Date Filed: 03/12/2024

BRYAN CAVE LEIGHTON PAISNER LLP
Sharon z. Weiss (State Bar No. 169446)
sharon.weiss@bclplaw.com
120 Broadway, Suite 300
Santa Monica, CA 90401-2386
Telephone: (310) 576-2100
Facsimile: (310) 576-2200

Jarret P. Hitchings (*Pro Hac Vice*)
jarret.hitchings@bclplaw.com
One Wells Fargo Center
301 S. College Street, Suite 2150
Charlotte, NC 28202
Telephone (704) 749-8999
Facsimile: (704) 749-8990

[Proposed] Attorneys for Debtor and Debtor-in -Possession

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2386

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re Oceanwide Plaza LLC, Debtor	Case No. 2:24-bk-11057-DS Chapter 11 **MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION FINANCING, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) MODIFYING THE AUTOMATIC STAY AND (IV) SCHEDULING A FINAL HEARING; MEMORANDUM OF POINTS AND AUTHORITIES** [DECLARATIONS OF BRADLEY SHARP AND J. MICHAEL ISSA IN SUPPORT THEREOF; LOCAL BANKRUPTCY FORM 4001-2 FILED CONCURRENTLY THEREIN] <u>Emergency Hearing:</u> Date: March 14, 2024 Time: 2:00 p.m. (Pacific) Place: Ctrm 1634 / Via Zoom 255 East Temple Street Los Angeles, CA 90012

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120 BROADWAY, SUITE 300
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Oceanwide Plaza LLC, as debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Debtor"), by and through its proposed undersigned counsel, hereby moves (this "DIP Financing Motion") for entry of an interim order substantially in the form attached hereto as **Exhibit A** (the "Interim Order") and a final order (the "Final Order" and, together with the Interim Order, the "DIP Orders"): (i) authorizing the Debtor to obtain post-petition secured financing (the "DIP Financing") from B.H. Capital Ventures, LLC (the "DIP Lender") on the terms set forth in the *Debtor in Possession Financing Term Sheet* dated March 12, 2024 (the "DIP Term Sheet")[1] and each of the other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to or in favor of the DIP Lender in connection with the DIP Financing, which may include, without limitation, a loan agreement, promissory note, deed of trust, security agreement, UCC-1 financing statement, and assignment of rents (collectively, the "DIP Loan Documents"), (ii) granting the DIP Liens and the DIP Superpriority Claims (each as defined below), (iii) modifying the automatic stay as imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP Orders and the DIP Financing, and (iv) scheduling a final hearing with respect to the DIP Financing Motion (the "Final Hearing"). A copy of the DIP Term Sheet is attached as Exhibit 2 to the *Declaration of Bradley Sharp* (the "Sharp Decl.") in support of this DIP Financing Motion, which is filed concurrently herewith. In support of the relief requested in this DIP Financing Motion, the Debtor also relies upon the *Declaration of J. Michael Issa Proposed Financial Advisor of Debtor Oceanwide Plaza LLC and Greg Eidson, MAI, CCIM, In Support of Chapter 11 Petition and Debtor In Possession Financing* (the "Issa Decl.), which is filed concurrently herewith.

Jurisdiction and Venue

On February 13, 2024 (the "Petition Date"), Lendlease (US) Construction Inc., Standard Drywall, Inc., Star Hardware, Inc., Woodbridge Glass Inc., and Mitsubishi Electric US, Inc. (collectively, the "Petitioning Creditors") filed an involuntary petition for relief against the Debtor (the "Involuntary Petition") under chapter 11 of the United States Bankruptcy Code, 11

[1] Capitalized terms used but not defined in this DIP Financing Motion shall have the meanings given to such terms in the DIP Term Sheet or the Interim Order.

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2386

U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the Central District of California (this "Court").

On March 8, 2024, the Debtor filed its *Answer* [ECF No. 27] to the Involuntary Petition and consented to entry of an order for relief. On March 11, 2024 (the "Relief Date"), the clerk of the Court issued the *Order for Relief* [ECF No. 29] (the "Relief Order"). From and after the Relief Date, the Debtor has managed its estate as a debtor-in-possession. To date, no official committee has been appointed in this case.

The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, as this matter constitutes a core proceeding. Moreover, venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. Finally, the Debtor consents to the Court's entry of a final order in connection with this DIP Financing Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

Relief Requested

By this DIP Financing Motion, the Debtor respectfully requests entry of the DIP Orders, including the Interim Order substantially in the proposed form attached hereto as **Exhibit A**, pursuant to sections 105, 363(b) and 364(c) and (d) of the Bankruptcy Code, Rule 4001(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 4001-2 of this Court's Local Rules of Bankruptcy Practice and Procedure (the "Local Rules"), authorizing the Debtor to obtain credit on the terms set forth in the DIP Term Sheet and the other DIP Loan Documents, granting the DIP Liens, granting the DIP Superpriority Claims, for a good faith determination, for waiver of any applicable stays of enforcement of the DIP Orders, and other ancillary relief.

In support of this DIP Financing Motion, the Debtor relies on the *Memorandum of Points and Authorities*, the Sharp Declaration, the Issa Declaration. and those exhibits attached hereto and thereto, all of which are being filed contemporaneously herewith.

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2386

MEMORANDUM OF POINTS AND AUTHORITIES

I. Background

Since the Relief Date, the Debtor has been possession of its bankruptcy estate and has operated its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committee has been appointed in this case.

Additional information about the Debtor's business and affairs, capital structure, and prepetition indebtedness, and the events leading up to the Petition Date is set forth in the Sharp Declaration, which is incorporated herein by reference.

The Debtor was organized in 2013 to purchase a block in downtown Los Angeles across from then Staples Center, bounded by Figueroa, Flower, 11th and 12th Streets (generally, the "Property"). The Debtor purchased the Property that year for $174 million. At the time, the Property consisted of an asphalt parking lot and a small two-story building.

The Debtor owns Oceanwide Plaza (the "Project"), a 60-percent complete $2 billion mixed-use development project in downtown Los Angeles. The Project is situated on the Property which is comprised of a single parcel owned by the Debtor.

The Project is across from (what is now known as) Crypto.com Arena and consists of three high-rise residential towers: two towers are 42 stories tall, and the other is 55 stories tall which includes a 11-story Park Hyatt hotel. Each tower is built on a 6-story podium, consisting of parking, retail, dinning, and office space, and a 2-story-high LED screen wrapped around the podium's Figueroa, 11th, and 12th street facades. The Project's external construction is largely complete, but the Project's internal construction is substantially unfinished.

To date, the Debtor has self-funded construction of the Project with approximately $956.6 million in capital transfers and approximately $118.4 million in inter-company loans that are more fully set forth in the Sharp Decl. For short-term needs, the Debtor obtained a credit line with a $325 million limit from L.A. Downtown Investment LP ("LADI"). LADI is an investment vehicle deployed under the federal government's EB-5 Immigrant Investor visa program. The credit line extended by LADI (generally, the "EB-5 Loan") is evidenced by a $325 million Promissory Note which is secured by a Deed of Trust in favor of LADI (the "EB-5 Deed of

Trust". LADI recorded the EB-5 Deed of Trust against the Property in 2015 to secure repayment of any disbursements under the EB-5 Loan. To date, LADI has disbursed approximately $125.5 million to Oceanwide under the EB-5 Loan. With interest, LADI asserts a current secured claim of approximately $180 million. LADI also asserts it holds a first priority lien on the Property.

In November 2018, the Debtor began to have difficulty getting additional capital transfers from its affiliates in China for several reasons, including regulatory restrictions by the Chinese government on current transfers and other macro-economic conditions. As more fully explained in the Sharp Decl., the Debtor was also unable to secure construction financing, which proved even more difficult with the limits imposed on the lending market by the global pandemic. Efforts to partner in a joint venture also were unsuccessful. In May 2021, the Debtor began to primarily focus on selling the Project. Serious conversations began with one potential purchaser in March 2022, who signed a Letter of Intent ("LOI") in August 2023. Due diligence and negotiation efforts are ongoing. In September 2023, Oceanwide signed an LOI with a second potential purchaser, and due diligence and negotiations are ongoing.

Creditor pressure mounted when its general contractor, Lendlease, exited the Project in 2019 due to lack of funding. Ultimately, Lendlease, and several of its subcontractors, filed mechanic's liens and commenced judicial foreclosure proceedings to perfect their respective mechanic's lien positions. Priority disputes also exists between LADI and the mechanic's lien holders, which is set forth in the Sharp Decl.

The Debtor is in desperate need of funds to pay for continued maintenance and preservation of the Property, including funds to safeguard the Property, insurance coverage for the Property, and payroll for employees. Failure to address these immediate needs will significantly impair the value of the Property and could (and already has) present health and safety issues at the Property. Likewise, the Debtor requires funds to pay its administrative obligations during the course of this case, including payment of professionals and payment of fees owed to the Office of the United States Trustee. In each instance, the DIP Financing funds will be used to preserve the value of the Property for the benefit of the Debtor's estate and to promote safety at the Property.

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2386

II. The Proposed DIP Financing

On March 12, 2024, the Debtor and the DIP Lender entered into the DIP Term Sheet.[2] Pursuant to the DIP Term Sheet, the DIP Lender will provide loans (the "DIP Loans") that will fund the Approved Budget (as defined in the DIP Term Sheet) and allow the Debtor to advance this chapter 11 restructuring. The proposed DIP Lender is a lender with experience in special situation debtor transactions.

To secure repayment of the DIP Loans, the Debtor will grant to the DIP Lender first priority liens (the "DIP Liens") on all of the real and personal property which the Debtor owns and all other property interests, real, personal, or intangible of the Debtor, now existing or hereafter acquired, being more fully described in the DIP Term Sheet (collectively the "DIP Collateral").[3] The liens and security interests granted to the DIP Lender to secure payment of the DIP Loans will be first-priority "priming" liens and security interests that are senior in priority to any and all other liens and security interests that exist or may exist on or against the DIP Collateral pursuant to section 364(d)(1) of the Bankruptcy Code.

In addition to the DIP Liens, the DIP Lender shall be granted, pursuant to sections 105, 363, 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code, allowed superpriority administrative expenses claims, having priority in right of payment over any and all other obligations, liabilities, and indebtedness of any of the Debtor (other than the Carve Out, discussed below), including any and all unsecured claims, administrative expenses, adequate protection claims, priority claims or any other claims of the kind specified in, or ordered pursuant to, the Bankruptcy Code, including, without limitation, *inter alia*, sections 105, 326, 328, 330, 331, 503(b), 507, 364(c)(1), 546(c), 726, or 1114 of the Bankruptcy Code and, upon entry of the Final Order, section 506(c) of the Bankruptcy Code (the "DIP Superpriority Claims").

[2] The summary of the DIP Term Sheet and the various terms of the proposed DIP Financing set forth herein are provided for explanatory or descriptive purposes only. To the extent any explanation or description is inconsistent with the DIP Term Sheet, the Dip Term Sheet controls.

[3] The DIP Collateral shall not include the Debtor's and the estate's claims or causes of action arising under chapter 5 of the Bankruptcy Code and section 724(a) of the Bankruptcy Code (although the DIP Collateral will include, subject to entry of the Final Order, all proceeds of, and property received through or as a result of, such claims or causes of action).

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120 BROADWAY, SUITE 300
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Notwithstanding their relative priorities, the allowed DIP Superpriority Claims granted to the DIP Lender pursuant to the DIP Orders shall be subject to and subordinate to a carve-out for (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee, (ii) reasonable professional fees and expenses incurred by the Debtor for services rendered and expenses incurred prior to the DIP Lender's delivery of a Default Notice (for which the noticed Event of Default is not subsequently cured in accordance with the DIP Orders) and to the extent in amount expressly set forth in the Approved Budget, subject to further order of the Court approving such professional fees, and (iii) reasonable professional fees and expenses incurred by the Debtor for services rendered and expenses incurred after the DIP Lender's delivery of a Default Notice (for which the noticed Event of Default is not subsequently cured in accordance with the DIP Orders) in an amount in the aggregate of the professional fees set forth in the Approved Budget (the "Carve-Out").

III. Entities with Alleged Liens That Will be Primed by the DIP Liens

Upon information and belief, the following entities have asserted liens against the Debtor's assets which will be primed by the DIP Liens:

- The Los Angeles County Tax Collector asserts a statutory tax lien against the Property on account of unpaid property taxes, in the amount of approximately $15 million as of the Petition Date.
- LADI asserts a lien on the Property securing the purported amount outstanding under the LADI Loan, in the amount of approximately $170 million as of the Petition Date.
- Lendlease / Subcontractors: A number of contractors and other parties that allegedly provided labor and/or materials to the Property assert mechanic's liens, materialmen's liens, or similar lien rights with respect to the Property, in the aggregate amount of approximately $185 million as of the Petition Date.

