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January 6, 2025, as amended January 10, 2025

Via email and AAA portal

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Dear Arbitrator Reiman and Counsel:

We represent respondents JDS Principal 9DKB LLC (the “Company”) and JDS Principal 9DKB Parent LLC (together “JDS”).

On December 20, 2024, Claimant served “a chart of what [its] client believes to be outstanding books and records demands” (“Claimant’s Chart”), along with some unauthorized and prejudicial commentary.

On January 6, 2025, JDS served and uploaded to the AAA portal a letter and “Chart of Responses” responding to Claimant’s Chart.

On January 8, 2024, JDS met and conferred pursuant to Procedural Order No. 1. At that time, Claimant requested JDS to clarify or verify certain information, and in response JDS performed additional investigation. As a result, both for purposes of accuracy and to advance the arbitration, JDS amends its responses to Claimant’s Chart, as follow and as attached.

The following (“Letter Responses”), together with the accompanying amended responsive chart (“Chart of Responses”), are the amended responses and objections of JDS pursuant to Procedural Order No. 1 § 2(ii).

1. Claimant is a member of the Company. Claimant seeks documents under the operating agreement for a different entity, Ackerman 9 Dekalb Partner LLC (“Ackerman”), pursuant to a provision in the Company’s Amended and Restated LLC Agreement, dated July 25, 2022 (the “Principal Agreement”) that states in part that “BNP shall have the same rights and

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protections afforded to BNP Development as set forth in . . . Section 9.1 . . . of the [Ackerman Agreement¹].” See Statement of Claim ¶ 11.

Whether Claimant can utilize the inspection rights provided by the Ackerman Agreement is critical to its claims because the Ackerman Agreement provided rights to inspect a far larger set of books and records than either Delaware law or the Principal Agreement authorizes. For example, the Ackerman Agreement provides rights to inspect books and records of “Subsidiaries” – a term that is defined to include entities in which the Company only holds indirect, non-controlling and minority interests, entities as to which Claimant otherwise does not have broad inspection rights, if any, and which are not parties in this proceeding.

Claimant is mistaken. As Claimant admits in its Statement of Claim, the owner of the Brooklyn Tower and its associated assets (the “Property”) was assigned to the project’s lender on June 10, 2024 (the “Transfer Date”), following a maturity default and foreclosure proceedings.

The Ackerman Agreement provides at § 10.1.3 that Ackerman dissolved automatically upon the transfer of the Property:

ARTICLE 10
TERMINATION AND DISSOLUTION

10.1 **Dissolution.** The Company shall be dissolved and its affairs wound up upon the first to occur of any of the following events:

- 10.1.1 the expiration of the Period of Duration;
- 10.1.2 the unanimous written agreement of all Members to dissolve the Company;
- 10.1.3 the sale, exchange or other transfer of all or substantially all Company Property or the Property; and
- 10.1.4 the entry of a decree of judicial dissolution of the Company under Section 18-802 of the Act.

Accordingly, inspection rights of BNP Development LLC or any other members under the Ackerman Agreement, and in turn those asserted by Claimant, became null and void months before Claimant commenced this arbitration.

The Principal Agreement, in and of itself, does not contain inspection rights other than those incorporated by reference to the Ackerman Agreement, and inspection rights under the

¹ “Ackerman Agreement” refers to the Amended and Restated Limited Liability Company Operating Agreement of Ackerman, dated November 4, 2019.

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Ackerman Agreement no longer exist. Consequently, Claimant's inspection rights are limited to those afforded by operation of Delaware law for a member of an LLC that has dissolved and is winding down. That means, absent certain extraordinary circumstances, Claimant is entitled only to inspect books and records of the Company, and only those books and records of the Company for which Claimant has stated a "proper purpose" under Delaware law, where the company has no assets to distribute and is in winddown. Most of Claimant's inspection demands do not meet that requirement.

2. Notwithstanding the preceding, as set forth in the Chart of Responses, JDS offers to provide certain documents that are not required by the Principal Agreement or as a matter of Delaware law. JDS has offered to provide those documents in the interest of affording transparency – JDS has nothing to hide – and a good faith attempt to reduce the scope of the dispute. However, the offer to produce such documents is expressly conditioned that it shall not be deemed a waiver of any arguments or defenses respecting any other documents or things, even those that arguably may be similar in nature. JDS understands that Claimant agrees to this condition.

