.

### **2.2 Company Expenses.**

(a) The Company may in its discretion incur the following expenses (collectively, the “**Program-Related Expenses**”) on behalf of the Operator and/or the Program, and the same shall be reimbursed by the Operator as Loans as provided herein:

(i) *Real Estate Lease Expenses*: all expenses incurred under or in connection with the creation, administration and enforcement of the leasing and sub-leasing the Premises (whether before or after occupancy by Operator), including but not limited to: (i) all fees due and not otherwise paid by Operator under the Sublease for the Premises, including rent, security deposits and utilities, (ii) fees payable to brokers or to any lease servicing or other agents and (iii) fees paid to identify and establish the suitability of the Premises as a CAURD;

(ii) *Design Build Expenses*: all expenses relating to or incurred on account of the design and build-out of the Premises for use as a CAURD and the cost of any equipment or fixtures installed on the Premises;

(iii) *Property Management Services*: all expenses related to property management services provided by third parties for the benefit of Operator;

(iv) *Other Expenses Particular to Operator or the Premises*: all expenses relating to: (i) property, liability and any other insurance for the Premises; (ii) the purchase of technology and administrative support services for the benefit of Operator; (iii) Program training for Operator, (iv) any insurance for the benefit of Operator to the extent paid for by the Company, and (v) all other expenses related to Operator or the Premises;

(v) *Loan Expenses*: all expenses incurred under or in connection with the creation, administration and enforcement of the Loans from the Company to Operator pursuant to the Transaction Documents, including fees paid to loan servicing and other agents;

(vi) *Organizational Expenses*: Operator's Allocable Share (as defined below) of an amount of all expenses incurred or anticipated to be incurred by (i) the Fund, Social Equity Impact Ventures GP I, LLC (the general partner of the Fund), or its affiliate SWS Capital Management, LLC (the manager of the Fund), in connection with the formation of the Fund and the Company, including legal fees, audit and accounting fees, fees of other professional service providers, and expenses related to travel, meals and lodging related thereto, but specifically excluding the fees and expenses of any placement agent incurred in the placement of Fund interests and (ii) DASNY and its wholly-owned subsidiary, the Social Equity Servicing Corporation, in the creation and advancement of the Program and the procurement of the services of the Fund and the Company including legal fees, audit and accounting fees, fees of other professional service providers, and expenses related to travel, meals and lodging related thereto (collectively, "**Organizational Expenses**"); and

(vii) *Program-Related Expenses*: Operator's Allocable Share (as defined below) of expenses incurred or anticipated to be incurred with respect to the Program and other expenses determined necessary to the success of the Program.

(b) As used herein, "**Operator's Allocable Share**" shall initially mean two percent (2.00%), provided, however, that such percentage shall be subject to downward adjustment by the Company, on or before the [second] anniversary of this Agreement, to reflect the actual number of CAURDs operating pursuant to the Program. Notwithstanding anything in this Agreement to the contrary, in the event Operator's Allocable Share decreases (*i.e.*, in the event more than fifty (50) CAURDs are in operation) or the sum of Organizational Expenses and Program-Related Expenses actually incurred is less than the amount initially projected, any excess of expenses that Operator has previously agreed to reimburse as part of its Allocable Share of such expenses as a result of any adjustment shall, at the Company's discretion, be credited against the principal amount of Operator's Note (as defined below) or against any Subsequent Reimbursable Amounts payable hereunder. For the avoidance of doubt, Operator's Allocable Share shall not exceed two percent (2.00%) at any time.

(c) Reimbursable Amount as of the Date Hereof. The parties hereto agree that the amount due to the Company from Operator for reimbursable expenses incurred by or on behalf of the Company prior to the date hereof is \$[ ] (the "**Initial Reimbursable Amount**"). The Initial Reimbursable Amount represents the sum of (i) the Operator's Allocable Share of Organizational Expenses and Program-Related Expenses and (ii) the sum of expenses outlined in paragraphs (a)(i)-(v) above, as set forth in greater detail on Schedule A hereto.

(d) Further Reimbursable Amounts. The parties hereto agree that, in addition to the Initial Reimbursable Amount, Operator shall be obligated to reimburse the Company for any Program-Related Expenses that are borne by the Company or any of its Affiliates on or subsequent to the date hereof (such amounts collectively, the “**Subsequent Reimbursable Amounts**”). Any amounts reimbursable by Operator after the date hereof pursuant to this section shall be payable by Operator to the Company upon delivery of written notice thereof by the Company to Operator and evidenced by an amended or additional Note.

(e) Satisfaction of Licensee’s Reimbursement Obligations. The parties hereto agree that all Program-Related Expenses incurred by the Company that are subject to reimbursement under the terms of this Agreement will at the time of incurrence be deemed to have been incurred by the Company at the request of Operator to be reimbursed as Loans hereunder on the terms and conditions set forth herein.

### 2.3 Payments.

(a) Commencing on the last Business Day of the first calendar month ending at least ninety (90) days following the Closing Date, and on the last Business Date of each of the following one hundred fifteen (115) calendar months thereafter, Operator shall make one hundred sixteen (116) consecutive level monthly payments consisting of both principal and interest in an aggregate amount per month equal to the amount indicated on Schedule [TBD] (the “**Monthly Installment Amount**”); and

(b) on the Maturity Date, Operator shall make a final payment to the Company in an amount equal to the entire remaining outstanding principal balance of all Loans, together with any then accrued and unpaid interest thereon and any other amounts comprising Obligations and payable hereunder.

(c) The Company’s calculation of the amount payable by Operator on the Maturity Date pursuant to clause (b) above shall be conclusive absent manifest error.

### 2.4 Prepayments.

(a) Operator may, at its option, prepay the outstanding principal amount of the Loans in whole or in part on any Business Day. In the event that Operator elects to so prepay the Loans or in the event that the Loans are accelerated upon or after the occurrence of an Event of Default, such prepayment may be made by paying the outstanding aggregate principal amount of the Loans, together with all interest accrued at such payment date and either (x) solely in the case of a Modified Make-Whole Prepayment, the Modified Make-Whole Amount or (y) in all other cases, the Make-Whole Amount.

(b) All amounts payable pursuant to this Section 2.4 shall be applied as follows: first, to all then unpaid fees and expenses; second, to all accrued and unpaid interest on the Loans; third to the Make-Whole Amount (or the Modified Make-Whole Amount, as applicable); and fourth, to the outstanding aggregate principal balance of the Loans; provided, however, that the reduction of the aggregate principal balance of the Loans shall not affect the amount or timing of

principal payments required under this Agreement until the balance of such principal is reduced to zero.

## **2.5 Interest.**

(a) The unpaid principal amount of the Loans shall bear interest from the Closing Date at the Interest Rate.

(b) Notwithstanding the foregoing, at any time that an Event of Default exists, interest shall accrue at the Default Rate. All interest accruing while an Event of Default exists shall be paid upon demand.

(c) All computations of interest and fees hereunder shall be made on the basis of a year consisting of 360 days, with regard to the actual number of days (including the first day and the last day) elapsed. Interest on each Loan shall accrue for each day, from and including the date such Loan is made available to Operator through and including the date of repayment in full.

**2.6 Fees.** All fees to be paid to the Company under or in connection with the Transactions: shall be fully earned by the Company when due and payable; shall not be subject to rebate, refund or proration under any circumstances; are and shall be deemed to be for compensation for services; and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money.

**2.7 Maximum Interest.** In no event whatsoever shall interest and other charges charged hereunder exceed the highest rate permissible under applicable law. In the event interest and other charges as computed hereunder would otherwise exceed the highest rate permitted under applicable law: (a) the interest rates hereunder will be reduced to the maximum rate permitted under applicable law; (b) such excess amount shall be first applied to any unpaid principal balance owed by Operator; and (c) if the remaining excess amount is greater than the previously unpaid principal balance, the Company shall promptly refund such excess amount to Operator and the provisions hereof shall be deemed amended to provide for such permissible rate.

**2.8 Notes.** All Loans hereunder shall be evidenced by one or more Notes. Each Note shall be issued by Operator to the Company and shall be duly executed and delivered by an Authorized Officer of Operator.