The DIP Collateral may also be subject to other liens or security interests that are unknown to the Debtor. In any event, and for the avoidance of doubt, the Debtor and the DIP

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120 BROADWAY, SUITE 300
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Lender intend that the DIP Liens be superior to any valid, perfected pre-petition liens and security interests, including mechanic's liens, materialmen's liens, and similar lien rights.

IV. Argument

A. The Court Should Approve the DIP Term Sheet and Authorize the Debtor to Borrow the DIP Loans Secured By, Among Other Things, the DIP Liens

The Debtor's use of property of its bankruptcy estate is governed by section 363 of the Bankruptcy Code. Under section 363(b)(1), the Debtor, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. The DIP Term Sheet involves the use of property outside the ordinary course of business because it involves obtaining credit in exchange for the grant of super-priority liens. By the DIP Financing Motion, the Debtor has complied with the notice and hearing requirements of section 363.

There is ample business justification for the proposed use of estate property for at least the following reasons:

- ***The proposed DIP Financing is immediately necessary to preserve the value of the estate's property and to protect public health and safety***. The Debtor is illiquid, has no cash and has no operating revenue. Without immediate access to funds, the Debtor cannot take the necessary steps required to preserve the value of the estate's property, which includes providing and enhancing security at the Property and securing and obtaining insurance coverage for the Property. These measures are of critical importance not only to maintain and maximize the value of the Property but also to protect public safety at the Property.

- ***Failure to approve the DIP Financing will diminish the value of the Property and result in further costs/risks related to public health and safety***. If the Debtor is unable to obtain DIP Financing, it will be unable to provide necessary maintenance and preservation of the Property. Because the Debtor currently lacks the ability to pay for continued security measures at the Property, the costs and risks associated with the Debtor's inability to implement necessary security measures at the Property will be borne by the public.

- ***The proposed DIP Financing is immediately necessary to stabilize this chapter 11 case***. Without immediate access to funds, the Debtor will not be able to satisfy its administrative obligations, including payment of professional fees and fees to the Office of the United States Trustee.
- ***The grant of the super-priority lien on DIP Collateral is necessary and appropriate***. The Debtor has not been able to obtain any financing commitment on an unsecured basis. Rather, all post-petition financing options it has

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
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> considered required senior-priority priming liens and super-priority administrative expense protections. In particular, the DIP Lender was not willing to enter into the DIP Term Sheet or provide the DIP Loans without such protections.

Section 364 of the Bankruptcy Code gives bankruptcy courts the power to authorize postpetition financing for chapter 11 debtors in possession. S*ee In re Defender Drug Stores, Inc.*, 126 B.R. 76, 81 (Bankr. D. Ariz. 1991), *aff'd*, 145 B.R. 312 (9th Cir. BAP 1992); *In re Latam Airlines Group, S.A.*, 620 B.R. 722, 767 (Bankr. S.D.N.Y. 2020). Generally, courts apply a three-part test to determine whether a debtor-in-possession may obtain credit under section 364(c) of the Bankruptcy Code. Under such test, a debtor may incur postpetition financing pursuant to section 364(c) of the Bankruptcy Code if the debtor demonstrates that (a) it cannot obtain credit unencumbered or without superpriority status, (b) the financing is necessary to preserve assets of the estate, and (c) the terms of the loan are fair, reasonable and adequate. *See In re Los Angeles Dodgers, LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011); *Pearl-Phil GMT (Far E.) Ltd. v. Caldor Corp.*, 266 B.R. 575, 582-83 (Bankr. S.D.N.Y. 2001); *see also Latam Airlines*, 620 B.R. at 767. Section 364(d) of the Bankruptcy Code authorizes a debtor-in-possession to obtain credit or incur debt secured by a senior or equal lien on property of the estate that is subject to a lien if the debtor is unable to obtain such credit otherwise and the interests of its secured creditors whose liens are being primed are adequately protected. 11 U.S.C. § 364(d)(1); *In re YL 8th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010); *see also In re Aqua Assocs*., 123 B.R.192, 196 (Bankr. E.D. Pa. 1991).

Against this statutory backdrop, courts will evaluate the facts and circumstances of a debtor's case and accord significant weight to the necessity for obtaining the financing. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40-41 (Bankr. S.D.N.Y. 1990); *see also In re YL 8th Holdings*, 423 B.R. at 441. A debtor-in-possession is generally permitted to exercise its business judgment consistent with its fiduciary duties when evaluating the necessity of proposed protections for a party extending credit under section 364 of the Bankruptcy Code. *In re Ames Dep't Stores, Inc.*, 115 B.R. at 38; *see also Latam Airlines Group, S.A.*, 620 B.R. at 768 ((citing *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992)).

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
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1. The Debtor Cannot Obtain Unsecured Credit.

To show that the credit required is not obtainable on an unsecured basis, a debtor needs only to demonstrate "by a good faith effort that credit was not available" without the protections afforded to potential lenders by sections 364(c) or (d) of the Bankruptcy Code. *In re Snowshoe Co*., 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Republic Airways Holdings, Inc.*, No. 16-10429 (SHL), 2016 WL 2616717, at *10 (Bankr. S.D.N.Y. May 4, 2016) (citing *In re Ames Dep't Stores*, *Inc.*, 115 B.R. at 40-41). Of course, the Bankruptcy Code "imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." *In re Snowshoe Co*., 789 F.2d at 1088; *see also In re Republic Airway,* 2016 WL 2616717 at *10.

The Debtor is operating its business as a debtor-in-possession. The Debtor's business does not generate revenue and the Property is the Debtor's only material asset. Accordingly, it is not in a position to elicit offers of financing in the amounts needed on an unsecured basis. Moreover, the Debtor's assets are already subject to liens and encumbrances, making its chances of obtaining financing secured by a junior lien extremely doubtful. Thus, the Debtor is unable to obtain financing on an unsecured basis or secured by a junior lien on assets. Indeed, all offers to extend credit to the Debtor post-petition have been on a senior priority secured basis.

The Debtor solicited offers for a DIP loan from twenty (20) potential lenders. Only two (2) of these lenders provided term sheets for a potential DIP loan and neither of them agreed to advance money to the Debtor on an unsecured or junior priority secured basis. Indeed, each of the term sheets required that the loan be secured by a "priming" lien against the DIP Collateral.

2. The Debtor Can Provide Adequate Protection to Its Pre-Petition Secured Creditors

If a debtor is unable to obtain credit under section 364(c) of the Bankruptcy Code, it may obtain credit secured by a senior or equal lien on property of the estate as long as there is adequate protection of any pre-existing secured creditor's interests in the property. As a threshold matter, in order to be entitled to adequate protection, a secured creditor must first prove that the value of its collateral is declining or threatening to decline.

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120 BROADWAY, SUITE 300
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What constitutes adequate protection is a question of fact to be determined on a case-by-case basis. See *First Sec. Bank and Trust Co. v. Vegt*, 511 B.R. 567, 580, Bankr. L. Rep. (CCH) P 82645 (N.D. Iowa 2014) (citations omitted); *In re Mt. Olive Hospitality*, LLC, 2014 WL 1309953, *3 (D.N.J. 2014) (citing *In re Swedeland Development Group, Inc.*, 16 F.3d 552, 564, 25 Bankr. Ct. Dec. (CRR) 486, 30 Collier Bankr. Cas. 2d (MB) 1034, Bankr. L. Rep. (CCH) P 75803 (3d Cir. 1994)); *see also In re Ziegler*, 2012 WL 6186597, *5 (Bankr. D. Mont. 2012) ("Value is the linchpin of adequate protection, and since value is a function of many factual variables, it logically follows that adequate protection is a question of fact."). "The focus of this [adequate protection] requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use by the debtor." *In re Satcon Technology Corp.*, 2012 WL 6091160, *5 (Bankr. D. Del. 2012).

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2386

Although the Bankruptcy Code does not explicitly define "adequate protection," section 361 of the Bankruptcy Code provides that it may take the form of a cash payment or periodic cash payments to the extent that there is a decrease in the lien holder's property interest, an additional or replacement lien to the extent that there is a decrease in the lien holder's property interest, or other relief that will result in a secured party's realizing the indubitable equivalent of its property interest. Where a debtor's proposed use of funds from additional postpetition financing augment the value of the secured creditor's collateral, adequate protection exists. *In re Sky Valley, Inc.*, 100 B.R. 107, 114 (Bankr. N.D. Ga. 1998); *In re 495 Cent. Park Ave Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); *YL 8th Holdings*, 423 B.R. at 442. The most commonly cited factors indicating that a creditor's interest is adequately protected are "the sufficiency of the equity cushion, periodic payments, additional liens, or a good prospect of a successful reorganization." *In re Van Horn*, 2011 WL 1900324, *4 (Bankr. M.D. Pa. 2011) (citing *In re Liona Corp., N.V.*, 68 B.R. 761, 767 (Bankr. E.D. Pa. 1987)); see also *In re Swedeland Development*, 16 F.3d at 566, 25 Bankr. Ct. Dec. (CRR) 486, 30 Collier Bankr. Cas. 2d (MB) 1034, Bankr. L. Rep. (CCH) P 75803 (3d Cir. 1994) (citations omitted); *In re Shivshankar Partnership LLC,* 517 B.R. 812, 817, 60 Bankr. Ct. Dec. (CRR) 40 (Bankr. E.D. Tenn. 2014).

a. The Debtor Has a Sufficient Equity Cushion In the Property

The DIP Liens are appropriate in this case, and can be allowed to prime the existing security interests and other liens in the DIP Collateral because the existing pre-petition secured parties are adequately protected by the Debtor's substantial equity in the Property. As described more fully in the Issa Declaration, at least a preliminary analysis supports that the Project's land value alone is approximately $200 million, a cost basis value of $731 million and a Buyer's Interest Value of $850 million. It would appear that the total asserted value of the known liens against the Property does not exceed $371 million. Even using just the cost basis value, the Debtor thus has at least $360 million of equity, or an equity cushion of 49% in the Property.

This equity cushion is sufficient to protect the value of the existing secured creditors' interests. *See In re Capitol Station 65, LLC*, No. 17-23627-B-11, 2018 EL 333863 at *11 (Bankr. E.D. Cal. Jan. 8, 2018) ("The Ninth Circuit has held that a 20% equity cushion provides adequate protection); *In re Lee*, No. 2:19-BK-10119-RK, 2020 WL 2787679 at *9 (Bankr. C.D. Cal. May 28, 2020) (holding that an 18% equity cushion is not *per se* inadequate protection); *In re 1604 Sunset Plaza, LLC*, No. 2:21-BK-19157-ER, 2022 WL 1085557 at *7 (Bankr. C.D. Cal. Apr. 8, 2022) (holding that 20% equity cushion would be adequate protection).

b. There is No Diminution of Value As a Result of the Priming Lien.

In this case, the DIP Loan will be used to specifically preserve the value of the Property, and therefore provide the secured creditors with indubitable equivalent value. This is especially true with respect to the asserted mechanic's lienholders as the estate should be entitled to surcharge these lienholders under section 506(c).

The prevailing case in the Ninth Circuit regarding surcharge pursuant to section 506(c) of the Bankruptcy Code is *In re Compton Impressions, Ltd.*, 217 F.3d 1256, 1260 (9th Cir. 2000). Under section 506(c) of the Bankruptcy Code, the movant must demonstrate either (1) that the expenses it seeks to surcharge against the secured creditor were reasonable, necessary,

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2386

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2386

and beneficial to the secured creditor's recovery (the "Objective Standard"), or (2) that the secured creditors caused or consented to those expenses (the "Subjective Standard").

The Debtor satisfies the Objective Standard because there is little doubt that the expenses to be paid through the DIP Loans are reasonable, necessary, and provide a concrete and quantifiable benefit to the secured creditors. *In re Debbie Reynolds Hotel & Casino, Inc.*, 255 F.3d 1061, 1068 (9th Cir. 2001). To satisfy the benefit test of section 506(c) of the Bankruptcy Code, the movant must establish in quantifiable terms that it expended funds directly or primarily to protect and preserve the collateral. *In re Cascade Hydraulics & Util. Serv., Inc.*, 815 F.2d 546, 548 (9th Cir. 1987). As referenced in the Approved Budget, all of the expense are to preserve the DIP Collateral. Therefore, not only are the secured creditors protected by an equity cushion, but the secured creditors may also be subject to surcharge.

3. The Debtor Requires Immediate Access to Funds

As described above, the DIP Financing will fund payments that are immediately necessary for the maintenance and preservation of the Property and the administration of the Debtor's chapter 11 case, including the funding of necessary security measures and the purchaser of insurance. All of these expenses are necessary and time sensitive and will provide a direct benefit to the Debtor and its estate.

