

**AMERICAN ARBITRATION ASSOCIATION®****BNP Development LLC
Claimant****v.****01-24-0008-2505****JDS Principal 9DKB LLC and
JDS Principal Parent et al
Respondents**

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been appointed in accordance with the arbitration agreement entered into between the parties identified and described below, having been duly sworn, having received, reviewed and considered the written documents submitted to me, and having reviewed the written arguments and heard the oral arguments of counsel identified in pars. 3 and 4, below, a Partial Final Award having been entered in this matter dated April 29, 2025, do hereby make this Final Award as follows:

INTRODUCTION

This matter comes before this Tribunal on the demand for arbitration of BNP Development LLC (“BNP”) against Respondents JDS Principal 9DKB LLC (“JDS”) and JDS Principal 9DKB Parent LLC (“JDS Parent”). Claimant shall be referred to as “BNP.” JDS and JDS Parent will collectively be referred to as “Respondents”. BNP and Respondents will be collectively referred to as the “Parties”.

By this arbitration, BNP seeks to compel Respondents to provide access to the books and records of the Brooklyn Tower project (the “Project”, more fully described below) pursuant to

Delaware statute and pursuant to the terms of the JDS Principal LLC agreement.¹ Respondents have provided access to some Project books and records, and but have refused access to many of the books and records BNP seeks. On April 29, 2025, the Tribunal issued a Partial Final Award addressing the Parties' rights under Delaware law and the JDS Agreement with respect to BNP's books and records requests. This Final Award resolves all remaining issues presented by the Parties.

THE PARTIES, THE PROJECT, And Relevant Persons

1. BNP and Respondents are all Delaware limited liability companies.
2. BNP is a limited member of JDS. JDS Parent is the managing member of JDS. BNP and JDS Parent are the only two members of JDS.
3. BNP is represented in this matter by the law firm Blank Rome LLP, 1271 Avenue of the Americas, New York, NY 10020, and the following attorneys: Andrew Hambelton, Craig Flanners, Andrew M. Kaufman, and Matthew Treiber.
4. Respondents are represented in this matter by the law firm Kasowitz Benson Torres LLP ("KBT"), 1633 Broadway, 21st Floor, New York, NY 10019, and the following attorneys: David Szeker, Robert M. Novick, and Ann M. St. Peter-Griffith. On May 6, 2025, the KBT law firm and individual KBT lawyers withdrew as counsel for Respondents, and Jonathan E. Minsker, Esq., 1100 Biscayne Blvd, Suite 3701, Miami, FL 33132 appeared on behalf of Respondents. The KBT withdrawal notice gave no reason for the withdrawal, however Mr. Minsker advised the Parties and the Tribunal orally during a May 13, 2025, status hearing that the reason for the withdrawal was a conflict that had arisen.
5. The Project is a 74-story, 1,067-foot high mixed-use property comprising retail space, rental units, and residential condominiums. It is located at 9 DeKalb Street, Brooklyn, New York.

¹ Amended and Restated Limited Liability Company Agreement of JDS Principal 9DKB LLC (hereinafter, the "JDS Agreement").

6. In addition to being an investor in the Project via JDS, BNP invested in the Project as a limited member of Ackerman 9 DeKalb Partner LLC (“Ackerman”). Ackerman is a company **not** a party to this arbitration.
7. Certain of the books and records review rights claimed by BNP are set forth in The Amended and Restated Limited Liability Company Operating Agreement of Ackerman 9 DeKalb Partner LLC (the “Ackerman Agreement”).
8. Michael Stern (“Stern”) is the natural person who controls JDS, JDS Principal, and Ackerman². Stern is **not** a party to this arbitration in his personal capacity.