## **SECTION 3. CONDITIONS PRECEDENT**

**3.1 Closing Conditions.** This Agreement shall be effective on the date that each of the following conditions has been satisfied by the Operator in the sole judgment of the Company or waived by the Company in its sole discretion:

(a) Operator and each other Person that is to be a party to any Transaction Document shall have executed and delivered each such Transaction Document, including this Agreement, the initial Note and the Sublease;

(b) Operator shall have delivered to the Company the following documents, each in form and substance satisfactory to the Company:

(i) [a certificate signed by the secretary or assistant secretary of Operator (or, in the case of an Operator that is a partnership, the general partner of such Person or, in the case of an Operator that is a limited liability company, the members or manager, as appropriate, of Operator), including a certificate of incumbency with respect to each Authorized Officer executing a Transaction Document, together with appropriate attachments which shall include the following: (A) a copy of the certificate of formation of Operator certified to be true, complete and correct by the Secretary of State of the State of Operator's incorporation or formation; (B) a true, complete and correct copy of the other Organic Documents of Operator reflecting such amendments necessary in the opinion of the Company in connection with the Transaction Documents or otherwise; (C) a true, complete and correct copy of the resolutions of Operator (or its general partner, members or manager, as applicable) authorizing the execution, delivery and performance by Operator of the Transaction Documents to which Operator is a party and authorizing the borrowings hereunder; (D) certificates of good standing from Operator's jurisdiction of formation; and (E) copies of all shareholders or share purchase agreements relating to the Equity Interests of Operator;]<sup>1</sup>

(ii) a duly executed counterpart of the Sublease;

(iii) evidence of insurance, including standard forms of certificates of insurance and policy endorsements addressed to the Company, confirming Operator's satisfaction of the insurance requirements contained in the Transaction Documents, and

(iv) such financial reports and information concerning Operator as the Company shall request;

(c) the Company shall have received assurances, satisfactory to it, that (i) no litigation and no investigation or audit by any Governmental Authority is pending or threatened against Operator which the Company determines may have a Material Adverse Effect or that would be a breach of any representation by Operator in any Transaction Document, (ii) no breach or default (or event or condition, which after notice or lapse of time, or both, would constitute a breach or default) has occurred and is continuing under any material contract as a result of which a Material Adverse Effect could be reasonably expected to occur, and (iii) none of Operator's Cannabis Licenses have been suspended, revoked or non-renewed;

(d) No Default or Event of Default shall exist (whether before or after giving effect to the Loans or other extension of credit); and

(e) All of the representations and warranties of Operator in each of the Transaction Documents shall be true and correct in all material respects at such time, both before and after giving effect to the Loans.

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<sup>1</sup> NTD: Not required unless Operator is a business entity.



**3.2 Loans Made after the Closing Date.** The Company shall not be obligated to advance any Company Expenses on behalf of the Operator after the Closing Date, but any such amounts shall constitute Subsequent Reimbursable Amounts and be deemed to be Loans outstanding hereunder without any further action on the part of any party. The Operator agrees to execute a new or amended Note to reflect any such additional Loan, but failure to provide such a Note does not affect the automatic conversion of all Subsequent Reimbursable Amounts to Loans hereunder.

#### **SECTION 4. OPERATOR'S REPRESENTATIONS AND WARRANTIES**

To induce the Company to enter into this Agreement and to extend credit, Operator makes the following representations and warranties, all of which shall be deemed made as of the Closing Date and each day thereafter:

**4.1 Existence and Rights; Predecessors.** The exact legal name of Operator is as set forth on the signature pages to this Agreement. [Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly qualified or licensed to transact business in all places where the failure to be so qualified could reasonably be expected to have a Material Adverse Effect.]<sup>2</sup> Operator has the right and power to enter into and discharge all of its obligations under the Transaction Documents to which it is a party. Each Transaction Document to which Operator is a party constitutes a legal, valid and binding obligation of Operator, enforceable against it in accordance with its terms, subject only to bankruptcy and similar laws affecting creditors' rights generally, and Operator has the power, authority, rights and franchises to own its property and to carry on its business as presently conducted.

**4.2 Authority.** The execution, delivery and performance of the Transaction Documents by Operator have been duly authorized by all necessary actions of such Person, do not and will not violate any provision of law, or any writ, order or decree of any court or Governmental Authority or agency, or any provision of the Organic Documents of Operator. Operator has obtained all Permits, and all such Permits are in full force and effect. None of such Permits is the subject of any pending or, to the best of Operator's knowledge, threatened attack or revocation, by the grantor of the Permit. Operator is not required to obtain any additional Permits in connection with the execution, delivery and performance of this Agreement or any other Transaction Document, in accordance with their respective terms, or the consummation of the transactions contemplated hereby or thereby.

**4.3 Litigation.** There are no actions or proceedings pending against Operator before any Governmental Authority.

**4.4 Solvency.** Operator is, and upon consummation consummating the Transactions will be, Solvent.

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<sup>2</sup> NTD: For business entities only.

**4.5 Taxes.** Operator has filed all tax returns that it is required to file and has paid all Taxes shown on said returns as well as all Taxes shown on all assessments received by it.

**4.6 Compliance With Laws.** Operator, and its properties, business operations and leaseholds, are in compliance in all material respects with all applicable laws (excluding those United States federal authorities that may enforce or interpret any laws or regulations or the like, so as to prevent or materially restrict the business of Operator) to permit it to conduct and operate Operator's business. Operator is not engaged in any Restricted Cannabis Activities.

**4.7 Anti-Corruption Laws and Sanctions.** Operator has implemented and maintains in effect policies and procedures designed to ensure compliance by Operator, its directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. Operator, and to the knowledge of Operator, its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

**4.8 Full-Time Commitment.** The Authorized Officers are working full-time on their activities on behalf of Operator and, to the best knowledge of Operator, none of their other professional or business activities might materially interfere with the fulfillment of their full-time obligations to Operator.

**4.9 Account** The Debtor has established the Account at Valley National Bank and has no other deposit, security or investment accounts.

**4.10 No Reliance.** Operator acknowledges, represents, and warrants that it understands the nature and structure of the transactions contemplated by this Agreement and the other Transaction Documents, that it is familiar with the provisions of all of the documents and instruments relating to such transactions, that it understands the risks inherent in such transactions and that it has not relied on the Company of the Fund or any of its affiliates for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement or any other Transaction Document or otherwise relied on the Company, the Fund or any of its affiliates in any manner in connection with interpreting, entering into, or otherwise in connection with this Agreement, any other Transaction Document, or any of the matters contemplated hereby or thereby.

## **SECTION 5. AFFIRMATIVE COVENANTS**

At all times prior to the later of the Maturity Date and the date of payment in full of the Obligations and termination of the Transaction Documents, Operator shall:

**5.1 Maintenance of Rights and Premises.** Maintain and preserve all rights, franchises, Permits, privileges and other authority adequate for the conduct of its business; maintain the Premises, equipment and facilities in good order and repair, working order and condition; conduct its business in an orderly manner without voluntary interruption; maintain and preserve its existence; and qualify and remain qualified and authorized to do business in each jurisdiction in which the Premises is located or the nature of its business requires such qualification

or authorization, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. Operator shall (a) remain the sole and lawful owner of, and in possession of, its assets, (b) use its assets only in its trade or business and (c) use and maintain its assets only in compliance with all applicable laws, regulations and insurance policies.

**5.2 Insurance.** Maintain (a) insurance with respect to its properties and business against such casualties and contingencies of such type (including product liability, workers' compensation, larceny, embezzlement or other criminal misappropriation insurance) and in such amounts and with such coverages, limits and deductibles as is customary in the business of Operator, and (b) business interruption insurance in such amounts and with such coverages, limits and deductibles as is customary in the business of Operator but in no event shall the amount of such coverage be less than the annual rent to be paid by Operator under the Sublease for the Premises; provided, however, that all such insurance, including all coverages, limits and deductibles, shall be reasonably acceptable to the Company. All such insurance policies shall name the Company as additional insured or lender loss payee, as the case may be. Operator shall deliver certificates of insurance evidencing that the required insurance is in force, together with satisfactory additional insured or lender loss payee, as the case may be, endorsements. Each policy of insurance or endorsement shall contain, unless the Company agrees otherwise, in its discretion, a clause requiring the insurer to give not less than thirty (30) days prior written notice to the Company in the event of cancellation or modification of the policy for any reason whatsoever other than non-payment of premiums, in which case ten (10) days prior written notice is acceptable. If Operator fails to provide and pay for such insurance, the Company may, at Operator's expense, procure the same, but shall not be required to do so. Operator agrees to deliver to the Company, promptly as rendered, true copies of all reports made by Operator in any reporting forms to insurance companies.