4. The Terms for the DIP Loans and Fair and Reasonable

The terms for the DIP Loans should also be approved because they are fair, reasonable, and adequate. First, the Debtor, being a debtor-in-possession in bankruptcy, is generally unable to obtain unsecured credit. Second, the proposed DIP Loans represent, in the business judgment of the Debtor, the best post-petition financing terms available to the Debtor. In fact, the Debtor received financing interest from a number of potential lenders, but none provided terms superior to the DIP Term Sheet. Third, the terms themselves reflect the market terms for distressed financings in general, and unique commercial real estate developments in particular. Finally, the protections being granted to the DIP Lender, including the DIP Liens and the DIP Superpriority Claims, are typical of DIP financing structures and are necessary in this case. Indeed, the DIP Lender will not extend the DIP Loans without these protections.

Bankruptcy courts consistently defer to a debtor's business judgment on most business decisions, including the decision to borrow money, unless such decision is arbitrary and capricious. *See In re Trans World Airlines, Inc*., 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that an interim loan, receivables facility and asset-based facility were approved because they "reflect[ed] sound and prudent business judgment [were] reasonable under the circumstances and in the best interests [of the Debtors] and its creditors"); *In re Republic Airways Holdings, Inc.* at *11("In determining whether to authorize post-petition financing, bankruptcy courts will generally defer to the debtor's business judgement" (citing *In re Ames Dep't. Stores, Inc.* at 40-41). Consistent with this authority and deference, the Court should approve the Debtor's decision to accept and enter into the DIP Term Sheet.

B. The Debtor and the DIP Lender Entered the DIP Term Sheet in Good Faith

Section 364 of the Bankruptcy Code provides in pertinent part as follows:

> The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

The record before the Court reveals that the Debtor and the DIP Lender negotiated the terms of the DIP Loans and the DIP Term Sheet in good faith. Moreover, the terms of the DIP Loans are fair and reasonable. Thus, the Debtor requests that the Court find that the DIP Loans have been extended by the DIP Lender to the Debtor in good faith.

C. Waiver of Bankruptcy Rule 6004(h) Is Necessary To Allow the Debtor to Immediately Access the DIP Loans

Bankruptcy Rule 6004(h) provides than an order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise. So as to allow the Debtor to promptly and immediately borrow funds pursuant to the DIP Term Sheet, the Debtor respectfully requests that the DIP

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2386

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2386

Orders provide that each is effective and immediately enforceable notwithstanding any potential application of Rule 6004(h).

V. Request for Final Hearing

As set forth above, the Debtor requires immediate authorization to obtain the DIP Loans in order to fund costs and expenses necessary to maintain and preserve the Property, its value, and the health and safety of the public. Accordingly, the Debtor has sought relief on an interim basis to allow the Debtor to borrow up to $4.3 million, on an interim basis, under the DIP Loans. The Debtor respectfully requests the Court schedule a further hearing to consider the relief requested herein on a final basis at the Court's first available hearing date that is at least 14 days from the date of this DIP Financing Motion.

Conclusion

For the foregoing reasons, the Debtor respectfully requests that the Court approve the DIP Term Sheet and the other DIP Loan Documents and authorize the Debtor to consummate the transactions contemplated thereby, including the DIP Loans secured by a first-priority priming lien on the DIP Collateral, and grant ancillary relief.

Dated: March 12, 2024

Respectfully submitted,

BRYAN CAVE LEIGHTON PAISNER LLP

By: */s/ Sharon Z. Weiss*
Sharon Z. Weiss
[Proposed] Attorneys for Debtor-in-Possession

EXHIBIT A

EXHIBIT A

BRYAN CAVE LEIGHTON PAISNER LLP
Sharon Z. Weiss (State Bar No.: 169446)
sharon.weiss@bclplaw.com
120 Broadway, Suite 300
Santa Monica, CA 90401-2386
Telephone: (310) 576-2100
Facsimile: (310) 576-2200

Jarret P. Hitchings (*Pro Hac Vice Admission Pending*)
jarret.hitchings@bclplaw.com
One Wells Fargo Center
301 S. College Street, Suite 2150
Charlotte, NC 28202
Telephone (704) 749-8999
Facsimile: (704) 749-8990

[*Proposed*] *Attorneys for Debtor and Debtor-in-Possession*

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re Oceanwide Plaza LLC, Debtor.	Case No.: 2:24-bk-11057-DS Hon. Deborah J. Saltzman Chapter 11 **INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION FINANCING, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) MODIFYING THE AUTOMATIC STAY AND (IV) SCHEDULING A FINAL HEARING** Emergency Hearing: Date: March 14, 2024 Time: 2:00 p.m. (Pacific) Place: Ctrm 1634 / Via Zoom 255 East Temple Street Los Angeles, CA 90012

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

Upon the above-captioned debtor's (the "Debtor") *Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to Obtain Postpetition Financing, (II) Granting Liens and Superpriority Administrative Expenses Claims, (III) Modifying the Automatic Stay, and (IV) Scheduling a Final Hearing* (the "Motion"),[1] pursuant to sections 105(a), 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and Local Rules 4001-2 and 9013-1, seeking entry of an interim order (this "Interim Order") and a final order approving the Motion, and an initial hearing on the Motion having been held by the Court on March 14, 2024 (the "Interim Hearing"), and the Court having considered the Motion, the *Declaration of Bradley Sharp* (the "Sharp Decl.") in support of the Motion, the *Declaration of J. Michael Issa* (the "Issa Decl."), and the evidence submitted or adduced and the arguments of counsel made at the Interim Hearing; and notice of the Motion and the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014; and the Interim Hearing having been held and concluded; and all objections, if any, to the relief requested in the Motion on an interim basis having been withdrawn, resolved, or overruled by the Court; and it appearing to the Court that granting the relief requested is necessary to avoid immediate and irreparable harm to the Debtor and its estate pending the Final Hearing, and otherwise is fair and reasonable, in the best interests of the Debtor, its estate, creditors, and equity holders, and essential to preserve and maximize the value of the assets of the Debtor's business and estate; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[2]

A. Bankruptcy Filing. On February 13, 2024 (the "Petition Date"), Lendlease (US) Construction Inc., Standard Drywall, Inc., Star Hardware, Inc., Woodbridge Glass Inc., and Mitsubishi Electric US, Inc. (collectively, the "Petitioning Creditors") filed an involuntary petition for relief against the Debtor (the "***Involuntary Petition***") under chapter 11 of the United States

[1] Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

[2] Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact pursuant to Fed. R. Bankr. P. 7052.

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120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the Central District of California (this "Court"). On March 8, 2024, the Debtor filed its *Answer* [ECF No. 27] to the Involuntary Petition and consented to entry of an order for relief . On March 11, 2024 (the "Relief Date"), the clerk of the Court issued the *Order for Relief* [ECF No. 29] (the "Relief Order").

B. Debtor-in-Possession. From and after the Relief Date, the Debtor has managed its business and properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner or official committee of unsecured creditors has been appointed in the Chapter 11 Case.

C. Jurisdiction and Venue. The Court has jurisdiction over the Debtor, the Debtor's estate, this proceeding, and the persons and properties affected hereby, pursuant to 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtor has consented to entry of a final order on the Motion by the Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Section 552(b); Section 506(c). Subject to entry of the Final Order, the DIP Lender is entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

E. Necessity for Relief Requested; Immediate and Irreparable Harm. The Debtor requested the entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2), 4001(c)(2) and Local Rule 4001-2. The Debtor has an immediate need to obtain financing on the terms and conditions set forth in the Debtor in Possession Financing Term Sheet between the Debtor and B.H. Capital Ventures, LLC (the "DIP Lender") attached to this Interim Order as **Exhibit A** (the "DIP Term Sheet", and the loans advanced thereunder, the "DIP Loans") to, among other things, preserve and maximize the value of the Debtor's assets, absent which immediate and irreparable harm will result to the Debtor, its estate, and creditors. The preservation and maintenance of the Debtor's assets and business are necessary and appropriate to maximize values available for distribution to creditors. Absent the Debtor's ability to obtain the financing set forth in the DIP Term Sheet, the Debtor would not have sufficient available sources of working capital and would be unable to administer its estate, pay its operating expenses or maintain its assets, to the detriment of the

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

Debtor's estate and creditors. Accordingly, the relief requested in the Motion and the terms herein are (i) critical to the Debtor's ability to maximize the value of its estate, (ii) in the best interests of the Debtor and its estate, and (iii) necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtor and its assets.

F. Good Cause. Good cause has been shown for entry of this Interim Order, and the entry of this Interim Order is in the best interests of the Debtor and its estate and creditors. Among other things, the relief granted herein will permit the Debtor to preserve and maintain the value of its assets. The terms of the DIP Term Sheet are fair and reasonable under the circumstances, and reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties.

G. Good Faith. The DIP Term Sheet has been negotiated in good faith and at arms' length between the Debtor and the DIP Lender.

H. Notice. The Debtor has caused notice of the Motion, the relief requested therein, the entry of this Interim Order, and the Interim Hearing to be served by telephone and email on the following parties or their counsel: (a) the Office of the United States Trustee for the Central District of California; (b) counsel for the Petitioning Creditors; (c) the County of Los Angeles; and (d) the Debtor's pre-petition secured creditor; and has further served notice the Motion via email on (e) all parties having entered an appearance in this case; and has further served notice of this Motion on (f) the Debtor's twenty largest unsecured creditors via email; and has further served notice of this Motion via state court filings intended to provide notice to (g) all parties with liens of record on assets of the Debtor. Under the circumstances, the notice given by the Debtor of the Motion, the relief requested therein, and of the Interim Hearing is sufficient and complies with Bankruptcy Rules 2002, 4001(b), (c) and (d).

BASED UPON THE FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Motion Granted. The Motion is **GRANTED** to the extent provided herein on an interim basis. Any objection to the interim relief requested in the Motion to the extent not withdrawn or resolved is hereby overruled on the merits.

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120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

2. Authorization to Obtain Postpetition Financing. Subject to the terms and conditions of this Interim Order, the Court hereby authorizes the Debtor to obtain post-petition financing on the terms described in the DIP Term Sheet for the disbursements set forth in the budget attached to this Interim Order as **Exhibit B** (subject to permitted variances), which attached budget has been approved by the DIP Lender (as such budget may be modified, replaced, or supplemented from time to time by the Debtor with the consent of the DIP Lender in its sole discretion, the "Approved Budget"); provided that at the times required under the DIP Term Sheet or other DIP Loan Documents or upon the request of the DIP Lender, the Debtor shall provide an updated budget to the DIP Lender, and upon approval by the DIP Lender, such updated budget shall replace any prior Approved Budget and be deemed the Approved Budget for purposes of this Interim Order and the DIP Term Sheet.

3. Authorization of the DIP Term Sheet. The DIP Term Sheet is hereby approved. The Debtor is expressly and immediately authorized and empowered, on an interim basis and subject to a Final Order, to execute and deliver the DIP Term Sheet, and to incur and to perform the obligations thereunder in accordance with its terms, the Approved Budget, and this Interim Order, and to execute, deliver and perform under all agreements and other documents which may be required or necessary for the performance by the Debtor under the DIP Term Sheet (collectively with the DIP Term Sheet, the "DIP Loan Documents"). Upon entry of this Interim Order, the DIP Term Sheet and the other DIP Loan Documents shall constitute legal, valid, binding and non-avoidable obligations of the Debtor, enforceable in accordance with the terms of this Interim Order and the DIP Term Sheet against the Debtor. No obligation, payment, transfer, or grant of security hereunder or under the DIP Term Sheet or the other DIP Loan Documents to the DIP Lender shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under applicable law (including, without limitation, under Bankruptcy Code sections 502(d), 544, and 547 to 550 or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim,

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

cross-claim, or challenge, whether under the Bankruptcy Code or any other applicable law or regulation by any person or entity for any reason.

4. Authorization to Borrow and Make Payments Under the DIP Term Sheet. Subject to the entry of a Final Order, and subject further to the terms and conditions of the DIP Term Sheet, the Debtor is hereby authorized to request an extension of credit (in the form of DIP Loans) pursuant to the DIP Term Sheet, and make all payments and transfers of the Debtor's property as provided, permitted or required under the DIP Term Sheet and this Interim Order, including, without limitation, payment of all principal, interest, fees, and indemnities when due, under the DIP Term Sheet, and pay or reimburse the DIP Lender for all present and future costs and expenses, including, without limitation, all reasonable and documented professional fees, consultant fees, and legal fees and expenses paid or incurred by the DIP Lender in connection with the financing transactions as provided in the DIP Term Sheet and this Interim Order regardless of whether such amounts are in the Approved Budget.