ARBITRATION CLAUSE | APPOINTMENT | APPLICABLE LAW

1. The Parties agree that the following is the arbitration clause (“Arbitration Agreement”) governing these proceedings³:

24. Arbitration of Disputes. Any dispute among the Members shall, in each case, be resolved and finally determined by arbitration pursuant to an Expedited Arbitration Proceeding, which shall be the sole and exclusive mechanism for resolving disputes arising out of or relating to this Agreement. As used herein, an “Expedited Arbitration Proceeding” means a binding arbitration proceeding conducted in the City and County of New York under the Commercial Arbitration Rules of the American Arbitration Association (or its successor) (the “Rules”) and administered pursuant to the expedited procedures provisions thereof; provided, however, that with respect to any such arbitration, (A) the list of arbitrators referred to in Section E-4(B) of the Rules shall be returned within seven (7) days from the date of mailing; (B) the parties shall notify the American Arbitration Association (or its successor) by telephone, within five (5) days of receipt of notice of the appointed arbitrator, of any objections to the arbitrator appointed and, subject to clause (G) below, shall have no right to object if the arbitrator so appointed was on the list sub-mitted by the

² The JDS Agreement and Ackerman Agreement are signed by Michael Stern, as an “authorized signatory.”

The JDS Agreement identifies its managing member as JDS Parent. Mr. Stern’s signature appears in the JDS Agreement’s signature block under the designation “Managing Member, JDS Principal 9DKB Parent LLC.”

The Ackerman Agreement defines the “Managing Member” as Ackerman/JDS. That agreement is signed “Ackerman JDS by Michael Stern, authorized signatory.”

³ Procedural Order #1 (“PO#1”), par. 1.

American Arbitration Association (or its successor) and was not objected to in accordance with Section E-4(B) of the Rules as modified by clause (A) above; (C) the notification of the hearing referred to in Section E-7 of the Rules shall be five (5) days in advance of the hearing; (D) the hearing shall be held within ten (10) days after the appointment of the arbitrator; (c) the arbitrator shall have no right to award damages or vary, modify or waive any provision of this Agreement; (F) the decision of the arbitrator shall be final and binding on the parties, and any party may seek to have the decision confirmed by way of a court order; and (G) the arbitrator shall not have been employed by either party (or any of their respective Affiliates) during the three (3) year period immediately prior to the date of the Expedited Arbitration Proceeding. All fees and expenses of the arbitrator and all other expenses of the arbitration shall be borne initially by the Members equally (i.e., 50% for each Member), but ultimately shall be borne by the non-prevailing party in the arbitration.

9. The Parties further agreed, as set forth below⁴:

The contiguous number of Parts C, D and “c” of the [Arbitration Agreement] are ambiguous and contain scrivener errors not consistent with the Parties intent and agreement. Part “c” shall hereinafter be referred to as Part E. With respect to the instant arbitration only, Parts C and D are replaced with the time periods set forth below. . .⁵

10. The Parties agreed that the Tribunal was properly appointed.⁶

11. No Party objected to any proceeding conducted as part of this arbitration as being contrary to, or inconsistent with, an Expedited Arbitration Proceeding (as that term is defined in the Arbitration Agreement) or any other term or provision of the Arbitration Agreement.

⁴ PO #1, par. 2

⁵ PO #1, par. 2 sets forth a series of dates which the Parties either complied with or agreed to be extended. All date extensions were expressly agreed to by the Parties, not their counsel.

Par. 3 of PO#1 (an agreed term of PO #1) states: “Counsel for the Parties have been expressly authorized by their respective clients to agree to par. 2 of this Procedural Order #1, and the Parties expressly agree to par. 2 of this Procedural Order.” The language of Par. 3 of PO#1 is set forth in all procedural orders memorializing all Parties’ agreements extending any date applicable to this arbitration.

⁶ PO #1, par. 5

12. The Parties agreed that the substantive law governing the dispute is the law of Delaware, the procedural law governing the dispute is the law of New York, and the seat and place of the hearing is New York City, New York.⁷

13. The Parties further agreed as follows⁸:

- a. AAA Commercial Rules effective September 1, 2022 (“AAA Rule/s”) apply.
- b. The IBA Rules on the Taking of Evidence in International Arbitration (May 29, 2010) may guide the Tribunal in making rulings regarding evidence (“IBA Rules”).
- c. The language for all documents and all hearings is English.
- d. An arbitration hold is in effect and commenced on October 17, 2024.⁹

PROCEDURAL HISTORY

14. BNP commenced the instant arbitration by filing its Demand for Arbitration on October 16, 2024, seeking “access to books and records under the JDS Principal 9DKB LLC Agreement.” The Demand for Arbitration checked the boxes for claims for attorney’s fees, interest, and arbitration costs.¹⁰

15. As noted, on April 29, 2025, the Tribunal issued a Partial Final Award (the “PFA”) addressing the Parties’ rights under Delaware law and the JDS Agreement with respect to BNP’s books and records requests.