**5.3 Visits and Inspections.** Permit representatives of the Company to: visit and inspect the Premises; inspect, audit and make extracts from the Books of Operator; conduct field examinations and appraisals; and discuss with its officers, employees and independent accountants Operator's businesses, assets, liabilities, financial positions, results of operations and business prospects; provided, however, that unless a Default or an Event of Default exists, the foregoing shall be conducted during normal business hours and upon reasonable prior notice to Operator; and provided, further, that upon the request of the Company, Operator shall assemble, deliver or otherwise make available to the Company, at a location to be determined by the Company, all Books of Operator requested by the Company. This Agreement shall constitute Operator's authorization to its accountants to discuss Operator's affairs, finances and accounts with such representatives of the Company and the Company. In addition to the foregoing, the Company may, at its option if an Event of Default has occurred and is continuing, from time to time obtain a quality of earnings report with respect to Operator. Nothing contained in this Section 6.3 shall require Operator to violate any provision of applicable Local Cannabis Laws.

**5.4 Taxes, other Obligations, Etc.** (a) File all tax returns and appropriate schedules thereto that are required to be filed under applicable law, prior to the date of delinquency, including any permissible extensions, and (b) pay and discharge, before the same shall become delinquent or in default, its obligations, including Taxes and nongovernmental levies or charges resulting from covenants, conditions, and restrictions affecting its assets which are assessed or imposed upon such assets or become due and payable, except and only to the extent that the validity or

amount thereof is being Properly Contested. If requested by the Company, Operator shall provide proof of payment or, in the case of withholding or other employee taxes, deposit required by applicable law and shall deliver to the Company copies of all tax returns (and amendments thereto).

#### **5.5 Financial Statements and Other Information.**

(a) Keep accurate and complete records and books of account with respect to its business activities in which proper entries are made in accordance with GAAP reflecting all its financial transactions; and

(b) Prepare and furnish, or cause to be prepared and furnished to the Company (i) as soon as available, and in any event within fifteen (15) days after the end of each month hereafter, including the last month of each Fiscal Year, unaudited balance sheets of Operator as of the end of such month, together with a report of monthly gross profit, monthly cart average and monthly payroll for such month, (ii) as soon as available, and in any event within fifteen (15) days after the end of each fiscal quarter of the Operating hereafter, including the last fiscal quarter of each Fiscal Year, unaudited balance sheets and statements of profit and loss of Operator as of, and for the fiscal quarter ended, the last day of such fiscal quarter, and (iii) such other periodic business metrics reports as the Company may reasonably request.

**5.6 Financial Covenants.** From the Closing Date until the later of the Maturity Date and payment in full of all Obligations, comply with the following covenants:<sup>3</sup>

(a) *Fixed Charge Coverage Ratio.* Operator shall not permit the Fixed Charge Coverage Ratio, for the Test Period ending on the last day of any fiscal quarter of Operator occurring on or after [\_\_\_\_], 2023<sup>4</sup>, to be less than [1.5]:1.00.

(b) [*Gross Margin.* Operator shall not permit Operator's gross margins, for the three-month period ending on the last day of any fiscal quarter of the Operator occurring on or after [\_\_\_\_], 2023, to be less than 45% of [revenues].]

(c) *Staffing Costs.* Operator shall not permit staffing costs, including bonuses and other executive compensation, for the three-month period ending on the last day of any fiscal quarter of Operator occurring on or after [\_\_\_\_], 2023, to exceed 17% of [gross revenues].

#### **5.7 Further Assurances.**

Take such further actions as the Company shall reasonably request from time to time in connection herewith to evidence, give effect to or carry out this Agreement and the other Transaction Documents and any of the transactions contemplated hereby or thereby.

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<sup>3</sup> Financial Covenants to be discussed with CAG.

<sup>4</sup> Note: To be the first fiscal quarter end occurring on or after the 6 month anniversary of the date of the Agreement

## **5.8 Loan Monitoring.**

(a) Provide the Company, and any other Person the Company may designate, at all times during the term of this Agreement, with sufficient real-time access to view the activity in (i) all commercial transaction and bank accounts of Operator and (ii) such other accounts and sales and inventory software and data as the Company deems necessary and appropriate, for the purpose of monitoring the business activities and finances of Operator.

(b) Grant to the Company, at all times during the term of this Agreement, view access with respect to its Sales Tracking Software.

(c) Within thirty (30) days of receipt of a written request from the Company, provide daily transaction log files from Operator's ACH payment processor vendors and card processors, in each case, which shall continue to be provided until the Maturity Date.

**5.9 Management Services Contracts.** Not enter into, or become subject to, any Management Services Contracts that collectively pay any Person or Persons an aggregate amount in excess of 20% of the net profits of the Licensee.

**5.10 Deposits.** Deposit all revenue, receipts and proceeds from the business of the CAURD at the Premises into the Account, and not open any deposit or similar account other than the Account. Operator hereby grants to the Company a security interest in the Account, together with all amounts on deposit therein and all proceeds thereof.

**5.11 Post-Closing Covenants.**[TBD]

## **SECTION 6. NEGATIVE COVENANTS**

At all times prior to the later of the Maturity Date and the date of payment in full of the Obligations and termination of the Transaction Documents, Operator shall not shall:

**6.1 Fundamental Changes.** (a) Merge, reorganize or consolidate with any Person, or liquidate, wind up its affairs or dissolve itself, in each case whether in a single transaction or in a series of related transactions; (b) change its federal employer identification number; (c) conduct business under any fictitious name except for any fictitious name disclosed to the Company or change its legal name, state of incorporation or formation, organizational identification number or structure, in each case of this clause (c), without having first provided at least thirty (30) days prior written notice to the Company and complying with all reasonable requirements of the Company in regard thereto; (d) relocate its chief executive office or principal place of business without having first provided at least thirty (30) days prior written notice to the Company or (e) amend, modify or otherwise change any of the terms or provisions in any of its Organic Documents.

**6.2 Conduct of Business.** Suspend or otherwise discontinue all or any material part of its business operations for any other reason; move, transfer or otherwise locate any assets used at, acquired to be used at, arising from, located at or relating to the facilities and operations conducted at any property encumbered by any Mortgage to any other property; conduct any business outside of the State of New York.

**6.3 Inconsistent Agreements.** Enter into any contract or agreement which would violate the terms hereof or any other Transaction Document.

**6.4 Restricted Payments.** Directly or indirectly declare or make any Distributions or set aside any funds for any such purpose.

**6.5 Tax and Accounting Matters.** File or consent to the filing of any consolidated income tax return with any Person (other than a Subsidiary of Operator); make any significant change in accounting treatment, accounting methods or reporting practices, except as required by GAAP; or establish a fiscal year different than the Fiscal Year.

**6.6 Maintenance of Accounts.** Maintain any deposit account, securities account or commodity account other than the Account.

**6.7 Capital Expenditures.** Make or incur Capital Expenditures outside of the Ordinary Course of Business.

**6.8 Compensation of Executive Personnel.** Increase the total compensation paid to its officers or directors (or any of their relatives) and senior executive personnel, including salaries, withdrawals, fees, bonuses, commissions, profits distributions drawing accounts and other payments, whether directly or indirectly, in money or otherwise, during any Fiscal Year during the term of this Agreement by more than the greater of (x) three percent (3.00%) per year or (y) the increase in the Consumer Price Index (as reported by the United States Bureau of Labor Statistics) for such year.

**6.9 Changes to Material Contracts.** Amend, supplement or otherwise modify, or waive any material right under, any material contract, or suffer or permit any other Person to do so.

**6.10 Arms-Length Transactions.** Engage in any transaction with any of Operator's officers, directors, managers, employees or Affiliates, except for an "arms-length" transaction on terms no less favorable to Operator than would be granted to Operator in a transaction with a Person who is not an affiliate of Operator, which transaction shall be approved by Operator's disinterested directors, members or managers and shall be disclosed in a timely manner to Administrative Agent prior to the consummation of such transaction.

**6.11 Dividend Restrictions.** Enter into, directly or indirectly, any agreement with any Person that restricts the ability of any subsidiary of Operator to pay Distributions to Operator.

## **SECTION 7. EVENTS OF DEFAULT; REMEDIES**

**7.1 Events of Default.** The occurrence or existence of any one or more of the following events or conditions shall constitute an Event of Default under this Agreement:

(a) Operator shall fail to pay when due (i) any principal payment required under the terms of the Note on the date due thereof, or (ii) any interest payment or other payment required under the terms of the Note on the date due thereof and, in the case of this clause (ii), such failure shall continue unremedied for fifteen days.