5. DIP Liens; DIP Collateral. In order to secure its obligations under the DIP Term Sheet and the other DIP Loan Documents, effective immediately and subject to entry of a Final Order, pursuant to section 361, 362, 363 and 364(c)(2), (3) and (d) of the Bankruptcy Code, the DIP Lender is hereby granted continuing, valid, binding, enforceable, non-avoidable and automatically and properly perfected first priority priming postpetition security interests in and liens (the "***DIP Liens***") in and upon the DIP Collateral, as follows:

(a) pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, non-avoidable, automatically and properly perfected first priority liens on and security interests in all DIP Collateral that is not otherwise subject to any liens or security interests; and

(b) pursuant to Section 364(d)(1) of the Bankruptcy Code, valid, binding, continuing, enforceable, non-avoidable, automatically and properly perfected first priority "priming" liens on and security interests in all DIP Collateral that is subject to any liens or security interests, including but not limited to any and all County of Los Angeles property taxes. As used in this Interim Order, "DIP Collateral" means all property and rights and interests in property of the Debtor

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

and its estate of any kind or nature whatsoever in existence as of the Petition Date as well as thereafter created or acquired, and wherever located, including, without limitation: (a) the real property and improvements located at 1101 S. Flower Street, Los Angeles, CA 90015 (the "***Property***") all other real property and leaseholds; (b) all accounts and accounts receivable, inventory, chattel paper, equipment, fixtures, machinery, commercial tort claims, deposit accounts, instruments, documents, cash and cash equivalents, investment property (including, without limitation, all equity interests in subsidiaries), books and records, patents, trademarks, trade names, copyrights, rights under license agreements and all other intellectual property, rights, rebates, refunds and other claims under and with respect to insurance policies, tax refunds, deposits, rebates, contract rights and other general intangibles, software, letter of credit rights, money, and inter-company claims or receivables (whether or not evidenced by notes) at any time owing to the Debtor; (c) if not otherwise described above, all of the property or rights in property identified as "Collateral" in the DIP Term Sheet; (d) subject to entry of a Final Order, all proceeds of, and any property received through or as a result of, any claim or cause of action under chapter 5 of the Bankruptcy Code and section 724(a) of the Bankruptcy Code (collectively "Avoidance Actions") (but, for the avoidance of doubt, not the Avoidance Actions themselves); (e) all other tangible and intangible property of the Debtor and its estate of every kind and nature; and (f) as to all of the foregoing, all rents, issues, products, proceeds (including insurance policies), and profits of, from, or generated by any of the foregoing, in whatever form. The DIP Liens are granted to the DIP Lender to secure all existing and future obligations and liabilities of every kind or nature (including, without limitation, principal of, and accrued interest on, amounts advanced to the Debtor under the DIP Term Sheet and the other Loan Documents and all other fees, indemnity obligations, reimbursement obligations, and other obligations owing by the Debtor or its estate under or in connection with the DIP Term Sheet and the other DIP Loan Documents, whether due or to become due, absolute or contingent (the "DIP Obligations").

6. Automatic Effectiveness of DIP Liens. The DIP Liens shall become valid, perfected, binding, enforceable, non-avoidable and effective liens by operation of law as of the Petition Date without any further action by the Debtor or the DIP Lender and without the necessity of executing,

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120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

filing or recording any financing statements, security agreements, mortgages, filings with a governmental unit, or other documents, agreements, or instruments or the taking of any other actions (including, for the avoidance of doubt, taking possession of any collateral) to validate or perfect (in accordance with applicable law) the DIP Liens or to entitle the DIP Lender to the priorities granted herein. If the DIP Lender hereafter requests that the Debtor execute and deliver any financing statements, security agreements, mortgages, filings with a governmental unit, or other documents, agreements, or instruments considered by the DIP Lender to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens, the Debtor is hereby authorized to execute and deliver any such documents, agreements, and instruments to the DIP Lender, and the DIP Lender is hereby authorized to file or record any such documents, agreements or instruments in its discretion without seeking modification of the automatic stay under Section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens. The DIP Lender, in its sole discretion, may file a copy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office in addition to, or in lieu of, such financing statements, mortgages, notices of liens or similar documents, agreements, or instruments, and any such filing, recording, or similar office is directed to accept such filing as a financing statement.

7. DIP Lien Priority. Subject to the Carve Out, pursuant to section 364(c)(2) and 364(d) of the Bankruptcy Code, the DIP Liens are valid, enforceable, non-avoidable, and fully perfected first priority priming security interests in and first priority priming liens upon all the Debtor's right, title, and interest in, to, and under the DIP Collateral, in each case, senior to any and all other security interests in and liens upon on the DIP Collateral, whether now in existence or hereafter incurred and whether arising before or after the Petition Date.

8. DIP Superpriority Claims. Subject to the Carve Out, the DIP Lender is hereby granted, pursuant to section 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code, allowed superpriority administrative expenses claims for the DIP Obligations, having priority in right of payment over any and all other obligations, liabilities, and indebtedness of any of the Debtor,

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

whether now in existence or hereafter incurred by the Debtor, of every kind or nature, including any and all unsecured claims, administrative expenses, adequate protection claims, priority claims or any other claims of the kind specified in, or ordered pursuant to, the Bankruptcy Code, including, without limitation, *inter alia*, sections 105, 326, 328, 330, 331, 503(b), 507, 364(c)(1), 546(c), 726, or 1114 of the Bankruptcy Code and, upon entry of the Final Order, section 506(c) of the Bankruptcy Code ("DIP Superpriority Claims").

9. Modification of Automatic Stay. The automatic stay under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) enter into, execute, deliver, perform, and comply with all of the terms, conditions, and covenants of the DIP Term Sheet and execute the DIP Loan Documents and all other documents or agreements required for the Debtor's performance of its obligations under the DIP Term Sheet and the creation and perfection of liens granted or contemplated thereby; and (b) pay all obligations incurred by the Debtor under the DIP Term Sheet and the other DIP Loan Documents (whether principal, interest, fees, costs, expenses, indemnities, or other amounts described in) as such amounts become earned, due, and payable and without need to obtain further Court approval.

10. Carve Out. As used in this Interim Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee, (ii) reasonable professional fees and expenses incurred by the Borrower for services rendered and expenses incurred prior to the DIP Lender's delivery of a Default Notice (for which the noticed Event of Default is not subsequently cured in accordance with this Interim Order) and to the extent expressly set forth in the Approved Budget, subject to further order of the Bankruptcy Court approving such professional fees, and (iii) reasonable professional fees and expenses incurred by the Borrower for services rendered and expenses incurred after the DIP Lender's delivery of a Default Notice (for which the noticed Event of Default is not subsequently cured in accordance with this Interim Order) in an amount not to exceed the aggregate amount of the professional fees set forth in the Approved Budget, including those set forth in clauses (i), (ii) and (iii) above.

11. Default; Rights and Remedies.

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

(a) *Events of Default*. The following shall constitute an "Event of Default" under this Interim Order unless waived by the DIP Lender or, with respect to any dates, deadlines or other milestones, extended (any such waivers or extensions may be granted via email by the DIP Lender's counsel):

(1) the occurrence of an "Event of Default" identified in the DIP Term Sheet that is not cured during any applicable cure period, including any failure to maintain the lien and claim status referenced in Section 13(a), (b), and (c) of the Term Sheet;

(2) the failure by the Debtor to obtain entry of the Final Order within sixty (60) days after the date of the DIP Term Sheet;

(3) the filing by the Debtor of any pleading seeking to vacate or modify this Interim Order over the objection of the DIP Lender;

(4) the failure by the Debtor to make any required payments or comply with any deadline set forth in this Interim Order;

(5) the filing by the Debtor of (or supporting any other party in the filing of) any pleading seeking entry of a Court order granting any superpriority claim or lien that is senior to or *pari passu* with those granted to the DIP Lender hereunder;

(6) the granting of any superpriority claim or lien that is senior to or *pari passu* with those granted to the DIP Lender hereunder;

(7) the use or application of proceeds in a manner not provided for in the Approved Budget (subject to permitted variances);

(8) the entry of a Court order appointing a chapter 11 trustee or examiner in the Chapter 11 Case with expanded powers;

(9) the entry of an order dismissing the Chapter 11 Case or converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code;

(10) the sale of any DIP Collateral without the approval of the Court; and

(11) any breach by the Debtor of the terms of the DIP Term Sheet.

(b) *Rights and Remedies*.

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120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

(1) Upon the occurrence of an Event of Default, and without the necessity of seeking relief from the automatic stay or any further order of the Court, the DIP Lender shall provide the Debtor and its counsel with notice of such Event of Default (a "Default Notice"), and the Debtor shall have three (3) business days after receipt of such Default Notice in which to cure such Event of Default (the "Cure Period"). During the Cure Period, the Debtor and any party-in-interest may seek a hearing before the Court (a "Remedies Hearing"), on an emergency basis or otherwise and in any event subject to the Court's availability, to determine whether an Event of Default has occurred and not been waived or such other matters as the Court determines to hear. If the Debtor fails to cure the Event of Default within the Cure Period and the Court has not entered an order finding that an Event of Default has not occurred, then, without the necessity of seeking relief from the automatic stay or any further order of the Court (but subject and subordinate in all respects to the Carve Out set forth in this Interim Order):

(i) the DIP Lender shall no longer have any obligation to make any DIP Loans (or otherwise extend credit) under the DIP Term Sheet,

(ii) all amounts outstanding under the DIP Term Sheet shall, at the option of the DIP Lender, shall be accelerated and become immediately due and payable,

(iii) the DIP Lender shall be entitled to charge the default rate of interest under the DIP Term Sheet,

(iv) the Debtor shall be bound by all post-default restrictions, prohibitions, and other terms as provided in this Interim Order and the DIP Term Sheet, and

(v) the DIP Lender shall be entitled to take any other action or exercise any other right or remedy as provided in this Interim Order, the DIP Term Sheet or the other DIP Loan Documents, or applicable law, as it may deem appropriate in its sole discretion to, among other things, proceed against and realize upon the DIP Collateral or any other assets or properties of the Debtor's estate which the DIP Lender has been or may hereafter be granted liens or security interests, in order to obtain the full and indefeasible payment of the DIP Obligations.

(2) The rights and remedies of the DIP Lender specified herein are cumulative and not exclusive of any rights or remedies that the DIP Lender may have under the

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120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

DIP Term Sheet or otherwise and may be exercised in whole or in part in any order. With respect to the exercise of such rights and remedies, the fourteen-day stay provisions of Bankruptcy Rules 6004(h) and 4001(a)(3) are hereby waived.

12. Section 506(c) Waiver. Subject to entry of the Final Order, the Debtor and its estate waive any claim under section 506(c) of the Bankruptcy Code for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization upon the DIP Collateral.

13. No Marshalling/Application of Proceeds. In no event shall the DIP Lender be subject to the equitable doctrine of "marshalling" or any other similar doctrine with respect to any of the DIP Collateral or any proceeds thereof.

14. Good Faith. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, pursuant to sections 105, 361, 363, and 364 of the Bankruptcy Code, the Debtor and the DIP Lender are hereby found to be entities that have acted in "good faith" in connection with the negotiation of the DIP Term Sheet and the entry of this Interim Order and are entitled to the protections afforded by section 363(m) of the Bankruptcy Code.

15. No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

16. No Liability to Third Parties. In exercising any rights or remedies as and when permitted pursuant to this Interim Order, the DIP Lender shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq*. as amended, or any similar federal or state statute), nor shall it owe any fiduciary duty to the Debtor, its creditors or estate, or shall constitute or be deemed to constitute a joint venture or partnership with the Debtor. Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose upon the DIP Lender any liability for any claims arising

from the prepetition or postpetition activities of the Debtor (as defined in section 101(2) of the Bankruptcy Code).

17. Binding Effect of Interim Order. The provisions of this Interim Order shall be binding upon all parties in interest in the Chapter 11 Case, including the DIP Lender, any statutory committees that may be appointed in the Chapter 11 Case, and the Debtor and their respective successors and assigns and shall inure to the benefit of the DIP Lender, the Debtor and their respective successors and assigns. This Interim Order shall bind any trustee hereafter appointed or elected for the Debtor's estate whether in the Chapter 11 Case or in the event of the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code. Any payments to be made by the Debtor under any order (including any "First Day" order) shall be made in accordance with this Interim Order and the Approved Budget.

18. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive the entry of any order: (i) confirming any chapter 11 plan, (ii) converting the Chapter 11 Case to a chapter 7 case, or (iii) dismissing the Chapter 11 Case. The terms and provisions of this Interim Order, including the adequate protection granted pursuant to this Interim Order, shall continue in full force and effect notwithstanding the entry of any of the foregoing orders, and such claims and liens shall maintain their priority as provided by this Interim Order until all of the DIP Obligations are indefeasibly paid and satisfied in full in cash.

19. Findings of Fact and Conclusions of Law. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon the entry thereof. To the extent that any findings of fact are determined to be conclusions of law, such findings of fact shall be adopted as such; and to the extent that any conclusions of law are determined to be findings of fact, such conclusions of law shall be adopted as such.