16. The PFA determined as follows, awarding the relief set forth below:

⁷ PO #1, pars. 6, 7, 8 and 10.

⁸ PO #1, pars. 9, 11, and 13.

⁹ PO #1 states the date of the commencement of the arbitration hold as October 17, 2024, notwithstanding the Demand for Arbitration being dated October 16, 2024.

¹⁰ Demand for Arbitration.

- A. For the time period commencing on July 25, 2022, through the date JDS is terminated pursuant to Delaware law, Respondents shall, upon 7 days prior written notice, permit BNP, its counsel and/or agents, to inspect and make copies of JDS' books and records and reports concerning the Project.
- B. JDS Parent shall cause the Subsidiaries to, within 7 days prior written notice by BNP, grant BNP and BNP's counsel and/or agents access to the Subsidiaries' books and records and reports concerning the Project. Until further ordered by the Tribunal, the time period applicable to the Subsidiaries' books and records and reports shall be July 25, 2022, through the date JDS is terminated pursuant to Delaware law.
- C. The term "Subsidiaries" as used in pars. A and B, above, means those entities identified in par. 2.7 of the Ackerman Agreement.
- D. The term "books and records," as used in pars. A and B, above, includes, without limitation, the general ledger of the applicable entity, all contracts and binding agreements of the applicable entity, and all documents recording "each and every financial transaction with respect to the operations of the" applicable entity. With respect to the year 2022, full year or year-end reports for such year shall not be excluded by reason of such document(s) including time periods prior to July 25, 2022.
- E. Notwithstanding the generality of par. D, above, and with respect to the Assignment-in-Lieu only, Respondents shall, on or before 12 noon, ET, May 6, 2025, deliver to, or grant BNP access to and permit it to inspect and make copies of, all documents comprising the Assignment-in-Lieu (including, without limitation, the financial and other terms of the Assignment-in-Lieu and those terms of the Assignment-in-Lieu in dispute or not fully determined). If such documents are not in Respondents' possession but in the possession of a Subsidiary, JDS parent shall cause the applicable Subsidiary/ies to deliver, or permit the inspection and copying, within such time period.
- F. Until otherwise ordered by the Tribunal, BNP and its counsel and/or agents shall maintain in confidence and not disclose to persons not officers, directors, employees, or counsel of BNP any information disclosed to it by reason its access to information permitted by this Partial Final Award. Further, all persons receiving such information shall be bound by confidentiality.
- G. The Parties are ordered to meet and confer and agree upon the terms of a confidentiality agreement applicable to the documents to be disclosed pursuant to this arbitration which agreement, when executed, shall supplant and supersede par. F, above. If the Parties cannot agree upon the terms of a confidentiality agreement, each shall, on or before May 6, 2025, provide the Tribunal with a proposed draft confidentiality agreement and a statement of their objections to the language proposed by BNP/Respondents.

- H. This matter is set for status on May 7, 2025, at 3:00 p.m. ET via a Zoom hearing. A Zoom link shall be provided by the Tribunal.
- I. The Tribunal retains jurisdiction to resolve all matters that are the subject of the Parties dispute save those expressly determined in this Partial Final Award. Without limiting the generality of the foregoing, the Tribunal retains jurisdiction to resolve disputes regarding the time period for access to books and records, and to extend the time period as described in par. **Error! Reference source not found.**; determine the award, if any, of attorneys' fees and costs; determine whether any particular document or report is the subject of this Partial Final Award, and; determine the terms of the Parties confidentiality agreement described in par. G.

Partial Final Award dated April 29, 2025, Dispositive / Award.