3. The majority of the books and records that Claimant seeks, including those which JDS offers to provide, contain confidential and proprietary business and financial information about the Brooklyn Tower project and about the investments of other parties including other outside investors. Accordingly, with the exception of publicly available documents, any books and records that JDS produces, whether voluntarily or as a result of an arbitration award, must be protected by a suitable non-disclosure agreement. If, *in arguendo*, the arbitrator does not find fully in favor of JDS, any award requiring additional production beyond that volunteered by JDS likewise should include a confidentiality decree. JDS and Claimant will be endeavoring to negotiate a confidentiality agreement.

4. Claimant has exceeded the scope of Procedural Order No. 1 by taking it upon itself to direct JDS to explain supposed breaches of the Principal Agreements or the Ackerman Agreement. JDS does not agree there have been any breaches. In all events, JDS is under no obligation to address such questions under Procedural Order No. 1.

To be clear, JDS represents that no business records have been destroyed or improperly modified.

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Subject to the preceding, JDS proposes to produce copies of those records that it agrees to produce in the Chart of Responses by or before January 31, 2025 (the “Production Date”).

Respectfully submitted,

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By: /s/ Robert M. Novick

Robert M. Novick

Enclosure – Chart of Responses

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**Enclosure to JDS's Letter dated January 6, 2025, as Amended January 10, 2025,
Pursuant to Preliminary Order No. 1:
"Chart of Responses"**

	BNP Requested Books and Records as of 2024.12.20	JDS's Position
1	Copies of the consolidated (or separated) financial statements related to the Project, including profit and loss statement, balance sheet, cash flow statement, all versions and copies of any capitalization table showing any changes in membership interests throughout the life of the Project	<p>JDS prepares financial statements on a consolidated basis for the fee owner of the Property, 9 Dekalb Fee Owner LLC ("<u>Fee Owner</u>"), with the senior and junior mezzanine borrowers that, prior to June 10, 2024, were the respective direct and indirect 100% parent entities of the fee owner (collectively with the Fee Owner, the "<u>Project Entities</u>"). In the ordinary course, JDS does not prepare financial statements for the many limited purpose entities that sit above the Project (the "<u>JV Structure</u>") and are not regularly engaged in the transaction of business.</p> <p>JDS previously has provided Claimant with consolidated financial statements for the Project Entities.</p> <p>Although for the reasons set forth in the Letter Responses Claimant is not entitled to the books and records it seeks except (at most) for the respondent Company of which Claimant is a member, notwithstanding, subject to the qualifications and conditions set forth in the Letter Responses, JDS will provide Claimant (i) the financial statements and capitalization table for the Company for 2019-through 2023 by the Production Date, and (ii) for 2024¹ promptly after they have been prepared in the ordinary course.</p> <p>Additionally, subject to the qualifications and conditions set forth in the Letter Responses, in the interest of transparency JDS will provide Claimant with a capital table for 2023 for JV Structure by the Production Date, and will provide a capital table for the JV Structure for 2024 promptly after it has been prepared in the ordinary course.</p>

¹ References to financial information for year 2024 generally means through the June 10, 2024 Transfer Date unless the context indicates otherwise.