20. Order Effective upon Entry. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

21. Retention of Jurisdiction. The Court has and will retain jurisdiction and power to enforce this Interim Order in accordance with its terms and to adjudicate any and all matters arising from or related to the interpretation or implementation this Interim Order.

22. Final Hearing. A hearing on the Debtor's request for a Final Order approving the Motion is scheduled for [●], 2024, at _____ a.m. (prevailing Pacific time) before the Court. Within three (3) business days after entry of this Interim Order, the Debtor shall serve, or cause to be served, by first class mail or other appropriate method of service, a copy of the Motion (to the extent the Motion was not previously served on a party) and this Interim Order on (i) the Notice Parties (as defined herein), (ii) counsel for the Petitioning Creditors; (iii) the County of Los Angeles; and (iv) the Debtor's pre-petition secured creditor; (v) all parties having entered an appearance in this case; (vi) the Debtor's twenty largest unsecured creditors via email; (vii) all parties with liens of record on assets of the Debtor. Any responses or objections to the Motion shall be made in writing, conform to the applicable Bankruptcy Rules and Local Rules, be filed with the Court, set forth the name of the objecting party, the basis for the objection, and the specific grounds therefor, and be served by no later than [●], 2024, at 4:00 p.m. (prevailing Eastern time) by the following parties (the "Notice Parties"): (x) counsel for the Debtor, Bryan Cave Leighton Paisner LLP, 120 Broadway, #300, Santa Monica, California 90401 (Attn: Sharon Weiss) (email: sharon.weiss@bclplaw.com); (y) counsel for the DIP Lender, Sklar Kirsh, 1880 Century Park East, Suite 300, Los Angeles, California 90067 (Attn: Robbin Itkin) (email: ritkin@sklarkirsh.com); and (z) the Office of the United States Trustee, 915 Wilshire Blvd., Suite 1850, Los Angeles, California 90017 (Attn: Noreen A. Madoyan) (email: Noreen.Madoyan@usdoj.gov). The Final Hearing may be continued from time to time without further notice other than given in open Court.

###

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

EXHIBIT A

EXHIBIT A

DEBTOR IN POSSESSION FINANCING TERM SHEET

This Term Sheet, together with the transactions contemplated in this Term Sheet, sets forth the binding terms and conditions of the Debtor In Possession Financing (the "**Loan**") to be provided by B.H. Capital Ventures, LLC ("**DIP Lender**") to the Borrower (defined below) secured by, among other things described herein as Collateral, **1101 S. Flower Street, Los Angeles, CA 90015** ("**Property**").

1.	**Borrower:**	Oceanwide Plaza, LLC ("**Borrower**" or "**Debtor**") and its bankruptcy estate ("**Estate**") including, but not limited to, real property and improvements located at the property located at 1101 S. Flower Street, Los Angeles, CA 90015 (the "**Property**"), in the chapter 11 bankruptcy case entitled *In re Oceanwide Plaza LLC,* Case Number 2:24-bk-11057 (the "**Case**"), pending in the United States Bankruptcy Court for the Central District of California ("**the Court**").
2.	**Loan Amount:**	*Ten Million Dollars ($10,000,000)* in total, to be paid at once or in tranches as mutually agreed by Borrower and DIP Lender and approved by the Court (the "**Commitment**"). The Loan shall be evidenced by definitive documents incorporating the terms set forth in this Term Sheet, including, but not limited to, a loan agreement, promissory note, deed of trust, security agreement, UCC-1 financing statement and assignment of rents ("**Loan Documents**") that shall be approved by DIP Lender in its sole discretion and shall be approved by the Court in an interim order approving this Term Sheet (the "**Interim Order**") and a final order approving this Term Sheet (the "**Final Order**") (together, the "**DIP Orders**").
3.	**Loan Maturity Date:**	All amounts owed are due and payable to DIP Lender (the "**Maturity Date**") on the earlier of (i) the acceleration of the Loan following the occurrence of an Event of Default; (ii) sale of the Collateral; and (ii) twelve (12) Months from the Closing Date (defined below). Any sale of the Property shall utilize a standard escrow and DIP Lender shall be paid in full through an escrow with all escrow fees to be paid by Borrower as a condition to any reconveyance or release of DIP Lender's deed of trust, security interests or liens. The term "**Event of Default**" shall mean events of default (following the Cure Period (as defined below)) customary for debtor in possession financing transactions, including (a) the failure by the Debtor to obtain Court approval of the Final Order within sixty (60) days of the date hereof; (b) the filing

		by the Debtor of any pleading seeking to vacate or modify any DIP Order over the objection of the DIP Lender; (c) the failure by the Debtor to make any required payments or comply with any deadline set forth in any DIP Order; (d) any failure to maintain the lien and claim status referenced in Section 13(a), (b), and (c); (e) the filing by the Debtor of (or supporting any other party in the filing of) any pleading seeking entry of a Court order granting any superpriority claim or lien that is senior to or *pari passu* with those granted to the DIP Lender under the DIP Orders; (f) the granting of any superpriority claim or lien senior or *pari passu* with those granted to the DIP Lender under the DIP Orders; (g) the use or application of DIP Loan proceeds in a manner not provided for in the Approved Budget, subject to the permitted variance; (h) the entry of a Court order appointing a chapter 11 trustee or examiner in the Chapter 11 Case with expanded powers; (i) the entry of an order dismissing the Chapter 11 Case or converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code; (j) the sale of any DIP Collateral without the approval of the Court; and (k) any breach by Debtor of the terms of this Term Sheet.
4.	**Extension Option:**	Borrower shall have the one-time right to extend the Maturity Date by six (6) months upon providing written notice to DIP Lender at least ten (10) days prior to the Maturity Date, subject to (i) no Events of Default continuing, and (ii) payment of an extension fee equal to one percent (1.0%) of the outstanding principal balance of the Loan ("**Extension Fee**"), which Extension Fee shall be deferred and paid in full on the extended Maturity Date.
5.	**Closing Date:**	The date of initial funding of the Loan date is the "**Closing Date**".
6.	**Use of Proceeds:**	Loan proceeds shall be used only for the expenses identified on the budget attached as <u>Exhibit A</u> that DIP Lender has approved (or any change to the attached budget that DIP Lender may approve in its sole discretion, subject to approval of such budget by the Court) (the "**Approved Budget**"). Without DIP Lender's consent, Borrower shall be permitted to reallocate amounts between line items in an amount not to exceed 10% with respect to any particular line item, so long as an aggregate cap of 10% is not exceeded.

EXECUTION VERSION

7.	**Right of First Refusal:**	DIP Lender shall have the right of first refusal for all refinancings of the Property so long as the Loan is outstanding (the "**ROFR Right**").
8.	**Interest Rate/Minimum Interest:**	Interest on the Loan shall accrue at Prime (with a floor of 8.50%) plus 3.50bps per annum (provided the maximum interest rate shall not exceed fourteen percent (14%) per annum) starting on the Closing Date, which interest shall be deferred and paid in full on the Maturity Date. There shall be a minimum of $600,000 in interest paid on the Loan (including interest at both the standard rate and at the Default Rate).
9.	**Default Rate:**	18% per annum from and after any Event of Default.
10.	**Fees:**	Borrower shall pay to DIP Lender all fees and expenses of DIP Lender related to the Loan or the Property, including but not limited to reasonable attorneys' fees, title insurance fees, recording and reconveyance fees, and any applicable court costs. All such fees shall be deemed fully earned when due and shall be non-refundable. Any and all such fees and expenses of DIP Lender incurred prior to the Closing Date shall be paid from the initial funding of the Loan on the Closing Date. Any and all such fees and expenses of DIP Lender incurred after the Closing Date shall be paid in accordance with a schedule mutually agreeable to DIP Lender and Borrower. Upon repayment of the loan, Borrower shall pay a fee equal to 2.0% of the Commitment (the "**Commitment Fee**"). For clarification purposes, the interest, the Commitment Fee, and (if applicable) the Extension Fee shall not be paid out of the DIP Lender's funding.
11.	**Voluntary Prepayments:**	Voluntary prepayments of $2,000,000 or multiples thereof. Prepayments shall not be re-advanced.
12.	**Mandatory Prepayments:**	Any sale of the Property shall occur through an escrow in which DIP Lender shall reconvey or release its deed of trust, mortgage, liens or security interests only upon DIP Lender being paid in full. DIP Lender agrees to provide a payoff demand promptly upon written request from Borrower. In addition, subject to paragraph 13 below, not later than five (5) business days after receipt thereof, Borrower shall pay to DIP Lender to apply to the Loan balance, any cash proceeds from the sale or other disposition of any other property of the Debtor or its Estate, including but not limited

		to any recovery by the Debtor or its Estate (net of reasonable and customary fees and expenses relating thereto) in respect of any proceeding, case, matter, asset disposition, casualty event, condemnation, debt issuance recovery or equity issuance by Borrower or any direct or indirect subsidiary of Borrower, or the Estate.
13.	**Priority and Liens:**	All amounts owed to DIP Lender by the Borrower and the Estate under the Loan ("**Obligations**") shall at all times be (a) a super-priority administrative expense claim with priority over all other administrative expense claims and other claims against the Borrower and the Estate pursuant to sections 105, 363, 364, 503 and 507 of the Bankruptcy Code, and (b) secured by a first priority senior lien against all unencumbered property of the Borrower and the Estate granted pursuant to sections 105, and 364(c)(2) of the Bankruptcy Code, and (c) secured by a first priority "priming lien" against all property of the Borrower and the Estate that may be subject to a lien or encumbrance under sections 105 and 364(d)(1) of the Bankruptcy Code, including but not limited to any and all County of Los Angeles property taxes, except (1) fees payable to the Clerk of the Bankruptcy Court or the Office of the United States Trustee, and (2) reasonable professional fees and expenses incurred by the Borrower for services rendered and expenses incurred prior to the DIP Lender's delivery of a Default Notice (for which the noticed Event of Default is not subsequently cured in accordance with paragraph 18 below) and to the extent in amount expressly set forth in the Approved Budget, subject to further order of the Bankruptcy Court approving such professional fees, and (3) reasonable professional fees and expenses incurred by Borrower for services rendered and expenses incurred after the DIP Lender's delivery of a Default Notice (for which the noticed Event of Default is not subsequently cured in accordance with paragraph 18 below) in an amount not to exceed the aggregate amount of the professional fees set forth in the Approved Budget, including those set forth in clause (2) above ((1) through (3) above being the "**Carve Out**"), provided that the liens securing the Loan with respect to the Carve Out shall not be subject to surcharge, either pursuant to Bankruptcy Code section 506(c) or otherwise. The Carve Out shall be senior to all liens and claims securing the Loan, and the superpriority claims, and any and all other liens or claims securing the Loan; provided that Borrower agrees that (i) the Carve Out shall not reduce or affect the full amount that is due and

owing to DIP Lender under the Loan, and (ii) nothing herein shall be construed to require DIP Lender, in the event that Borrower's assets are insufficient to pay any portion of the Carve Out, to infuse any money in excess of any unfunded amount of the Approved Budget as approved by the Final Order to pay any portion of the Carve Out. Under no circumstances shall professional fees subject to the Carve Out be utilized to fund adverse actions, oppositions or litigation against DIP Lender. Further, the Carve Out applies to the maximum $2 million in professional fees set forth in the Approved Budget, and nothing more.

Borrower may obtain payment of the Carve Out as a borrowing under the Loan and shall deposit the full amount of the Carve Out into a segregated account, which amount and account shall remain subject to all rights and obligations accorded to the Carve Out in this paragraph.

All claims and liens of DIP Lender, and the priorities thereof, described herein, in the Loan Documents and in the DIP Orders shall be allowed, valid, enforceable, and perfected without the requirement of filing any deed of trust, mortgage, financing statement or any other instrument or document. With respect to any of the Collateral that is encumbered by valid and enforceable pre-petition liens, DIP Lender's post-petition liens against the Collateral will be granted pursuant to section 364(d)(1) of the Bankruptcy Code and shall constitute first priority liens in and to such Collateral and shall be senior to and prime any pre-petition liens. No other person or entity shall receive or be granted any liens of any type or nature, whether senior to, on parity with, or junior to DIP Lender's post-petition liens, on any of the Collateral, except as permitted by DIP Lender in its sole discretion. Relief pursuant to section 364(d)(1) of the Bankruptcy Code is a condition precedent to funding the Commitment. Subject to entry of the Final Order, any rights to surcharge the DIP Lender or the Collateral under section 506 of the Bankruptcy Code or any other law are waived and released.

Except for County taxes that are not yet due and payable, any lien, security interest and any related claim on any Collateral shall be expressly subordinated and junior in priority to the claims and liens of DIP Lender pursuant to a written subordination agreement approved by DIP Lender in its sole discretion.