17. Following the issuance of the PFA, a status hearing was held on May 13, 2025. During that status hearing BNP argued that Respondents had not fully complied with the PFA and was in default of certain terms of the PFA. Respondents, by Mr. Minsker, responded as follows:

- JDS intends to move to vacate at least part of the PFA.
- JDS intends to produce "certain documents consisting of contracts and written agreements entered into by JDS and the 'Subsidiaries.'"
- Given the language of Paragraph E of the PFA¹¹, JDS believes that it has complied with Paragraph E as written.
- Based on JDS' intent to move to vacate part of the PFA, JDS will not be producing the general ledgers and bank records contemplated by the PFA and requested by BNP in its April 30, 2025, request.

PO #9, Recital par. N.

18. During the May 13, 2025, status hearing, BNP asked the Tribunal to find Respondents in default of the PFA.

19. Following the May 13, 2025, status hearing all Parties requested clarification of the PFA, as follows¹²:

- JDS proposed that the forthcoming procedural order state "the PFA is a Final Award for purposes of NY CPLR §7502."
- BNP proposed that the forthcoming procedural order "expressly order that the PFA is intended to include a broad meaning of books and records

¹¹ Set forth in full in par. 16 (E) of this Final Award, above.

¹² PO #9,

including, but not limited to, for the time period specified in the Partial Final Award. Specifically, BNP requested the following:

- The general ledgers of JDS and all Subsidiaries (as that term is defined in paragraph 2.7 of the Ackerman Agreement), in native electronic format.
- All bank records of JDS and all Subsidiaries (as that term is defined in paragraph 2.7 of the Ackerman Agreement), including but not limited to statements, deposit slips, deposited checks, wire confirmations and wire instructions.
- All documents and communications concerning the transaction with Silverstein Capital Partners and/or its affiliates (“Silverstein”) by which JDS and its Subsidiaries assigned their interest in the project entities to Silverstein—inclusive both of the assignment of the interests in the project entities and property itself and any related guaran-tees, releases, payments, or any other side-deals or associated transactions—including but not limited to any executed agreements, draft agreements or term sheets/letters of intent, and communications reflecting negotiations with respect to the transaction with Silverstein.”

20. Following the May 13, 2025, status hearing, the Tribunal entered Procedural Order #9 (PO#9) which found and ordered as follows¹³:

1. JDS is in default of the PFA having failed to fully produce documents pursuant to BNP’s April 30, 2025, request to produce “within 7 days” “all books and records of JDS Principal 9DKB LLC and its subsidiaries requested by BNP and subject to the Partial Final Award.”
2. JDS is also in default of its obligations under Paragraph E of the PFA Dispositive. The Tribunal rejects JDS’ limited reading of par. E and holds that the word “comprising” is expansive and not limiting. As such, it includes all documents relating or pertaining to the subject. In further support of this holding, the Tribunal finds that the Assignment-in-Lieu is a document subject to the general disclosure obligation set forth in pars. A and B of the PFA Dispositive since it is a “contract” “concerning the Project.”
3. The Tribunal finds that the following specific requests of BNP are consistent with the PFA, and orders JDS to, on or before May 19, 2025, produce or permit BNP, its counsel and/or agents, to inspect and make copies of the following:
 - a. The general ledgers of JDS and all Subsidiaries (as that term is defined in paragraph 2.7 of the Ackerman Agreement), in native electronic format.
 - b. All bank records of JDS and all Subsidiaries (as that term is defined in paragraph 2.7 of the Ackerman Agreement), including but not limited to statements, deposit slips, deposited checks, wire confirmations and wire instructions.

¹³ PO #9.

c All documents and communications in the possession or control of JDS or any Subsidiary (as that term is defined in paragraph 2.7 of the Ackerman Agreement) concerning the transaction with Silverstein Capital Partners and/or its affiliates (“Silverstein”) by which JDS’ and the Subsidiaries’ interests in the Project were assigned — inclusive both of the assignment of the interests in the Project entities and property itself and any related guarantees, releases, payments, or any other side-deals or associated transactions—including but not limited to any executed agreements, draft agreements or term sheets/letters of intent, and communications reflecting negotiations with respect to the transaction with Silverstein.

* * *

7. The Tribunal declines to expressly hold that the “PFA is a Final Award for purposes of NY CPLR §7502.” The document is what it is and says what it says.