(b) Operator shall fail to pay the principal amount of any of the Obligations (except as provided in clause (a) above with respect to the Note) or any interest thereof (whether due at stated maturity, on demand, upon acceleration or otherwise), or fail to pay any other Obligation (except as provided in clause (a) above with respect to the Note) when due.

(c) Operator fails or neglects to perform, keep or observe any other covenant contained in this Agreement or any other Transaction Document if the breach of such other covenant is not cured to the Company's satisfaction within twenty (20) days after the occurrence thereof.

(d) Any representation, statement, report or certificate made or delivered by Operator to the Company under this Agreement, any other Transaction Document or otherwise is not true and correct, in any material respect, when made, deemed made or furnished.

(e) An Insolvency Proceeding (i) is commenced against Operator and is not dismissed within thirty (30) days thereafter or (ii) is commenced by Operator.

(f) Operator shall challenge in any action, suit or other proceeding the validity or enforceability of this Agreement or any other Transaction Document, the legality or enforceability of any of the Obligations, or this Agreement or any other Transaction Document ceases to be in full force or effect for any reason other than a full or partial waiver or release by the Company in accordance with the terms thereof.

(g) The Dispensary License shall be revoked, fail to be renewed, suspended or otherwise terminated.

(h) Either (i) Operator shall fail to observe or perform any covenant, obligation, condition or agreement contained in the Sublease or (ii) the Sublease shall expire or be terminated for any reason.

(i) At any time after the execution and delivery hereof or thereof (i) any material provision of this Agreement or any other Transaction Document ceases to be in full force and effect; (ii) any Transaction Document is revoked or terminated, becomes unlawful or is declared null and void by a Governmental Authority of competent jurisdiction (except if such action is initiated solely by the Company); or (iii) this Agreement or any other Transaction Document becomes unenforceable, is repudiated or the enforceability thereof is contested or disaffirmed by or on behalf of Operator.

(j) Either (i) [\_\_\_\_\_] ceases, for any reason, to directly or indirectly own and control, beneficially and of record, at least a majority of the outstanding equity interests of Operator, or (ii) [\_\_\_\_\_] ceases, for any reason, to directly or indirectly possess the right to elect (through contract, ownership of voting securities or otherwise) a majority of the board of directors (or similar governing body) of Operator or to direct the management policies and decisions of Operator.

(k) Operator shall engage in any Restricted Cannabis Activity.

(l) Operator, or any officer, director, shareholder or managing employee thereof shall have been found guilty of an act of fraud or shall have been indicted for or convicted of a felony crime.

(m) An event occurs that has a Material Adverse Effect.

(n) A Change of Control shall occur.

**7.2 Remedies.** Upon or after the occurrence of an Event of Default, the Company may, in its discretion, declare all Obligations, whether arising pursuant to this Agreement or otherwise, due, whereupon the same shall become without further presentment, protest, notice or demand (all of which presentment, protest, notice and demand Operator expressly waives) immediately due and payable (provided, that, upon the occurrence of any Event of Default described in Section 7.1(e), all Obligations shall automatically become immediately due and payable without further presentment, protest, notice or demand (all of which presentment, protest, notice and demand Operator expressly waives)), and Operator shall pay to the Company the entire outstanding aggregate principal balance of, and accrued and unpaid interest on, the Loans and all other Obligations plus reasonable attorneys' fees and its court costs if such principal and interest are collected by or through an attorney-at-law.

**7.3 Cumulative Rights; No Waiver.** All covenants, conditions, warranties, guaranties, indemnities and other undertakings of Operator in any of the Transaction Documents shall be deemed cumulative, and the Company shall have all other rights and remedies not inconsistent herewith as provided under applicable law. No exercise by the Company of one right or remedy shall be deemed an election, and no waiver by the Company of any Default or Event of Default on one occasion shall be deemed to be a continuing waiver or applicable to any other occasion. No delay by the Company shall constitute a waiver, election or acquiescence by the Company in any failure by Operator strictly to comply with its obligations under the Transaction Documents.

## **SECTION 8. GENERAL PROVISIONS**

**8.1 Accounting Terms.** Unless otherwise specified herein, all terms of an accounting character used in this Agreement shall be interpreted, all accounting determinations under this Agreement shall be made, and all financial statements required to be delivered under this Agreement shall be prepared, in accordance with GAAP, applied on a basis consistent with the most recent audited financial statements of Operator delivered to the Licensees prior to the Closing Date and using the same method for inventory valuation as used in such financial statements, except for any changes required by GAAP.

**8.2 Certain Matters of Construction.** The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. The section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. References in this Agreement to "Preamble", "Recital", "Sections", "Schedules" or "Exhibits" shall be to the Preamble, Recitals, Sections, Schedules or Exhibits of or to this Agreement unless otherwise specifically provided. All references in this Agreement or any other Transaction Document to statutes shall include all amendments of same and implementing



regulations and any successor or replacement statutes and regulations; to any instrument or agreement (including any of the Transaction Documents) shall include any and all modifications and supplements thereto and any and all restatements, extensions or renewals thereof to the extent such modifications, supplements, restatements, extensions or renewals of any such documents are permitted by the terms hereof and thereof; to any Person means and includes the successors and permitted assigns of such Person; to “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation”; or to the time of day means the time of day on the day in question in Chicago, Illinois, unless otherwise expressly provided in such Transaction Document. Unless the context of this Agreement or any other Transaction Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” A Default or an Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, with respect to any Default, is cured within any period of cure expressly provided in this Agreement. All references in any Transaction Document to the consent, discretion, or satisfaction of, acceptability to or approval by the Company or any the Company shall be deemed to mean the consent, discretion or satisfaction of, acceptability to or approval by the Company or such the Company in its sole and absolute discretion, except as otherwise expressly provided in the applicable Transaction Document.

**8.3 Notices and Communications.** All notices, requests and other communications to or upon a party hereto shall be in writing (including electronic mail transmission or similar writing) and shall be given to such party at the physical address or electronic mailing address set forth in below or at such other physical address or electronic mailing address as such party may hereafter specify for the purpose of notice to the Company and Operator in accordance with the provisions of this Section 8.3:

If to Operator: [NAME]<sup>5</sup>  
[ADDRESS]  
Attention: [TO BE PROVIDED]  
E-mail: [TO BE PROVIDED]

with a copy to (not to constitute service): [NAME]  
[ADDRESS ]  
Attention: [TO BE PROVIDED]  
E-mail: [TO BE PROVIDED]

If to the Company: NYSECIF OPERATING COMPANY, LLC  
100 Wall Street, 18<sup>th</sup> Floor  
New York, NY 10005  
Attention: [TO BE PROVIDED]  
Email: [TO BE PROVIDED]

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<sup>5</sup> Operator, please provide your and your counsel’s notice information.

with a copy to (not to constitute service):

Greenberg Traurig, LLP  
One Vanderbilt Avenue  
New York, New York 10017  
Attention: Todd E. Bowen, Esq.  
E-mail: bowent@gtlaw.com

Each such notice, request or other communication shall be effective (a) if given by mail, three (3) Business Days after such communication is deposited in the U.S. Mail with first class postage pre-paid, addressed to the noticed party at the address specified herein, (b) if by nationally recognized overnight courier, when delivered with receipt acknowledged in writing by the noticed party, (c) if given by personal delivery, when duly delivered with receipt acknowledged in writing by the noticed party or (d) if given by electronic mail, unless the Company or any the Company otherwise prescribes, upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided, however, that if such electronic mail is not sent during the normal business hours of the recipient, such electronic mail shall be deemed to have been sent at the opening of business on the next Business Day for the recipient. Any written notice, request or demand that is not sent in conformity with the provisions hereof shall nevertheless be effective on the date that such notice, request or demand is actually received by the individual to whose attention at the noticed party such notice, request or demand is required to be sent.

**8.4 Performance of Operator's Obligations.** If Operator shall fail to discharge any covenant, duty or obligation hereunder or under any of the other Transaction Documents, the Company may, in its discretion at any time, for Operator' account and at Operator' expense, pay any amount or do any act required of Operator hereunder or under any of the other Transaction Documents. All costs and expenses incurred by the Company in connection with the taking of any such action shall be reimbursed to the Company by Operator on demand with interest at the Default Rate from the date such payment is made or such costs or expenses are incurred to the date of payment thereof. Any payment made or other action taken by the Company under this Section shall be without prejudice to any right to assert, and without waiver of, an Event of Default hereunder and without prejudice to the right of the Company to proceed thereafter as provided herein or in any of the other Transaction Documents.