14.	**Collateral:**	Subject to the terms herein, in the Loan Documents and in the DIP Orders, all the real and personal property of the Borrower and the Estate of any description whatsoever, tangible or intangible, wherever located and whenever arising or acquired, including, without limitation, the Property, and any and all refunds, rents, issues, profits, proceeds, substitutions, or exchanges of the foregoing, including insurance and condemnation proceeds, and all other property of any kind, real or personal, tangible or intangible, including, but not limited to, any and all rights and claims arising under state law, or arising under, in or related to the Bankruptcy Code or rules, or otherwise ("**Collateral**"); provided, however, subject to entry of the Final Order, the Collateral shall include proceeds of claims and causes of action under Chapter 5 and Section 724(a) of the Bankruptcy Code (but not such claims or causes of action themselves).
15.	**Conditions, Representations and Warranties:**	Standard loan conditions, representations, and warranties for a debtor in possession loan, in DIP Lender's sole discretion, all subject to Court approval.
16.	**Covenants**	Standard affirmative and negative covenants for a debtor in possession loan, in DIP Lender's sole discretion, including but not limited to, reports to DIP Lender, and prohibiting Borrower's incurrence of debt or obtaining credit without Court approval.
17.	**Expenses:**	Subject to the terms herein, Borrower shall be responsible for all fees, costs and expenses of DIP Lender including all reasonable fees and expenses of DIP Lender's counsel and professional advisors and shall reimburse such amounts in accordance with paragraph 10 above. All such expenses constitute Obligations.
18.	**Defaults, Remedies and Indemnities**	Upon the occurrence of an Event of Default, and without the necessity of seeking relief from the automatic stay or any further order of the Court, DIP Lender shall provide the Debtor and its counsel with notice of such Event of Default (the "**Default Notice**"), and the Debtor shall have three (3) business days following receipt of the Default Notice in which to cure such Event of Default (the "**Cure Period**"). During the Cure Period, the Debtor and any party-in-interest may seek a hearing before the Court (a "**Remedies Hearing**"), on an emergency basis or otherwise and in any event subject to the Court's availability, to determine

	whether an Event of Default has occurred and not been waived or such other matters as the Court determines to hear. If the Debtor fails to cure the Event of Default within the Cure Period and the Court has not entered an order finding that an Event of Default has not occurred, then the DIP Lender shall be entitled to exercise any right or remedy as provided in the Interim Order, the DIP Term Sheet, or applicable law, without the necessity of seeking relief from the automatic stay or any further order of the Court (but subject and subordinate in all respects to the Carve Out) . Other standard defaults, events of defaults, and remedies for a debtor in possession loan.
19. Interest Rate Limitation:	Any applicable usury laws.
20. General:	Standard general loan and debtor in possession financing provisions on severability, California law, etc., in DIP Lender's sole discretion.
21. Overbids	In the event that the Court approves this Term Sheet (including payment of the Break-Up Fee) and authorizes the Debtor to enter into this Term Sheet and the Debtor thereafter consummates alternative DIP financing with a different lender prior to DIP Lender funding any amounts under this Term Sheet, the Debtor shall immediately pay the DIP Lender a break-up fee equal to DIP Lender's out of pocket costs related to the proposed Loan, plus three percent (3%) of the amount to be made available to the Borrower in connection with the alternative DIP financing (the "**Break-Up Fee**"). The Break-Up Fee shall be an allowed and immediately payable administrative expense of the Debtor and its Estate for providing significant value and benefit to the Debtor, its Estate and creditors, and as an actual and necessary cost and expense of preserving the Estate. The DIP Lender relied on the agreement of the Debtor's officers and professionals to pay the Break-Up Fee in making the Loan available to the Borrower and its Estate. DIP Lender shall be deemed a qualified overbidder should DIP Lender bid on any sale or other disposition of the Property or any alternative DIP financing facility subject to overbids.
22. Funding on Term Sheet.	Should Debtor request, and DIP Lender in its sole discretion agree, to fund any of the Commitment prior to Court approval of signed definitive documentation contemplated

herein, such funding is conditioned upon: (i) a DIP Order approving the terms hereof including findings of fact and conclusions of law acceptable to DIP Lender and setting forth the Borrower's covenants, events of default and DIP Lender's rights and remedies with respect thereto acceptable to DIP Lender; (ii) the recording of a Deed of Trust, UCC-1, and other security documents requested, and in form and content approved, by DIP Lender; and (iii) proof of insurance on the Property which coverage is acceptable to DIP Lender. Definitive documentation shall be completed, signed and approved by the Court by a date mutually agreed to by Debtor and DIP Lender, or it shall be deemed an Event of Default hereunder requiring repayment in full, with all fees included as described herein, within 30 days. If such repayment is not timely made, then DIP Lender shall have the rights and remedies for an Event of Default as set forth in the DIP Order required in this paragraph 22.

23. Binding Nature. To the maximum extent permitted by applicable law, this Term Sheet, once fully-executed and delivered by both DIP Lender and Borrower, shall constitute a legally binding and enforceable agreement between DIP Lender and Borrower with regard to the matters set forth herein, subject to termination by Lender or Borrower if the Interim Order is not entered by March 19, 2024.

[Signatures continued on next page.]

EXECUTION VERSION

IN WITNESS WHEREOF, the parties hereto have duly executed this Term Sheet as of this 12th day of March, 2024.

DIP LENDER

B.H. Capital Ventures, LLC

JXT

AK
By: Arsalan Gozini
Its: President

BORROWER

Oceanwide Plaza LLC

By:
Its:

Exhibit A

Approved Budget

[See attached]

Oceanwide Plaza LLC
13 Week DIP Budget

(All amounts in dollars)	3/4 - 3/10	3/11 - 3/17	3/18 - 3/24	3/25 - 3/31	4/1 - 4/7
Payroll and Supplies					
Payroll and Payroll Benefits	62,922	49,741	824	51,434	830
Office Supplies & Licenses	536	439	23	23	143
Bank Fees	100	-	-	600	-
Total Payroll and Supplies	**63,558**	**50,180**	**847**	**52,057**	**973**
Insurance					
Liability Insurance (5)		30,330		70,000	
Building Insurance (6)					150,000
Directors and Officers/Employee Liability (7)				300,000	
Total Insurance	**-**	**30,330**	**-**	**370,000**	**150,000**
Taxes					
Franchise Tax, California	3,200	2,700	-	-	-
Franchise Tax, Delaware	9,336	3,200			
Business Personal Property Tax		3,000			
Past Due Property Tax (8)					
Real Property Tax (9)			-	-	-
Total Taxes	**12,536**	**8,900**	**-**	**-**	**-**
State and City Licenses					
Agent for Service of Process, California(2)	200	-	-	-	-
Agent for Service of Process, Delaware(2)	700	-	-	-	-
Total State and City Licenses	**900**	**-**	**-**	**-**	**-**
Project Operations					
Site Security (3)	70,166	29,752	29,752	29,752	30,744
Portable Toilet	972	-	-	324	-
Site Cleaning/Trash/Bathrooms/Water Removal	-	-	-	11,000	-
Utility	10,474	-	-	11,094	-
Fence Maintenance	-	-	-	1,500	-
Hoists (Repair and Maintenance)	424,505	-	-	78,505	-
Scaffold Rental	12,125	-	-	8,000	-
Trench Plate Rental	9,577	-	-	9,577	-
Street Use Permit	13,677	-	-	2,877	-
Graffiti Abatement	-	-	-	341,400	-
Barricade Ground Floor Entrances (Stairs & Ramps)	-	-	-	160,000	-
Fire Extinguishers Purchase	25,000				
LAPD Fees	16,000				
Storm Water Pollution Prevention Plan Annual Fee	750				
Total Project Operations	**583,246**	**29,752**	**29,752**	**654,029**	**30,744**
Professional Fees					
Chief Restructuring Officer	-	50,000	-	-	50,000
Financial Advisor	-	75,000	-	-	50,000
Legal Services - Bankruptcy	-	350,000	-	-	350,000
Legal Services - Construction Litigation	5,500	50,000	-	-	50,000
Legal Services - Employment	-	2,000	-	-	1,000
Legal Services - Land Use	-	-	-	-	20,000
Legal Services - Other	-	50,300	1,000	-	50,000
Payroll Tax Service	-	-	-	1,500	-
Real Estate Broker	-	-	-	-	50,000
Tax Consultant		50,000			
Total Professional Fees	**5,500**	**627,300**	**1,000**	**1,500**	**621,000**
Others					
Contingency	192,308	192,308	192,308	192,308	192,308
Loan Fees (4)					
Interest Reserve (4)					
Total Others	**192,308**	**192,308**	**192,308**	**192,308**	**192,308**
Total	**858,048**	**938,770**	**223,907**	**1,269,893**	**995,025**

Oceanwide Plaza LLC

13 Week DIP Budget

	13 Week DIP Budget (1)					
(All amounts in dollars)	**4/8 - 4/14**	**4/15 - 4/21**	**4/22 - 4/28**	**4/29 - 5/5**	**5/6 - 5/12**	**5/13 - 5/19**
Payroll and Supplies						
Payroll and Payroll Benefits	-	49,741	824	51,450	500	50,565
Office Supplies & Licenses	23	406	623	23	143	406
Bank Fees	-	-	600	-	-	-
Total Payroll and Supplies	**23**	**50,147**	**2,047**	**51,473**	**643**	**50,971**
Insurance						
Liability Insurance (5)						
Building Insurance (6)						
Directors and Officers/Employee Liability (7)						
Total Insurance	**-**	**-**	**-**	**-**	**-**	**-**
Taxes						
Franchise Tax, California	-	-	-	-	-	-
Franchise Tax, Delaware						
Business Personal Property Tax						
Past Due Property Tax (8)						
Real Property Tax (9)		-	-	-	-	-
Total Taxes	**-**	**-**	**-**	**-**	**-**	**-**
State and City Licenses						
Agent for Service of Process, California(2)	-	-	-	-	-	-
Agent for Service of Process, Delaware(2)	-	-	-	-	-	-
Total State and City Licenses	**-**	**-**	**-**	**-**	**-**	**-**
Project Operations						
Site Security (3)	30,744	30,744	30,744	30,036	29,752	29,752
Portable Toilet	-	-	-	324	-	-
Site Cleaning/Trash/Bathrooms/Water Removal	-	-	-	11,000	-	-
Utility	-	-	-	11,094	-	-
Fence Maintenance	-	-	-	1,500	-	-
Hoists (Repair and Maintenance)	-	-	-	78,505	-	-
Scaffold Rental	-	-	-	8,000	-	-
Trench Plate Rental	-	-	-	9,577	-	-
Street Use Permit	-	-	-	13,677	-	-
Graffiti Abatement	-	-	-	2,500	-	-
Barricade Ground Floor Entrances (Stairs & Ramps)	-	-	-	-	-	-
Fire Extinguishers Purchase						
LAPD Fees						
Storm Water Pollution Prevention Plan Annual Fee						
Total Project Operations	**30,744**	**30,744**	**30,744**	**166,212**	**29,752**	**29,752**
Professional Fees						
Chief Restructuring Officer	-	-	-	50,000	-	-
Financial Advisor	-	-	-	50,000	-	-
Legal Services - Bankruptcy	-	-	-	200,000	-	-
Legal Services - Construction Litigation	-	-	-	50,000	-	-
Legal Services - Employment	-	-	-	1,000	-	-
Legal Services - Land Use	-	-	-	20,000	-	-
Legal Services - Other	-	1,000	-	50,000	-	1,000
Payroll Tax Service	-	-	-	-	-	-
Real Estate Broker	-	-	-	-	-	-
Tax Consultant						
Total Professional Fees	**-**	**1,000**	**-**	**421,000**	**-**	**1,000**
Others						
Contingency	192,308	192,308	192,308	192,308	192,308	192,308
Loan Fees (4)						
Interest Reserve (4)						
Total Others	**192,308**	**192,308**	**192,308**	**192,308**	**192,308**	**192,308**
Total	**223,075**	**274,198**	**225,099**	**830,993**	**222,703**	**274,030**