21. After the issuance of the PFA, BNP filed a motion and supporting brief seeking costs and “reserve[ing] its rights to move for attorneys’ fees”.¹⁴

22. Perhaps anticipating a court action to vacate the PFA given Respondents’ oral statements during the May 13, 2025, status hearing, BNP’s cost motion did not seek the immediate payment to it of costs. Rather, it prayed that the amount of costs to be awarded “be deposited in escrow as security by JDS immediately upon the entry of such award.”

23. Respondents filed their Opposition to Claimants’ Motion For Arbitration Costs (“Respondents’ Cost Response”). In Respondents’ Cost Response, Respondents again advised the Parties and the Tribunal that “JDS will be seeking to vacate a portion of the award set forth in the April 29, 2025 Partial Final Order (as clarified and/or modified by Procedural Order #9, dated May 13, 2025, the “Award”) on the grounds that the Award exceeds the Arbitrator’s authority in this contract-based ‘books and records’ action.”¹⁵ Respondents objected to the award of attorneys’ fees as well as BNP’s reservation of their right to “move for attorneys’ fees,” arguing that BNP waived its right to claim attorney fees.¹⁶

¹⁴ BNP’s Motion for Arbitration Costs (“BNP Costs Motion”), p. 3

¹⁵ Respondents’ Cost Response, p.

¹⁶ *Id.* at p. 4

24. With respect to BNP's prayer for costs, Respondents' Cost Response did "not oppose BNP's request for costs in this matter as the prevailing party."¹⁷ However, Respondents objected to BNP's prayer that JDS post security for costs¹⁸.

25. Following the filing of the BNP Costs Motion and Respondent's Cost Response, the Tribunal inquired of the Parties whether they desired that the Tribunal resolve the costs issue via a final award (which would terminate the Tribunal's jurisdiction) or address the matter via order or partial final award, thereby preserving the power of the Tribunal to address any open issues. All Parties responded that they desired a final award.

26. After reviewing the BNP Costs Motion, BNP's "reserve[ation of] its rights to move for attorneys' fees" in its costs motion, and BNP's prayer that costs be deposited into escrow, the Tribunal asked the Parties for clarification regarding their desire for a final award, noting issues the Tribunal identified. Specifically, the Tribunal advised the Parties as follows:

"I've noted your respective emails responsive to my query whether there are additional matters at issue, or I should make the ruling a Final Award which will end my jurisdiction. You both advised that I should make it a final award. Before I do so, however, please know the following:

- The award of costs is clear since JDS does not contest that BNP is the prevailing party. I intend to award costs in an amount equal to the Tribunal's and the AAA's fees.
- The general practice is that sums held to be payable in an award are to be paid within a stated period of time of the award. Costs are sums to be paid if assessed to one of the parties. My practice for smaller sums is that payment is to be made within 10 days of the award, although I've no objection to making it 30 days in this case. Whether an action to vacate the award is pursued, and whether that action succeeds, are not matters before the Tribunal and not appropriate for consideration by the Tribunal. Therefore, I intend to reject the "escrow" request and simply order payment. If payment is made and the award is vacated, then recovery of the payment is an issue to be addressed by the court, not the Tribunal.
- Regarding attorneys' fees, I intend to rule that Part II of BNP's motion for costs satisfies PO#9, par. 5's period to seek attorney's fees. I agree with JDS that a full motion (and not a reservation) should have been filed but will not deprive a party the opportunity to fully present their case on a technical ruling. I also note that BNP's demand for arbitration checked the box for the award of attorney's fees. That said, I am not aware of any

¹⁷ *Id.* at p. 2

¹⁸ *Id.*

provision of any applicable contract providing for the award of attorney's fees, and as you all well know, the American practice is not to award attorney's fees absent a statute or contract provision. If there is applicable contract language, a provision of Delaware law, or DE case law that addresses the award of attorney's fees in an arbitration absent as a sanction, I am unaware of such. I am open to receiving briefing on the subject if either party wishes to pursue the matter.