**8.5 Successors and Assigns.**

This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties, provided, that Operator shall not assign this Agreement or any other Transaction Document or any rights or obligations hereunder or thereunder without the Company's prior written consent and any prohibited assignment shall be absolutely void. The Company may sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, or any right or remedy under, the Obligations and the Transaction Documents without the consent of Operator.

**8.6 General Indemnity.** Operator hereby agrees to indemnify and defend the Indemnitees against and to hold the Indemnitees harmless from any Indemnified Claim that may

be instituted or asserted against or incurred by any of the Indemnitees. The foregoing indemnities shall not apply to Indemnified Claims incurred by any Indemnitee as a result of its own gross negligence or willful misconduct as determined by a final non-appealable order of a court of competent jurisdiction. Notwithstanding anything to the contrary in any of the Transaction Documents, the obligations of Operator with respect to each indemnity given by it in this Agreement or any of the other Transaction Documents in favor of the Company shall survive the payment in full of the Obligations and termination of the Transaction Documents.

**8.7 Survival of Representations.** All representations and warranties made in this Agreement and the other Transaction Documents shall survive the making of any extension of credit hereunder and the delivery of any Note and shall continue in full force and effect until the full and final payment and performance of the Obligations and the termination of the Transaction Documents.

**8.8 Severability.** Wherever possible, each provision of the Transaction Documents shall be interpreted in such manner as to be valid under applicable law. If any provision is found to be invalid under applicable law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Transaction Documents shall remain in full force and effect.

**8.9 Waiver and Amendment.** Any provision of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party against which enforcement of such waiver is sought. Any provision of this Agreement may only be amended, supplemented or modified upon the written consent of Operator and the Company.

**8.10 Counterparts.**

(a) This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Note. The parties agree that a scanned or electronically reproduced copy or image of this Note will be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Note and without the requirement that the unavailability of such original, executed counterpart of this Note first be proven.

(b) The words “execution,” “signed,” “signature,” and words of like import in any Transaction Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act or any other similar state laws based on the Uniform Electronic Transactions Act.

**8.11 Governing Law; Consent to Forum.** This Agreement and the other Transaction Documents are intended to take effect as sealed instruments and shall be construed in accordance

with and governed by the laws of the State of New York, without regard to the conflict of laws principles thereof that would result in the application of the law of any other jurisdiction. This Note shall be construed in accordance with the requirements of PAL §1678(30)(e).

**8.12 Submission to Jurisdiction, Waiver of Venue.** Any legal action or proceeding with respect to this Note shall be brought in the courts of the State of New York in the County of New York or of the United States for the Southern District of New York and, by execution and delivery of this Note, each party hereto hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. Each party hereto agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon it, and may be enforced in any other jurisdiction, including by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment. Each party hereto hereby irrevocably waives any objection that it may now have or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Note brought in the Supreme Court of the State of New York, County of New York or in the United States District Court for the Southern District of New York, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing in this Section 8.12 shall limit the right of the Company to refer any claim against Operator to any court of competent jurisdiction outside of the State of New York, nor shall the taking of proceedings by the Company before the courts in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

**8.13 Waiver of Jury Trial.** Each party to this Agreement hereby expressly waives any right to trial by jury of any claim, demand, action or cause of action arising under this Agreement or in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to this Agreement, or the transactions related thereto, in each case whether now existing or hereafter arising, and whether founded in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this Section 8.13 with any court as written evidence of the consent of the signatories hereto to the waiver of their right to trial by jury.

**8.14 No Third-Party Beneficiaries.** Neither (a) any stockholder or owner of any other Equity Interest in Operator, (b) any employee or creditor of Operator (other than the Company, the Licensees and their respective Affiliates), nor (c) any other Person claiming by or through Operator shall be entitled to rely on this Agreement or any other Transaction Document or have any rights, remedies or claims against the Company, any the Company or any affiliate thereof under or in connection with this Agreement or any other Transaction Document.

**8.15 Reviewed by Attorneys.** Operator represents and warrants that it (a) understands fully the terms of this Agreement and the consequences of the execution and delivery hereof, (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss the same with, such attorneys and other persons as Operator may wish, (c) has exercised independent judgment with respect to this Agreement and the other Transaction Documents, and (d) has entered

into this Agreement of its own free will and accord and without threat, duress or other coercion of any kind by any Person.

**8.16 PATRIOT Act.** the Company hereby notifies Operator that it may be required to obtain, verify and record information that identifies Operator pursuant to the requirements of the PATRIOT Act, which information includes the name and address of Operator and other information that will allow such the Company to identify Operator in accordance with the PATRIOT Act.

**8.17 Cannabis Laws.** The parties acknowledge that although certain US State Cannabis Laws have legalized the cultivation, distribution, sale and possession of cannabis and related products, (a) the nature and scope of US Federal Cannabis Laws may result in circumstances where activities permitted under US State Cannabis Laws may contravene US Federal Cannabis Laws, and (b) engagement in Restricted Cannabis Activities may also contravene US Federal Cannabis Laws. Accordingly, for the purpose hereof, each representation, covenant and other provision hereof relating to compliance with applicable law will be subject to the following qualifications: (x) engagement in any activity that is permitted by US State Cannabis Laws but contravenes US Federal Cannabis Laws, and in respect of which the applicable Governmental Authorities have agreed, or are bound by applicable law (e.g., the proposed Secure and Fair Enforcement (SAFE) Banking Act (H.R. 1595) and the proposed Clarifying Law Around Insurance of Marijuana (CLAIM) Act (H.R. 4074 and Senate Bill 2201)), to forego or otherwise suspend prosecution and enforcement of such US Federal Cannabis Laws will not, in and of itself, be deemed to be non-compliance with applicable law; (y) engagement in any Restricted Cannabis Activity will be deemed to be non-compliance with applicable law; and (z) if any Change in Law results in the business activities of Operator becoming Restricted Cannabis Activities, such Change in Law will be deemed to have had a Material Adverse Effect.

[Remainder of page intentionally left blank.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

**OPERATOR:**

[NAME]

By: \_\_\_\_\_

Name:

Title:

**COMPANY:**

[NYSECIF OPERATING COMPANY, LLC]

By: \_\_\_\_\_

William C. Thompson

President

EXHIBIT A

FORM OF NOTE

See Attached Document

SCHEDULE A  
INITIAL REIMBURSABLE AMOUNT

[provide amount and summary itemization]



## Exhibit C

### FORM OF PROMISSORY NOTE

INITIAL PRINCIPAL AMOUNT: \$[\_\_\_\_\_] ]  
INTEREST: 13.00% per annum

DATED: [\_\_\_\_\_] , 2023

FOR VALUE RECEIVED, [LICENSEE ENTITY] (the “**Operator**”) promises to pay to NYSECIF OPERATING COMPANY, LLC (the “**Company**”), or its assigns, in lawful money of the United States of America, the principal sum of \$[\_\_\_\_\_] (the “**Loan**”) outstanding under and pursuant to that certain Reimbursement Agreement between Company and Operator dated [\_\_\_\_\_] (“**Reimbursement Agreement**”) on or before the Maturity Date, as applicable, at the place and in the manner hereinafter provided, together with interest thereon at the rate or rates provided in the Reimbursement Agreement, and any and all other amounts which may be due and payable hereunder or under any of the Transaction Documents from time to time. The indebtedness evidenced by this Promissory Note (this “**Note**”) shall be senior in right of payment and title to all other indebtedness of the Operator to parties other than the Company. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Reimbursement Agreement.

With Operator’s authorization and at Operator’s direction pursuant to the Reimbursement Agreement, Company Expenses have been incurred, representing a disbursement of a Loan under this Note, in an aggregate principal amount, as of the date hereof, equal to \$[\_\_\_\_\_] (the “**Initial Reimbursable Amount**”).

From time to time after the date hereof, in the event that the Operator shall be required to pay any additional amounts pursuant to the Reimbursement Agreement (any such amounts, “**Subsequent Reimbursable Amounts**”), then, on each date on which such Subsequent Reimbursable Amounts shall be so payable by the Operator under the Reimbursement Agreement (each such date, an “**Additional Reimbursable Amount Date**”), the Subsequent Reimbursable Amounts shall constitute an additional Loan under this Note. Accordingly, the outstanding principal amount under this Note shall be deemed increased by the amount of each Subsequent Reimbursable Amount.