Oceanwide Plaza LLC

13 Week DIP Budget

(All amounts in dollars)	5/20 - 5/26	5/27 - 6/2	13 Week Total
Payroll and Supplies			
Payroll and Payroll Benefits	-	49,510	368,340
Office Supplies & Licenses	23	23	2,832
Bank Fees	-	600	1,900
Total Payroll and Supplies	**23**	**50,133**	**373,072**
			-
Insurance			
Liability Insurance (5)			100,330
Building Insurance (6)			150,000
Directors and Officers/Employee Liability (7)			300,000
Total Insurance	**-**	**-**	**550,330**
			-
Taxes			
Franchise Tax, California	-	3,500	9,400
Franchise Tax, Delaware			12,536
Business Personal Property Tax			3,000
Past Due Property Tax (8)			-
Real Property Tax (9)	-	-	-
Total Taxes	**-**	**3,500**	**24,936**
			-
State and City Licenses			
Agent for Service of Process, California(2)	-	-	200
Agent for Service of Process, Delaware(2)	-	-	700
Total State and City Licenses	**-**	**-**	**900**
			-
Project Operations			
Site Security (3)	29,752	30,036	431,727
Portable Toilet	-	324	1,944
Site Cleaning/Trash/Bathrooms/Water Removal	-	11,000	33,000
Utility	-	11,094	43,756
Fence Maintenance	-	1,500	4,500
Hoists (Repair and Maintenance)	-	78,505	660,019
Scaffold Rental	-	8,000	36,125
Trench Plate Rental	-	9,577	38,308
Street Use Permit	-	2,877	33,108
Graffiti Abatement	-	-	343,900
Barricade Ground Floor Entrances (Stairs & Ramps)	-	-	160,000
Fire Extinguishers Purchase			25,000
LAPD Fees			16,000
Storm Water Pollution Prevention Plan Annual Fee			750
Total Project Operations	**29,752**	**152,912**	**1,828,137**
			-
Professional Fees			
Chief Restructuring Officer	-	50,000	200,000
Financial Advisor	-	50,000	225,000
Legal Services - Bankruptcy	-	200,000	1,100,000
Legal Services - Construction Litigation	-	50,000	205,500
Legal Services - Employment	-	1,000	5,000
Legal Services - Land Use	-	-	40,000
Legal Services - Other	-	-	153,300
Payroll Tax Service	-	-	1,500
Real Estate Broker	-	-	50,000
Tax Consultant			50,000
Total Professional Fees	**-**	**351,000**	**2,030,300**
Others			
Contingency	192,308	192,308	2,500,000
Loan Fees (4)			TBD
Interest Reserve (4)			TBD
Total Others	**192,308**	**192,308**	**2,500,000**
Total	**222,083**	**749,853**	**7,307,676**

Oceanwide Plaza LLC

13 Week DIP Budget

(1) This budget is a preliminary estimate only based on current information at hand, the Debtor will amend this budget once more information is available.
(2) Includes payments for the immediate parent entity, Oceanwide Real Estate Group (USA) Corp., and subsidiaries, Oceanwide Plaza I LLC and Oceanwide Plaza II LLC.
(3) Executive Event Services (EES) provides two guards 24-7 at $55/hour/guard. They will be on duty from February 26, 2024 through at least March 3, 2024. Once DIP budget is approved, we have estimated six guards 24-7 at $30 per hour with a vendor to be determined.The actual hourly rate may be plus or minus $5 / hour / guard.
(4) Loan Fees and Interest Reserve are subject to final terms and conditions of the DIP agreement.
(5) Liability insurance is currently quoted for a coverage limit of $2 million plus $5 million. The debtor is looking to increase the coverage limit.
(6) The Building insurance premium is only an estimate, with a coverage limit of $2 million.
(7) D&O insurance premium is only an estimate, with a coverage limit of $4M.
(8) There is currently a past-due property tax bill of approximately $18.5 million.
(9) The April installment of the property tax in the amount of $2,716,054 is due on the week of 4/8 - 4/15.

Oceanwide Plaza LLC

13 Week DIP Budget

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BRYAN CAVE LEIGHTON PAISNER LLP
Sharon Z. Weiss (State Bar No.: 169446)
sharon.weiss@bclplaw.com
120 Broadway, Suite 300
Santa Monica, CA 90401-2386
Telephone: (310) 576-2100
Facsimile: (310) 576-2200

Jarret P. Hitchings (*Pro Hac Vice Admission Pending*)
jarret.hitchings@bclplaw.com
One Wells Fargo Center
301 S. College Street, Suite 2150
Charlotte, NC 28202
Telephone (704) 749-8999
Facsimile: (704) 749-8990

[Proposed] Attorneys for Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re: Oceanwide Plaza LLC, Debtor.	Case No.: 2:24-bk-11057-DS Hon. Deborah J. Saltzman Chapter 11 **DECLARATION OF BRADLEY D. SHARP, CHIEF RESTRUCTURING OFFICER OF DEBTOR OCEANWIDE PLAZA LLC, IN SUPPORT OF CHAPTER 11 PETITION AND DEBTOR IN POSSESSION FINANCING** <u>Emergency Hearing:</u> Date: March 14, 2024 Time: 2:00 p.m. (Pacific) Place: Ctrm 1634 / Via Zoom 255 East Temple Street Los Angeles, CA 90012

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

I, Bradley D. Sharp, declare under penalty of perjury:

1. I am the Chief Restructuring Officer ("CRO") of Oceanwide Plaza LLC (f/k/a Tohigh Construction Investment, LLC), a Delaware limited liability company ("Oceanwide" or the "Debtor") and a debtor and debtor-in-possession in the above-reference chapter 11 bankruptcy case. I was appointed as the Debtor's CRO on March 8, 2024.

2. I am the President and Chief Executive Officer of Development Specialists, Inc. ("DSI"), a leading provider of management consulting and financial advisory services, including turnaround consulting, fiduciary roles, and financial restructuring services with numerous offices throughout the country.

3. DSI has extensive experience in providing restructuring services in and out of chapter 11 proceedings and has an excellent reputation for the services it has rendered on behalf of debtors and creditors throughout the United States. Among many other examples, DSI has provided: (a) restructuring and turnaround advisory services for the following companies: Woodbridge Group of Companies, Variant Holding Company, LLC, Beverly Hills Bancorp, and Namco Capital Group, Inc.; and (b) financial advisory services to companies, secured creditors, committees or trustees in the following matters: London Fog, Keystone Steel, and United Producers, Inc.

4. I have been a professional with DSI's Los Angeles office since 1993. I have substantial experience in providing crisis management and consulting services to companies in various industries including real estate, consumer finance, high tech and agriculture. I have operated and sold publicly and privately-held troubled companies in and out of bankruptcy. I have also served as an expert witness with respect to banking, finance and securitizations.

5. My real estate experience includes, but is not limited to, the following bankruptcy proceedings:

a. I was the chief restructuring officer for Woodbridge Group of Companies, LLC, a Glendale, California-based real estate investment company that raised over $1.2 billion from over 10,000 investors nationwide and owned over 250 properties as part of a Ponzi scheme.

b. I was chief restructuring officer for Variant Holding Company, a San Diego, California-based real estate investment company that operated 26 highly-distressed multi-family properties with over 8,000 units.

c. I was the chapter 11 trustee for Namco Capital Group, Inc., a West Los Angeles-based real estate investment company with investments in more than 100 real estate projects which at one time was reportedly worth more than $2 billion.

d. I was the chapter 11 trustee for Estate Financial Mortgage Fund, LLC (“EFMF”), which received investments from almost 1,700 individual investors and in turn invested more than $170 million through Estate Financial, Inc., the former manager of EFMF.

6. Prior to joining DSI, I was a vice president and senior commercial loan collection officer with Bank of America, NT&SA, where I had been with the bank, through its acquisition of Security Pacific National Bank, since 1985. I have a Bachelors of Science in accounting, with an emphasis in business computer information systems, from Colorado Mesa University in Grand Junction, Colorado.

7. I am a director and member of the Executive Committee for the American Bankruptcy Institute. I am also a fellow of the American College of Bankruptcy as well as a member of the International Insolvency Institute.

8. I submit this declaration (this “Declaration”) (a) to assist this Court and parties-in-interest to understand the circumstances, as I understand them, that lead to the filing of the involuntary bankruptcy petition for the Debtor [ECF No. 1] (the “Involuntary Petition”) and (b) in support of: (i) the Debtor’s *Answer to Involuntary Petition, Consent to Entry of Order for Relief and Reservation of Rights* [ECF No. 27] by which the Debtor consented to entry of an order for relief under chapter 11 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”); (ii) the Debtor’s request for authorization to obtain post-petition secured financing (generally “DIP Financing”) which the Debtor is seeking on an emergency basis by motion filed concurrently herewith (the “DIP Financing Motion”); and (iii) such other subsequent motions that the Debtor may file during the course of this chapter 11 case.

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

9. Except as otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge, my discussions with members of the Debtor's management team and advisors, my review of relevant documents and information concerning the Debtor's operations, financial affairs and prior restructuring initiatives, and/or based upon my experience and knowledge. If called as a witness, I could and would testify competently to the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of the Debtor.

10. To familiarize the Court with the Debtor and the relief the Debtor seeks in its DIP Financing Motion, and other motions that will be filed shortly in this case, this Declaration is organized into three primary sections. Section I provides an overview of the Debtor's organizational structure, corporate history and business operations, and pre-petition capital structure. Section II describes the circumstances leading to the Involuntary Petition and the Debtor's consent to an order for relief. Section III relates to the DIP Financing Motion and the necessity of the requested relief.

11. The DIP Financing Motion is critical to this case. As described more fully in Section III, the Debtor has filed the DIP Financing Motion to minimize the adverse effects of this bankruptcy case and, more importantly, to address immediate public health and safety concerns. I further believe the DIP Financing Motion, and the other "first day" motions that will shortly follow, will aid in implementing a timely and efficient chapter 11 case for the Debtor that will preserve and maximize the value of its estate, and I respectfully submit that for the reasons discussed herein, the DIP Financing Motion should be approved.

I. Debtor's Organization, History and Business Operations, and Pre-Petition Capital Structure.

A. Debtor's Organization

12. Oceanwide, a Los-Angeles based real estate developer, is the American subsidiary of a global Chinese conglomerate. Oceanwide Real Estate Group (USA) Corp. ("OREG"), a Delaware corporation, is Oceanwide's sole member and its manager. Oceanwide is part of a corporate family consisting of other senior limited liability companies and is indirectly owned by Oceanwide Holdings Co. Ltd, ("Oceanwide Holdings"), in Beijing, China. The Debtor's relevant corporate affiliates are shown on **Exhibit 1**.

13. Oceanwide was organized in 2013 to purchase a block in downtown Los Angeles across from then Staples Center, bounded by Figueroa, Flower, 11th and 12th Streets (generally, the "Property"). Oceanwide purchased the Property that year for $174 million. At the time, the Property consisted of an asphalt parking lot and a small two-story building.

B. Debtor's History and Business Operations

14. The Debtor owns Oceanwide Plaza (the "Project"), a 60-percent complete $2 billion mixed-use development project in downtown Los Angeles. The Project is situated on the Property which is comprised of a single parcel owned by the Debtor.

15. The Project is across from Crypto.com Arena and consists of three high-rise residential towers: two towers are 42 stories tall, and the other is 55 stories tall which includes a 11-story Park Hyatt hotel. Each tower is built on a 6-story podium, consisting of parking, retail, dinning, and office space, and a 2-story-high LED screen wrapped around the podium's Figueroa, 11th, and 12th street facades. The Project's external construction is largely complete, but the Project's internal construction is substantially unfinished.

16. The Project is part of the Los Angeles Sports and Entertainment District, which includes the Convention Center, Crypto.com Arena, LA Live, and the two 30-plus story Circa luxury apartment towers at 12th and Figueroa Streets. It is also part of the City's broader plan and longstanding goal to develop this section of downtown Los Angeles into a Times Square-like

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
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destination zone with multi-story LED screens, entertainment venues, and nighttime dining and clubs.

17. In 2014, Oceanwide hired RTKL Associates, Inc., now known as CallisonRTKL Inc., which I understand to be an internationally renowned architectural firm, and Lendlease (US) Construction, Inc. ("Lendlease"), which I understand to be a global construction firm based in Australia with U.S. headquarters in New York, to begin pre-construction work.

18. In 2015, the existing structure and parking lot were demolished and excavation began. Oceanwide hired Swinerton Management Consulting ("Swinerton") to manage the construction phase and supervise a general contractor. I understand that Swinerton is well-known nationally and locally in construction and has worked on numerous Los Angeles projects, including at LAX, Union Station, and the Beverly Center.

19. In 2016, after a bidding process, Oceanwide hired Lendlease as its general contractor to construct the Project. Thereafter, Lendlease hired over forty subcontractors for the Project.

20. Based on my understanding of Oceanwide's development history, through the Project the Debtor has infused into the Los Angeles economy approximately $1.2 billion in construction and related expenses. Beyond that investment, as noted in the *Declaration of J. Michael Issa*, which I have reviewed and is submitted concurrently herewith, I understand that at least a preliminary analysis supports that the Project's land value alone is approximately $200 million, a cost basis value of $731 million and a Buyer's Interest Value of $850 million.

C. Debtor's Prepetition Capital Structure

21. Oceanwide anticipated it would cost $750 million to complete the Project and like many large-scale construction projects, anticipated its needs for a construction loan. Initially, Oceanwide self-funded the initial Project construction costs through capital transfers or loans made by a certain of its group-affiliates including China Oceanwide Holdings Limited ("COH"), Oceanwide Investment Three (Hungary) Limited Liability Company, and the Debtor's member OREG.

22. In 2017, Oceanwide signed a term sheet with Deutsche Bank for a $750 million construction loan. The parties, however, were unable to come to terms, and negotiations eventually terminated. As a result, Oceanwide continued to self-fund through later development stages a significant portion of the Project construction costs.