- Regarding awarding attorneys' fees as a sanction pursuant to Rule 60, I acknowledge BNP's arguments and frustration. The majority of the arguments presented by JDS, however, I judge aggressive, albeit proper, legal arguments that were professionally presented notwithstanding their rejection by the Tribunal.
 - Regarding BNP's request that the Tribunal award "attorneys' fees incurred in connection with proceedings connected with the cancellation of Ackerman and the withdrawal of counsel, both of which were bad-faith tactics to delay the ruling of the Tribunal" [BNP's Costs Motion, p. 4], the Tribunal will receive briefs and hear argument regarding these claims should BNP wish to present them. If presented, however, BNP must address the jurisdiction of the Tribunal to assess the actions of a non-party (Ackerman), and whether the Tribunal has the power to potentially pierce the attorney-client privilege to determine the propriety of the withdrawal. While not pre-judging the issues, both are heavy burdens.
- Regarding PO #9's findings of default, while not pre-judging whether attorneys' fees as a sanction should be awarded, such claims are more appropriate for Rule 60 relief.
 - If either party wishes to present a claim for attorneys' fees as a sanction, the specific fees sought must be related to the sanctionable conduct. If a motion is presented, the presenting party must provide sufficient detail to ascribe the time/fees requested to the claimed sanctionable conduct.
- In light of the foregoing, please re-confirm your desire that I issue a Final Award addressing costs and containing PO#9's pars. 3 and 4 (and BNP expressly not pursuing a claim for attorneys' fees). I'll then issue a final award, which award will terminate my jurisdiction. If BNP wishes to pursue its claim for attorneys' fees, then I propose for efficiency I hold the determination of costs for the final award, and we set a 7 day / 7 day response briefing schedule for fees.

Email from the Tribunal to all parties, dated June 18, 2025 ("June 18 email")

27. Following delivery of the June 18 email, counsel for BNP advised the Tribunal and Respondent via email as follows: “BNP is not pursuing an additional claim for attorneys’ fees at this time. Thank you.”¹⁹

ISSUES PRESENTED AND TO BE DETERMINED IN THIS FINAL AWARD

28. BNP having determined not to pursue “an additional claim for attorneys’ fees at this time,” the Tribunal finds that the issues for determination in this Final Award are as follows:

- a. Whether BNP is entitled to an award of costs?
 - i. If so, the amount of costs to be awarded?
 - ii. If costs are to be awarded, whether they should be escrowed?
- b. Whether BNP waived its claim to attorneys’ fees?
 - i. If not waived, BNP’s right to attorneys’ fees, and if so in what amount?

ANALYSIS AND FINDINGS

I. BNP IS ENTITLED TO AN AWARD OF COSTS

29. As noted in par. 24, above, Respondents’ Cost Response acknowledged that BNP is the prevailing party in this matter.²⁰

30. The Arbitration Agreement governing this dispute provides, as relevant to costs, as follows: “All fees and expenses of the arbitrator and all other expenses of the arbitration shall be borne . . . by the non-prevailing party in the arbitration.”

31. BNP is the prevailing party; Respondents are the “non-prevailing party,” and Respondents acknowledged same.²¹

32. BNP paid the entire American Arbitration Association filing fee for the arbitration, being \$3,500.00. The total Tribunal compensation for the arbitration totaled \$50,975.00. Respondent paid \$25,487.50 as Tribunal compensation; BNP paid \$25,487.50 as Tribunal compensation. Respondent, as the non-prevailing party, is therefore obligated to pay BNP’s fees and compensation

¹⁹ BNP email dated June 20, 2025 (“June 20 email”)

²⁰ Respondents’ Cost Response, at p. 4

²¹ *Id.*

totaling \$28,987.50, being \$3,500.00 American Arbitration Association filing fees and \$25,487.50 BNP's share of Tribunal compensation.

33. As described in par. 26, second bullet point, above, whether an action to vacate the award is pursued, and whether that action succeeds, are not matters before the Tribunal and not appropriate for consideration by the Tribunal. Therefore, the Tribunal finds that costs should be paid upon the issuance of the Final Award, with an appropriate grace period for Respondents to arrange payment (as set forth in the Dispositive / Award section of this Final Award).