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	BNP Requested Books and Records as of 2024.12.20	JDS's Position
2	The general ledger for the Company and each of its direct or indirect Subsidiaries on the Project in excel format in a single excel document covering the life of the Project through the present.	<p>Subject to the qualifications and conditions set forth in the Letter Responses, JDS will provide Claimant with a general ledger report for the Company.</p> <p>For the reasons set forth in the Letter Responses, Claimant is not entitled to these records for other entities and JDS declines to produce them.</p> <p>JDS further notes that Claimant in any event would not be entitled to impose upon JDS any obligation to reformat or reorganize records into the form of Claimant's preference to the extent they do not exist in such form.</p>
3	All bank account statements for the Company and each of its Subsidiaries, including, without limitation, for 340 Flatbush Partners LLC, including, but not limited to, all monthly account statements, year-end statements, and other documents evidencing the nature of each payment made from each bank account of 340 Flatbush Partners LLC, the names of each payer into any accounts and payees out of the accounts for the life of the Project through the present.	<p>The Company is a special purpose entity that does not have a bank account. Therefore, there are no bank statements for the Company.</p> <p>For the reasons set forth in the Letter Responses, Claimant is not entitled to such records for entities other than the Company and JDS declines to produce them.</p> <p>In addition, the request does not fulfill any proper purpose with regard to a member of the Company, nor of any company that has no assets and is winding down.</p> <p>Furthermore, the request is excessively burdensome inasmuch as it seeks an extensive documents, which are not pertinent to the winding down of the Company, Ackerman or any other "Subsidiaries" given that there are no assets to distribute to Claimant.</p>

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	BNP Requested Books and Records as of 2024.12.20	JDS's Position
4	Full tax returns for the Company and each of its Subsidiaries including, without limitation if reflected on a pass-through return of a different entity. Such returns would include, without limitation, all K-1s issued to any party, book-to-tax reconciliations, and detailed schedules or worksheets. If this information is housed in whole or in part by third-party, provide any requisite authorizations for release of the same from the taxing authorities or a tax preparer.	<p>Subject to the Letter Responses, JDS will provide Claimant with tax packages for the Company for years 2019 through 2023 by the Production Date, and for year 2024 when such documents are prepared in the ordinary course.</p> <p>JDS declines to provide Claimant with copies of Form K-1s issued to other parties. Without limitation, parties' tax information is confidential and not appropriately shared among unrelated investors, and the request also lacks a proper purpose.</p>
5	Copies of all valuation reports of the Project valuing real property and/or equity interests for the Company and all Subsidiaries.	<p>To the best of JDS's knowledge, there are no valuation reports for the Project or real property.</p> <p>There are no valuation reports for equity interests either, but as a simple factual matter the value of all equity interests is zero.</p>
6	Copies of all independent auditor's reports, including notes to the consolidated financial statements for the Company and all Subsidiaries.	For those years as to which audited financial statements for the Project exist, they will be provided to Claimant pursuant to the response to request 1, inclusive of notes to the consolidated financial statements.
7	Copies of any related party agreements involving any JDS affiliates, parents, or subsidiaries or entities owned or controlled in whole or in part by Michael Stern or Managing Member.	<p>Claimant will produce any agreements of which it is aware between the Company on one hand, and "any JDS affiliates, parents, or subsidiaries or entities owned or controlled in whole or in part by Michael Stern or the managing member" of the Company, on the other.</p> <p>For the reasons set forth in the Letter Response, Claimant is not entitled to agreements for entities other than the Company.</p> <p>Notwithstanding subject to the qualifications and conditions set forth in the Letter Responses, in the interest of transparency JDS will provide Claimant with a copy of the Construction Management Agreement and the Development Management Agreement related to the Property, and a bridge loan extended by a JDS affiliate.</p>

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	BNP Requested Books and Records as of 2024.12.20	JDS's Position
8	Copies of any retail leases and signed term sheets with any potential retail tenants for the Project.	<p>The Company is a limited purpose entity and is not a party to any such documents.</p> <p>For the reasons set forth in Letter Responses, Claimant is not entitled to these records except (at most) for the Company itself, if any existed, but not for its affiliates, subsidiaries or the Project.</p> <p>Notwithstanding, subject to the qualifications and conditions set forth in the Letter Responses, in the interest of transparency JDS will provide Claimant with such records that exist with respect to the Property through the Transfer Date (after which time JDS generally lacks information or records).</p>
9	All Organizational Charts (including an up-to-date Organizations Chart) for the Project entities showing all the participants in the Project, their direct (equity investment level) and indirect (Project level) membership interests, and manager of each entity.	<p>Subject to the qualifications and conditions set forth in the Letter Responses, JDS will provide Claimant with the most recent organizational chart in its possession or control.</p> <p>To the best of JDS's knowledge, the organizational chart accurately reflects the structure of the JV Structure, but no longer accurately reflects investors' capital contributions. However, such information may be found in the capitalization tables (see request no. 1).</p> <p>(Interests reflected in tax returns do not necessarily reflect accrued members' loans and dilution which are typically calculated when distributions are being prepared.)</p> <p>JDS further notes that all equity investments have no value, such that records regarding the precise calculations of investors' respective equity shares do not serve any proper purpose, <i>i.e.</i>, any percentage of zero is zero.</p>
10	Statement of membership interests (owner's equity) and capital accounts of the Company and each of its direct and indirect Subsidiaries.	See responses to requests 1, 4 and 9.