The principal amount outstanding under this Note shall be recorded from time to time in the column headed “Outstanding Principal Amount” on the record (the “**Grid**”) attached hereto as Annex A and forming part of this Note. The Company shall record on the Grid (i) the date and amount of any interest paid hereunder, (ii) the date and amount of each additional Loan made hereunder, and the resulting increase in the principal amount of Loans hereunder, and (iii) the date and amount of each repayment or prepayment of the principal amount of Loans hereunder and the resulting decrease in such principal amount. Such recordation, in the absence of manifest mathematical error, shall be prima facie evidence of such subsequent advances and of such repayments or prepayments; provided that the failure of the Company to make such recordation shall not affect the obligation of the Operator to repay the outstanding principal amount of Loans hereunder, and accrued and unpaid interest thereon, in accordance with the terms hereof.

Prior to the Maturity Date and provided no Event of Default has occurred and is continuing, interest shall accrue on the outstanding principal of the Loans hereunder from (and including) the date such Loans were originally made at a rate equal to 13.00% per annum, computed on the basis of the actual number of days elapsed and a year of 360 days. From and after the Maturity Date or upon the occurrence of an Event of Default, Company, at its option, may, as permitted under applicable law, add any unpaid accrued interest to the principal balance of the Note. Also, upon default, including failure to pay upon final maturity, Company, at its option, may, as permitted under applicable law, increase the Interest Rate to a rate (the

“**Default Rate**”) equal to the lesser of (i) eighteen percent (18.00%) and (ii) the maximum rate permitted by applicable law.

The Operator shall pay to the Company the outstanding principal amount of the Loans, together with interest accruing thereon, as follows:

(i) commencing on the last Business Day of the first calendar month ending at least ninety (90) days following the date of this Note, and on the last Business Date of each of the following one hundred fifteen (115) calendar months thereafter, the Operator shall make one hundred sixteen (116) consecutive level monthly payments consisting of both principal and interest in an aggregate amount per month equal to \$[\_\_\_\_\_] (the “**Monthly Installment Amount**”); and

(ii) on [\_\_\_\_\_] 2033 (the “**Maturity Date**”), the Operator shall make a final payment to the Company in an amount equal to the entire remaining outstanding principal balance of all Loans made pursuant to this Note, together with any then accrued and unpaid interest thereon and any other amounts comprising Obligations and payable hereunder.

The Company’s calculation of the amount payable by the Operator on the Maturity Date pursuant to clause (ii) above shall be conclusive absent manifest error.

In the event that any additional Loans are made hereunder, the Monthly Installment Amount required to be paid by the Operator each month shall be appropriately recalculated and increased to reflect the equal monthly installment amount that would be required to be paid by the Operator each month during the remaining monthly installment term in order to result in the repayment in full of the entire outstanding principal amount of this Note, and all accrued interest hereunder, at the end of such monthly installment term. Such recalculation of the Monthly Installment Amount shall be calculated by the Company and the Company’s calculation thereof shall be conclusive absent manifest error. In the event of any such recalculation of the Monthly Installment Amount, the Company shall notify the Operator in writing of the new Monthly Installment Amount and, upon delivery of such notice, the Monthly Installment Amount payable under this Note shall be deemed to be increased to the amount specified in such notice.

If the Operator is required by law to deduct, withhold and remit any taxes from any payments hereunder to any relevant Governmental Authority, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable hereunder) the Company receives an amount equal to the sum it would have received had no such deductions been made, and (ii) the Operator shall make such deductions.

At any time, upon delivery by the Operator to the Company of irrevocable written notice thereof at least three Business Days prior to the date of such prepayment, the Loans may be prepaid by the Operator, in whole or in part, at any time prior to the Maturity Date. In the event that the Operator shall make any prepayment of the Loans, the Operator shall, in addition to such prepayment, pay, on the date of such prepayment, to the Company either (x) solely in the case of a Modified Make-Whole Prepayment, the Modified Make-Whole Amount or (y) in all other cases, the Make-Whole Amount.

In the event that, pursuant to the terms of the Reimbursement Agreement, the Operator is entitled to receive a return of any amounts previously paid by the Operator to the Company under the Reimbursement Agreement (any such amounts, “**Returned Reimbursement Amounts**”), the Operator hereby instructs and directs the Company to apply, on the date on which such Returned Reimbursement Amount is required to be paid to the Operator pursuant to the Reimbursement Agreement, such Returned Reimbursement Amount to a repayment of the Loans hereunder. For the avoidance of doubt, no Make-Whole Amount or Modified Make-Whole Amount shall be required to be paid in connection with any

prepayment under this paragraph. Operator acknowledges and agrees that Returned Reimbursement Amounts shall not include, and Operator has no right to receive return of, any interest payments made by Operator.

Prepayments shall be applied in the order specified in the Reimbursement Agreement. Any partial prepayment applied to the outstanding principal amount of the Loans shall be applied against the scheduled installments of principal in inverse order of maturity.

All payments of any Obligations shall be made only in lawful money of the United States of America by wire transfer of immediately available funds for the credit of the Company on the due date for such payment, to a bank account specified by the Company in a written notice to the Operator.

Notwithstanding anything in this Agreement to the contrary, if the Obligations are accelerated in accordance herewith for any reason or otherwise become due in accordance herewith prior to their original maturity date, and including because of default, sale or encumbrance (including that by operation of law or otherwise and including as a result of the commencement of any proceeding under the Bankruptcy Code or any other Insolvency Proceeding), the applicable Make-Whole Amount shall also automatically be due and payable as though the Loans were voluntarily prepaid and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of the Company's lost profits, losses and other damages as a result thereof. Any Make-Whole Amount or Modified Make-Whole Amount payable pursuant to this Note shall be presumed to be the liquidated damages sustained by the Company as the result of the early acceleration or prepayment and the Operator agrees that such Make-Whole Amount or Modified Make-Whole Amount, as applicable, is reasonable under the circumstances currently existing. The Make-Whole Amount shall also be payable in the event the Obligations (and/or this Note) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. THE DEBTOR EXPRESSLY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE MAKE WHOLE AMOUNT IN CONNECTION WITH ANY ACCELERATION, IN EACH CASE, TO THE MAXIMUM EXTENT SUCH WAIVER IS PERMITTED UNDER APPLICABLE LAW. The Operator expressly agrees that (i) the Make-Whole Amount or Modified Make-Whole Amount, as applicable, is reasonable and is the product of an arm's-length transaction between sophisticated business people, ably represented by counsel, (ii) the Make-Whole Amount or Modified Make-Whole Amount, as applicable, shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between the Company and the Operator giving specific consideration in this transaction for such agreement to pay the Make-Whole Amount or Modified Make-Whole Amount, as applicable, (iv) the Operator shall be estopped hereafter from claiming differently than as agreed to in this Note, (v) its agreement to pay the Make-Whole Amount or Modified Make-Whole Amount, as applicable, is a material inducement to the Company to make Loans hereunder, and (vi) the Make-Whole Amount or Modified Make-Whole Amount, as applicable, represents a good faith, reasonable estimate and calculation of the lost profits, losses or other damages of the Company and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Company or profits lost by the Company as a result of such prepayment event.

Upon the occurrence of any Event of Default and at any time thereafter during the continuance of such Event of Default, Company may, by written notice to the Operator, declare all outstanding Obligations (including the Make-Whole Amount) payable by the Operator hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding. Upon the occurrence of an Event of Default described in Section 7.1(e) of the Reimbursement Agreement, all Obligations shall become automatically and immediately due and payable without the need for any further notice hereunder, and any requirement for presentment, demand, protest or notice of any kind is hereby expressly waived. In addition to the foregoing remedies, upon the occurrence and during the continuance of any Event of Default,

Company may exercise any other right, power or remedy granted to it under the Reimbursement Agreement or otherwise permitted by law, including by suit in equity or by action at law, or both.

Subject to the restrictions on transfer described in the Reimbursement Agreement, the rights and obligations of the Operator and Company shall be binding upon and benefit the successors, permitted assigns, heirs, administrators and transferees of the parties.

The Company may transfer this Note, or any of its rights, interests or obligations hereunder, without the prior written consent of the Operator.

In no event shall the interest charged with respect to any Loan or any other Obligation hereunder exceed the maximum amount permitted under the laws of the State of New York or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder (the “**Stated Rate**”) would exceed the highest rate of interest permitted under any applicable law to be charged (the “**Maximum Lawful Rate**”), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; provided, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, the Operator shall, to the extent permitted by law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by Company exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, the Company has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to the Operator. In computing interest payable with reference to the Maximum Lawful Rate applicable to the Company, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate divided by the number of days in the year in which such calculation is made.