II. BNP WAIVED ITS CLAIM FOR ATTORNEYS' FEES

34. As noted in par. 22, above, BNP in its Costs Motion sought to "reserve its rights to move for attorneys' fees." Respondents argued in their Respondents' Cost Motion that by failing to move for attorneys' fees in BNP's Costs Motion, BNP waived its claim to attorneys' fees.²²

35. As noted in par. 26, above, the Tribunal advised the Parties that it would not preclude BNP's right to seek attorneys' fees on a technical reading of the Tribunal's procedural order.²³

36. However, as noted in par. 27, above, on June 20, 2025, BNP advised the Tribunal again that it desired a final award and that it "is not pursuing an additional claim for attorneys' fees at this time."²⁴

37. BNP delivered the June 20, 2025 email after being advised that if the Tribunal enters a final award, it will lose jurisdiction.

38. The Tribunal's jurisdiction ending upon the delivery of the instant Final Award, BNP being advised of the Tribunal's loss of jurisdiction upon the entry of the instant Final Award, and BNP advising that it will not "at this time" seek attorneys' fees *after* receiving the Tribunal's notice, the Tribunal holds that BNP's determination not to pursue "an additional claim for

²² Respondents' Cost Motion, p. 4

²³ June 18 email

²⁴ June 20 email

attorney's fees at this time" is a waiver of its right to pursue a claim for attorneys' fees in this arbitration.

FINAL AWARD / DISPOSITIVE

For the reasons stated above, the Tribunal Awards as follows:

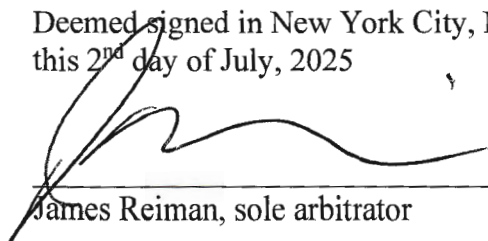
A. PO#9's orders 1 – 3 shall be made a part of this Final Award, being:

1. JDS did not comply with the PFA having failed to fully produce documents pursuant to BNP's April 30, 2025, request to produce "within 7 days" "all books and records of JDS Principal 9DKB LLC and its subsidiaries requested by BNP and subject to the Partial Final Award."
2. JDS did not comply with its obligations under Paragraph E of the PFA Dispositive. The Tribunal rejects JDS' limited reading of par. E and holds that the word "comprising" is expansive and not limiting. As such, it includes all documents relating or pertaining to the subject. In further support of this holding, the Tribunal finds that the Assignment-in-Lieu is a document subject to the general disclosure obligation set forth in pars. A and B of the PFA Dispositive since it is a "contract" "concerning the Project."
3. The Tribunal finds that the following specific requests of BNP are consistent with the PFA, and orders JDS to, within 2 business days of the date of this Final Award, produce (or permit BNP, its counsel and/or agents, to inspect and make copies of) the following:
 - a. The general ledgers of JDS and all Subsidiaries (as that term is defined in paragraph 2.7 of the Ackerman Agreement), in native electronic format.
 - b. All bank records of JDS and all Subsidiaries (as that term is defined in paragraph 2.7 of the Ackerman Agreement), including but not limited to statements, deposit slips, deposited checks, wire confirmations and wire instructions.
 - c. All documents and communications in the possession or control of JDS or any Subsidiary (as that term is defined in paragraph 2.7 of the Ackerman Agreement) concerning the transaction with Silverstein Capital Partners and/or its affiliates ("Silverstein") by which JDS' and the Subsidiaries' interests in the Project were assigned — inclusive both of the assignment of the interests in the Project entities and property itself and any related guarantees, releases, payments, or any other side-deals or associated transactions—including but not limited to any executed agreements, draft agreements or term sheets/letters of intent, and communications reflecting negotiations with respect to the transaction with Silverstein.

- B. BNP's prayer to reserve the right to claim attorneys' fees is denied.
- C. BNP's prayer for an award of costs is granted. Respondents shall, on or before July 18, 2025, pay to BNP, in immediately available funds, costs in the amount of \$28,987.50, representing that portion of fees and compensation in excess of the apportioned costs previously incurred and paid by Claimant.
- D. All relief prayed for by either Party not expressly granted or denied herein is denied.

I hereby certify that, for the purposes of Article I of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in New York City, NY, United States of America.

Deemed signed in New York City, NY
this 2nd day of July, 2025



James Reiman, sole arbitrator