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	BNP Requested Books and Records as of 2024.12.20	JDS's Position
11	Copies of monthly operating income and expense reports provided to SCP JV I Lender LLC per sections 4.9.4 and 4.9.2(a) respectively of the Junior Mezzanine Loan Agreement By and Between 9 DeKalb Holdings 2 LLC, as Borrower, and SCP JV I Lender LLC.	<p>JDS has previously provided the records responsive to this request to Claimant.</p> <p>No such documents exist for the Company. As set forth in the Letter Responses, Claimant is not entitled to these records except (at most) for the Company itself, but not for other entities.</p> <p>Notwithstanding, subject to the qualifications and conditions set forth in the Letter Responses, in the interest of transparency, JDS will provide Claimant with the records that it understands to be responsive to this request.</p>
12	A copy of the complete set of closing documents pertaining to the transaction with Silverstein Capital Partners that took place on or about June 10, 2024 (or any other date since) related to the Project. Additionally, any and all information, documentation, financial statements or other financial disclosure documents related to the Project sent to or from Silverstein Capital Partners at any time, including prior to June 10, 2024.	<p>The Company is not a party to any such documents.</p> <p>JDS will provide Claimant with a copy of the Assignment-in-Lieu that effectuated the transfer of Fee Owner and any associated tax forms.</p> <p>JDS otherwise declines to provide records responsive to this request on the grounds set forth in the Letter Responses. Furthermore, there have been many thousands of pages of information and documents exchanged with the Lender relating to the construction and financing of the Project. Production of such documents would be both excessively burdensome and beyond what applicable law would require even if Claimant's inspections rights extended to the books and records of entities other than the Company.</p>
13	Capital account tracker for the Company and each of its Subsidiaries for the life of the Project.	See responses to requests 1, 4, 9 and 10. (This request is duplicative of request 10.)
14	Copies of all books and records concerning the presentation, consideration, or approval or disapproval of BNP's proposal to purchase all residential units outlined in an October 5, 2023 Binding Term Sheet between BNP and 9 Dekalb Fee Owner LLC.	The October 5, 2023 Binding Term Sheet was an agreement between BNP and the Fee Owner. Books and records concerning BNP's proposal to purchase interests in real property from Fee Owner are not books and records of the Company, and hence BNP is not entitled to inspect them for the reasons set forth in the Letter Response.

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	BNP Requested Books and Records as of 2024.12.20	JDS's Position
		<p>Too, the request is inappropriate, and not for any proper purpose, because it does not concern Claimant's interest as a member of the Company, but rather as a party seeking to purchase property from Fee Owner, which was transferred to the lender on the Transfer Date. Claimant is apparently seeking information to advantage itself in the marketplace vis-à-vis other potential purchasers of interests in the real property, rather than in service of legitimate interests of an equity investor and member of JDS Principal 9DKB LLC.</p> <p>Without waiver of the preceding, and subject to the Letter Responses, JDS states that it presented BNP's proposal to the lender orally on multiple occasions, but is not aware of any records that would be responsive to this request.</p>
15	To the extent not encompassed by the requests above, copies of all the above books and records for (and of) all the Subsidiaries (as defined in the operating agreements), as well as any reports of any Subsidiary concerning the Project.	<p>See the Letter Responses and all of the preceding responses.</p> <p>To the extent Claimant seeks, books, records and "reports" that are not described with any specificity in its other requests, this request is counterproductive, if not in bad faith, because it is so undefined and ambiguous that it does not afford JDS a fair opportunity to respond, nor any basis for anyone, including the arbitrator, to assess its appropriateness or advance the arbitration.</p>