The Operator hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument.

This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law that would result in the application of the law of any other jurisdiction.

Any legal action or proceeding with respect to this Note may be brought in the courts of the State of New York in the County of New York or of the United States for the Southern District of New York and, by execution and delivery of this Note, the Operator hereby irrevocably accepts for itself the jurisdiction of the aforesaid courts. Operator hereto agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon it, and may be enforced in any other jurisdiction, including by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment. Obligor hereby irrevocably waives any objection that it may now have or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Note brought in the Supreme Court of the State of New York, County of New York or in the United States District Court for the Southern District of New York, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing in this paragraph shall limit the right of the Company to refer any claim against the Operator to any court of competent jurisdiction outside of the State of New York, nor shall the taking of proceedings by Company

before the courts in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

**Operator hereby expressly waives any right to trial by jury of any claim, demand, action or cause of action arising under this Note or in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to the Note, or the transactions related thereto, in each case whether now existing or hereafter arising, and whether founded in contract or tort or otherwise; and Operator hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that the Company or any assignee of the Company's interest in this Note may file an original counterpart or a copy of this Note with any court as written evidence of the consent of the Operator to the waiver of their right to trial by jury.**

In the event any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this Note operate or would prospectively operate to invalidate this Note, then and in any such event, such provision(s) only shall be deemed null and void and shall not affect any other provision of this Note and the remaining provisions of this Note shall remain operative and in full force and effect and in no way shall be affected, prejudiced, or disturbed thereby. This Note shall be construed in accordance with the requirements of PAL §1678(30)(e).

No director, officer, manager, employee or equity holder of the Operator, in his, her or its capacity as such, will have any liability for any obligations of the Operator under this Note.

[SIGNATURE PAGE FOLLOWS]

The Operator has executed this Note as of the date first written above.

**[NAME OF OPERATOR]**

By: \_\_\_\_\_

Name:

Title:

ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ANNEX A

GRID

<b>Date</b>	<b>Principal Amount of Loan Advanced</b>	<b>Amount of Repayment</b>	<b>Outstanding Principal Amount</b>

**EXHIBIT E**

**FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT**

This ASSIGNMENT AND ACCEPTANCE AGREEMENT (the “Assignment”), dated as of the Closing Date identified below, is entered into between \_\_\_\_\_ (“Assignor”) and \_\_\_\_\_ (“Assignee”).

The parties hereto hereby agree as follows:

Borrowers: New York Social Equity Cannabis Investment Fund, L.P., NYSECIP Operating Company LLC and NYSECIP Leasing Company LLC (the “Borrowers”)

Agent: Chicago Atlantic Admin, LLC (the “Agent”)

Loan Agreement: Loan Agreement, dated as of June 29, 2023, among Borrowers, Lender and the Agent and Sole Arranger identified therein (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Loan Agreement”; capitalized terms used herein without definition are used as defined in the Loan Agreement)

Closing Date: \_\_\_\_\_, \_\_\_\_

Loans Assigned (the “Loans”)	Aggregate principal amount of Term Loan	Aggregate amount of principal amount of Term Loan Assigned	Percentage Assigned
Term Loan dated _____	\$ _____	\$ _____	___.__%
Term Loan dated _____	\$ _____	\$ _____	___.__%
[Add rows as needed]			

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Section 1. Assignment. Assignor hereby sells and assigns to Assignee, and Assignee hereby purchases and assumes from Assignor, Assignor's rights and obligations in its capacity as Lender under the Loan Agreement and the other Loan Documents, in each case to the extent related to the amounts identified above as assigned (the "Assigned Interest").

Section 2. Representations, Warranties and Covenants of Assignor. Assignor (a) represents and warrants to Assignee and Lender that (i) it has full power and authority, and has taken all actions necessary for it, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and (ii) it is the legal and beneficial owner of its Assigned Interest and that such Assigned Interest is free and clear of any Lien and other adverse claims and (iii) the Person signing, executing and delivering this Assignment on behalf of the Assignor is an authorized signatory for the Assignor and is authorized to execute, sign and deliver this Agreement, (b) makes no other representation or warranty and assumes no responsibility, including with respect to the aggregate amount of the Loans, the percentage of the Loans represented by the amounts assigned, any statements, representations and warranties made in or in connection with any Loan Document or any other document or information furnished pursuant thereto, the execution, legality, validity, enforceability or genuineness of any Loan Document or any document or information provided in connection therewith and the existence, nature or value of any Collateral and (c) assumes no responsibility (and makes no representation or warranty) with respect to the financial condition of any Borrower or the performance or nonperformance by any Borrower of any obligation under any Loan Document or any document provided in connection therewith.

Section 3. Representations, Warranties and Covenants of Assignee. Assignee (a) represents and warrants to Assignor and Lender that (i) it has full power and authority, and has taken all actions necessary for Assignee, to execute and deliver this Assignment and to consummate the transactions contemplated hereby, (ii) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest assigned to it hereunder and either Assignee or the Person exercising discretion in making the decision for such assignment is experienced in acquiring assets of such type, (iii) the Person signing, executing and delivering this Assignment on behalf of the Assignor is an authorized signatory for the Assignor and is authorized to execute, sign and deliver this Agreement (b) shall perform in accordance with their terms all obligations that, by the terms of the Loan Documents, are required to be performed by it as a Lender, (c) confirms it has received such documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and shall continue to make its own credit decisions in taking or not taking any action under any Loan Document independently and without reliance upon Lender or any other indemnitee and based on such documents and information as it shall deem appropriate at the time, (d) acknowledges and agrees that, as a Lender, it may receive material non-public information and confidential information concerning the Credit Parties and their Affiliates and their Equity Interests and agrees to use such information in accordance with the Loan Agreement, (e) specifies as its applicable lending offices (and addresses for notices) the offices at the addresses set forth beneath its name on the signature pages hereof, (f) shall pay to Agent an assignment fee in the amount of \$3,000 to the extent such fee is required to be paid under Section 12.9 of the Loan Agreement and (g) to the extent required pursuant to Section 3.3(c) of the Loan Agreement, provides properly completed and executed (in such number of copies as shall be requested by the recipient) originals of the applicable IRS Forms

and other documentation, and, if applicable, a portfolio interest exemption certificate as described in Section 3.3(c) of the Loan Agreement.

Section 4. Determination of Closing Date; Register. Following the due execution and delivery of this Assignment by Assignor, Assignee and, to the extent required by the Loan Agreement, Borrower, this Assignment (including its attachments) will be delivered to Agent for its acceptance and recording in the Register. The Closing Date of this Assignment (the "Closing Date") shall be the later of (i) the acceptance of this Assignment by Agent and (ii) the recording of this Assignment in the Register. Agent shall insert the Closing Date when known in the space provided therefor at the beginning of this Assignment.

Section 5. Effect. As of the Closing Date, (a) Assignee shall be a party to the Loan Agreement and, to the extent provided in this Assignment, have the rights and obligations of a Lender under the Loan Agreement and (b) Assignor shall, to the extent provided in this Assignment, relinquish its rights (except those surviving the termination of the payment in full of the Obligations) and be released from its obligations under the Loan Documents other than those obligations relating to events and circumstances occurring prior to the Closing Date.

Section 6. Distribution of Payments. On and after the Closing Date, all payments under the Loan Documents in respect of each Assigned Interest shall be made (a) in the case of amounts accrued to but excluding the Closing Date, to Assignor and (b) otherwise, to Assignee.

Section 7. Miscellaneous.

(a) The parties hereto, to the extent permitted by law, waive all right to trial by jury in any action, suit, or proceeding arising out of, in connection with or relating to, this Assignment and any other transaction contemplated hereby. This waiver applies to any action, suit or proceeding whether sounding in tort, contract or otherwise.

(b) On and after the Closing Date, this Assignment shall be binding upon, and inure to the benefit of, the Assignor, Assignee, Lender and their successors and assigns.

(c) This Assignment shall be governed by, and be construed and interpreted in accordance with, the law of the State of New York.

(d) This Assignment may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(e) Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Assignment by facsimile transmission or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Assignment.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

[NAME OF ASSIGNOR], as Assignor

By: \_\_\_\_\_

Name:

Title:

[NAME OF ASSIGNEE], as Assignee

By: \_\_\_\_\_

Name:

Title:

Lending Office (and address for notice):

[Insert Address (including contact name, fax number and e-mail address)]

ACCEPTED and AGREED  
this \_\_ day of \_\_\_\_\_:

[Borrower]

By: \_\_\_\_\_

Name:

Title:

[Agent]

By: \_\_\_\_\_

Name:

Title:

Exhibit G-  
Form of Solvency Certificate

**CERTIFICATE**

The undersigned, being the Authorized Signatory of each of (i) **New York Social Equity Cannabis Investment Fund, L.P.**, a New York limited liability company (the “Fund”), (ii) **NYSECIF Leasing Company, LLC**, a Delaware limited liability company (“Propco”) and (iii) **NYSECIF Operating Company, LLC**, a Delaware limited liability company (“Opco”), does hereby certify to (i) CHICAGO ATLANTIC ADMIN, LLC, as Agent, (ii) CHICAGO ATLANTIC CREDIT ADVISERS, LLC, as the Sole Arranger and (iii) CHICAGO ATLANTIC REAL ESTATE FINANCE, INC., as Lender that as of this 29th day of June, 2023:

1. The fair value of the Property of each of the Fund, Propco and Opco is not less than the total amount of the liabilities of each of the Fund, Propco and Opco;
2. The present fair salable value of the assets of each of the Fund, Propco and Opco is not less than the amount that will be required to pay the probable liability of such Person on its existing debts as they become absolute and matured;
3. Each of the Fund, Propco and Opco is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business;
4. Each of the Fund, Propco and Opco does not intend to, and does not believe that it will, incur debts or liabilities beyond each of Fund, Propco and Opco’s ability to pay as such debts and liabilities mature; and
5. Each of the Fund, Propco and Opco is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which each of the Fund, Propco and Opco’s property would constitute unreasonably small capital.
6. Each of the representations and warranties made in Article VI of the Loan Agreement is true and correct as of the date hereof.

[Remainder of page left intentionally blank]

[Incumbency Page to Officer’s Certificate]

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date first written above.



William C. Thompson, Jr., as Principal of **New York Social Equity Cannabis Investment Fund, L.P.**, a New York limited liability company and President of (i) **NYSECIF Leasing Company, LLC**, a Delaware limited liability company and (ii) **NYSECIF Operating Company, LLC**, a Delaware limited liability company, and not individually

Exhibit H

**Definition of “Special Purpose Entity”**

A Special Purpose Entity is a limited partnership or limited liability company that satisfies the following conditions:

(i) is formed or organized solely for the purpose of: (1) entering into and performing its obligations under the Loan Documents, and (3) transacting lawful business that is incident, necessary and appropriate to accomplish any of the foregoing;

(ii) shall not own any real property other than as permitted under the Loan Documents;

(iii) shall not have any assets other than as contemplated in the Loan Documents;

(iv) shall not engage in, seek, consent to or permit, to the fullest extent permitted by law, (A) any dissolution, winding up, liquidation, consolidation, division or merger or division into two (2) or more limited liability companies or other legal entities, or (B) any sale or other transfer of all or substantially all of its assets or any sale of assets outside the ordinary course of its business, except as permitted by the Loan Documents;

(v) shall not cause, consent to or permit any amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation, operating agreement or other formation document or organizational document (as applicable) with respect to the matters set forth in this definition in each case without the prior written consent of Agent;

(vi) shall not, to the fullest extent permitted by law, (1) dissolve, merge, liquidate or consolidate except as permitted pursuant to the Loan Documents, (2) sell all or substantially all of its assets except as permitted pursuant to the terms of the Loan Documents; or (3) amend its organizational documents with respect to the matters set forth herein without the written consent of Agent;

(vii) shall at all times intend to remain solvent and shall pay its debts and liabilities (including, a fairly-allocated portion of any personnel and overhead expenses that it shares with any Affiliate) from its assets as the same shall become due, and shall intend to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (in each case, to the extent there exists sufficient cash flow from the operations of the Collateral to do so; provided, that the foregoing shall not require any member, partner or shareholder of a Special Purpose Entity to make any additional capital contributions to a Special Purpose Entity);

(viii) shall not fail to correct any known misunderstanding regarding the separate identity of such entity and shall not identify itself as a division or department of any other Person;

(ix) except as contemplated by the Loan Documents, shall (a) maintain its books of account, books and records separate from those of any other Person, (b) to the extent that it is required to file tax returns under applicable law, shall file its own income tax returns separate from those of any other Person, except to the extent that it is required by law to file consolidated tax returns or is treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law;

(x) except as contemplated by the Loan Documents, shall not (A) commingle its funds or assets with those of any other Person or (B) participate in any cash management system with any other Person;

(xi) shall hold all of its assets solely in its own name;

(xii) shall conduct its business solely in its name except for business conducted on behalf of itself by another Person under a business management services agreement that is on commercially-reasonable terms, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower;

(xiii) (A) shall maintain its financial statements, accounting records and other entity documents separate from those of any other Person; (B) shall show, in its financial statements, its assets and liabilities separate and apart from those of any other Person; and (C) shall not permit its assets to be listed as assets on the financial statement of any of its Affiliates except as required by GAAP; provided, however, that (i) appropriate notation shall be made on any such consolidated financial statement indicating the separateness of the Special Purpose Entity from such Affiliate and indicating that the Special Purpose Entity's separate assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and that the Special Purpose Entity's liabilities do not constitute obligations of the consolidated entity except as provided herein with respect to any other Borrower, and (ii) such assets shall also be listed on the Special Purpose Entity's own separate balance sheet;

(xiv) except in each case with respect to Borrower as contemplated by the Loan Documents, shall pay its own liabilities and expenses, including the salaries of its own employees, if any, solely out of its own funds and assets provided there is sufficient cash flow to do so, and shall maintain a sufficient number of employees, if any, in light of its contemplated business operations;

(xv) shall observe all partnership or limited liability company formalities, as applicable, that are necessary to maintain its separate existence;

(xvi) shall have no indebtedness other than (I) in the case of Borrower, (A) the Loans; (B) Permitted Liens; and (C) such other liabilities that such Special Purpose Entity is expressly permitted to incur pursuant to the Loan Agreement or as otherwise imposed by law, provided, however, that this covenant shall not require any shareholder, partner or member of Borrower to make additional capital contributions to any such entity;

(xvii) shall not assume or guarantee or become obligated for indebtedness of any other Person, shall not hold out its assets or credit as being available to satisfy the debts or obligations of any other Person and shall not pledge its assets to secure the indebtedness of any other Person, in each case, except as provided by the Loan Documents and as otherwise imposed by law;

(xviii) shall not acquire obligations or securities of its partners, members or shareholders or any other Affiliate, except with respect to the Fund, its limited liability company interests in PropCo and OpCo;

(xix) shall allocate fairly and reasonably any overhead expenses that are shared with any of its Affiliates or any guarantors of any of their respective obligations, or any Affiliate of any of the foregoing, including, but not limited to, paying for shared office space and for services performed by any employee of an Affiliate;

(xx) shall maintain and use separate stationery, invoices and checks bearing its own name and not bearing the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(xxi) shall hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or department of any other Person;

(xxii) shall maintain its assets in such a manner that it shall not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxiii) shall not make loans to any Person and shall not hold evidence of indebtedness



issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity) except as is contemplated in the Loan Documents with respect to each Borrower;

(xxiv) shall not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or department of it, and shall not identify itself or any of its Affiliates as a division or department of any other Person;

(xxv) Except as permitted under the Loan documents and its organizational documents, shall not enter into or be a party to, any transaction with any of its partners, members, shareholders or Affiliates or any partners, members, shareholders or Affiliates thereof;

(xxvi) shall not have any obligation to, and shall not indemnify its partners, officers, directors or members, as the case may be, in each case unless such an obligation or indemnification is fully subordinated to the Term Loans, to the fullest extent permitted by law, and shall not constitute a claim against it in the event that its cash flow is insufficient to pay the Term Loans;

(xxvii) shall not have any of its obligations guaranteed by any Affiliate except as provided by the Loan Documents with respect to a Borrower;

(xxviii) shall not form, acquire or hold any subsidiary except with respect to the Fund, its limited liability membership interests in Opco and PropCo;

(xxix) shall comply with all of the terms and provisions contained in its organizational documents;

(xl) shall not permit any Affiliate or constituent party independent access to its bank accounts, except as contemplated by the Loan Documents; and

(xli) is and shall continue to be duly formed, validly existing, and in good standing in the state of its incorporation or formation and in all other jurisdictions where it is qualified to do business.

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