23. To date, Oceanwide has self-funded construction of the Project with approximately $956.6 million in capital transfers and approximately $118.4 million in inter-company loans (summarized below).

24. For short-term needs, Oceanwide obtained a credit line with a $325 million limit from L.A. Downtown Investment LP ("LADI"). Upon information and believe, LADI is an investment vehicle deployed under the federal government's EB-5 Immigrant Investor visa program. The credit line extended by LADI (generally, the "EB-5 Loan") is evidenced by a $325 million *Promissory Note* which is secured by a *Deed of Trust* in favor of LADI (the "EB-5 Deed of Trust". Upon information and belief, LADI recorded the EB-5 Deed of Trust against the Property in 2015 to secure repayment of any disbursements under the EB-5 Loan.

25. To date, LADI has disbursed approximately $125.5 million to Oceanwide under the EB-5 Loan. With interest, LADI asserts a current secured claim of approximately $180 million. LADI also asserts it holds a first priority lien on the Property. The mechanic lienholders (as more fully noted below) dispute this position.

26. In sum, between the self-funded capital transfers and intercompany loans, and the EB-5 Loan disbursements made by LADI, Oceanwide has invested approximately $1.20 billion in the Project's construction:

Capital and Debt		**Amount**
Capital Transfers		
China Oceanwide Holdings Limited		$956,527,033.22
	Subtotal	**$956,527,033.22**
Debt		
L.A. Downtown Investment LP		$125,500,000.00
Oceanwide Real Estate Group (USA) Corp.		$95,000,000.00

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120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

Oceanwide Investment Three (Hungary) Limited Liability Company	$23,400,000.00
Subtotal	**$243,900,000.00**
TOTAL	**$1,200,427,033.22**

Notably, the capital transfers made up about 80% of the funding.

II. Circumstances Leading to Bankruptcy

a. Capital Funding Efforts

27. In March 2018, the Project "topped-out": the high-rise towers were finished to their top floors. Shortly thereafter, Oceanwide began loan negotiations with JPMorgan for a $1.1 billion loan facility. It is my understanding that negotiations continued into 2019 but were ultimately not successful.

28. During this time, in November 2018, I understand that Oceanwide began to have difficulty getting additional capital transfers from its affiliates in China. I am informed that these funding difficulties arose for several reasons, including regulatory restrictions by the Chinese government on current transfers and other macro-economic conditions.

29. I am informed that in response to Oceanwide's capital challenges, Lendlease demobilized most of its subcontractors by mid- January 2019.

30. Without access to capital, I understand that Oceanwide pursued three alternative plans beginning in later January 2019: 1) find alternative construction financing to complete the Project, 2) enter into a joint venture agreement to complete the Project, or 3) sell the Project.

31. In particular, at the end of January 2019, Oceanwide signed a bridge loan term sheet with JPMorgan, and the parties immediately began negotiation the loan documents and due diligence. In October 2019, however, the parties were unable to reach terms, and the negotiations were terminated.

32. A year later, in January 2020, Oceanwide worked with Jones Lange LaSalle ("JLL") to identify either joint venturers or buyers for the Project. Despite some initial interest, there were no substantive results, and Oceanwide ceased work with JLL in or around May 2021.

Bryan Cave Leighton Paisner LLP
120 Broadway, Suite 300
Santa Monica, CA 90401-2386

33. During this time, Oceanwide continued its efforts to secure a construction loan. I am informed that these efforts were negatively impacted by the COVID-19 pandemic and related economic slowdown, which impacted both national and global lending markets. Nevertheless, in September 2020, Oceanwide entered into a term sheet with another lender, DW Partners, for a $900 million loan. The parties were ultimately unable to reach mutually satisfactory terms, and negotiations terminated in April 2021.

34. After parting company with JLL in May 2021, Oceanwide began to primarily focus on selling the Project. Serious conversations began with one potential purchaser in March 2022, who signed a Letter of Intent ("LOI") in August 2023. Due diligence and negotiation efforts are ongoing. In September 2023, Oceanwide signed an LOI with a second potential purchaser, and due diligence and negotiations are ongoing.

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b. The "Foreclosure Lawsuit".

35. As noted above, Lendlease subcontracted with several subcontractors. One was Webcor Construction, LP ("Webcor"). Its contract was for approximately $120 million. Webcor finished its work around October 2018, recorded a mechanic's lien in November 2019, and sued to judicially foreclose on its lien on January 31, 2019, in Los Angeles Superior Court case number 19STCV03357, (the "Foreclosure Lawsuit") eventually claiming delay and owner impacts had cost it approximately $60 million in additional costs. Webcor sued, *inter alia*, Lendlease for breach of contract, Oceanwide for *quantum meruit* and judicial foreclosure, and LADI for a declaration that Webcor's lien rights were superior to LADI's deed of trust.

36. The Foreclosure Lawsuit is, in part, the genus of the Involuntary Petition.

37. The agreements between Oceanwide and Lendlease and between Lendlease and Webcor have binding arbitration clauses. Oceanwide and Lendlease demanded Webcor arbitrate, and it refused. Oceanwide and Lendlease then filed motions to compel arbitration and stay the Foreclosure Lawsuit, which were denied. Oceanwide and Lendlease immediately appealed, lost, and a remitter issued March 25, 2021.

38. During this period, for lack of payment, approximately 30 subcontractors recorded liens against the Property and sued Lendlease, Oceanwide, and LADI, for generally the same causes of action as Webcor had sued. Because their subcontracts had the same arbitration provision as Webcor's subcontract, their cases were related to the Foreclosure Lawsuit and stayed pending the appellate court's arbitrability decision.

39. In August 2021, the subcontractor lawsuits were consolidated into Webcor's Foreclosure Lawsuit. The court in the Foreclosure Lawsuit then turned its attention to the next threshold issue, a dispute between the contractors and LADI regarding lien priority. This is, apparently, a very complicated issue of first impression. LADI prevailed on a motion for summary adjudication, but I understand that the trial court indicated the appellate court might reverse and certified the issue for immediate appellate review under California Civil Procedure Code section 166.1. Lendlease and Webcor filed writ petitions for interlocutory review, which were denied in November 2023.

40. LADI recorded a notice of default in March 2023, after the court's ruling, but has never recorded a notice of sale. Without a final judgment or appellate review, the issue remains uncertain.

41. Three trials were set to address different sets of issues in the Foreclosure Lawsuit, the last of which was set for June 2024, but is now vacated as a result of the Involuntary Petition.

42. The first trial was to allow Lendlease and its subcontractors other than Webcor resolve their disputes with Oceanwide. Despite mediation efforts, Lendlease claimed it was entitled to "prompt payment penalty" and the Superior Court proceeded with a bench trial between September through December 2023. That trial resulted in a statement of decision that Oceanwide owed Lendlease approximately $122 million in "prompt payment penalties" under California Civil Code section 8800.

43. The second trial was initially and primarily to allow Webcor to resolve its disputes with Lendlease and Oceanwide. The parties reached an agreement prior to trial as discussed in the next section. Other issues, however, remained outstanding, and a bench trial proceeded from

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November 2023 to January 2024 to addressed whether certain subcontractors, including Webcor, had served LADI with a preliminary notice, without which, a subcontract may not assert a mechanic's lien under California law. The Superior Court issued a statement of decision that Webcor had not served a preliminary notice but was excused because Lendlease repeatedly communicated in writing there was no lender. That defense did not apply to all subcontractors and the Superior Court found that in those cases, the subcontractors lien's are junior to LADI's EB-5 Deed of Trust.

44. The third trial was set as a jury trial for June 2024, and related to the validity and priority of LADI's deed of trust. Lendlease and certain subcontractors assert that LADI's underlying loan is invalid, claiming LADI and Oceanwide are one entity, which LADI and Oceanwide disputes, and certain other fraud-based claims against LADI. LADI in turn argues Lendlease and its subcontractors subordinated their lien rights to LADI's deed of trust.

c. Lendlease's Pre-Petition Agreement To Pay Its Subcontractors $155 Million By December 31, 2024 If The Project Has Not Sold

45. In late 2019, Lendlease threatened to terminate its general contract with Oceanwide and all of its subcontracts, *i.e.*, quit. To incentivize Lendlease to stay on the Project, on of Debtor's indirect parent's, China Oceanwide Holdings Limited ("COH") signed a $100 million guarantee in favor of Lendlease in March 2020 (the "Payment Guarantee"), which required Oceanwide pay $54.44 million in three payments over April, May, and June 2020. Oceanwide received $16 million from COH which it paid to Lendlease.

46. Nevertheless, I understand that in September 2020, Lendlease terminated its agreement with Oceanwide and all of its subcontracts. Lendlease won an arbitration award for the non-payment, confirmed its award, and obtained a liquidation order in Hong Kong against COH. In a further attempt to salvage the Project and pay creditors, COH entered into a forbearance agreement with Lendlease and paid Lendlease approximately $21 million between September 2021 through April 2022. I am advised that COH was not able to make further payments to

Lendlease due to similar economic and liquidity restrictions put in place by the Chinese government and the global pandemic recession.

47. I understand that the amounts it received from COH covered Lendlease's direct exposure for amounts it had spent on construction, and it therefore did not enforce its liquidation order.

48. With Oceanwide's consent and direction, Lendlease paid approximately $8.1 million to certain subcontractors, including some who had been storing Project materials without payment since 2018.

49. In June and July 2023, prior to the first trial in the Foreclosure Lawsuit, Lendlease and Oceanwide mediated with the Project's subcontractors except Webcor and reached agreements with them on amounts to be put in a final judgment to be drafted and entered in the Foreclosure Lawsuit after the third trial. In October 2023, prior to the second trial, Lendlease and Oceanwide reached an agreement with Webcor on an amount to put in the Foreclosure Lawsuit's final judgment. The agreed amounts, documented in a statement of decision, total $155 million. In other words, the accumulated mechanic's liens against the Property total approximately $155 million. That agreement also provides for Lendlease to pay these amounts by December 31, 2024 if the Project has not sold in a market or judicial foreclosure sale by this date.

III. The DIP Financing Motion

50. On February 13, 2024 (the "Petition Date"), Lendlease, and four other petitioning creditors, Standard Drywall, Inc., Star Hardware, Inc., Woodbridge Glass Inc., and Mitsubishi Electric US, Inc. (collectively with Lendlease, the "Petitioning Creditors") filed an involuntary petition for relief against the Debtor (the "Involuntary Petition") under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the Central District of California (this "Court").

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SANTA MONICA, CA 90401-2386

51. On March 8, 2024, the Debtor filed its *Answer* [ECF No. 27] to the Involuntary Petition and consented to entry of an order for relief. On March 11, 2024 (the "Relief Date"), the clerk of the Court issued the *Order for Relief* [ECF No. 29] (the "Relief Order"). From and after the Relief Date, the Debtor has managed its estate as a debtor-in-possession. As of the date hereof, no official committee has been appointed in this case.

52. Debtor intends to first quickly stabilize its operations, and then proceed with a sales process to efficiently maximize the Property for the best interest of creditors.

53. Due to its severe lack of funds, the Debtor has not had general liability insurance or property insurance. Debtor obtained general liability insurance effective as of March 4, 2024, but will not have the ability to pay for it without debtor-in-possession financing.

54. Debtor is working with its insurance agent to place property insurance as soon as possible and will also need the funds to do so.

55. Security and insurance is of the upmost importance of the Debtor, especially right now when the Property has drawn substantial media attention.

56. Media reports about the Project appeared in various news outlets starting at the end of January 2024 because of a series of highly visible tagging incidents.

57. Notwithstanding its lack of funds and despite news reports to the contrary, I understand Oceanwide has continuously employed at least two security guards on the Project 24/7. It has also always had a perimeter green-screened chain link fence with a motion alarm system.

58. I am aware these security safeguards were effective as there were minimal incidents at the Project until the end of November 2023, when intruder incidents increased. These incidents, however, were under control and ably handled by the guards on site.

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

59. It is my understanding that in January 2024, there was coordinated activity on social media that encouraged hundreds of graffiti taggers to enter the Project at the end of January to tag the tower windows with balconies, and these individuals subsequently went to the Project and made repeated attempts to enter it.

60. While the security guards caught many individuals, others were able to enter resulting in graffiti on approximately 100 sets of windows.

61. On February 1, 2024, the City posted a notice to abate (the "Notice") at the Property, with directions to begin taking steps secure the Project, abate the graffiti, by February 17, 2024, or the City would take these steps with projected assessments for the work of $1 million or $5 million plus 40% for administrative costs.

62. On February 9, 2024, the City Council passed a motion for the City to act as indicated in the Notice if Oceanwide failed to comply with it.

63. I believe that the Los Angeles Police Department ("LAPD") began placing motor units on all four sides of the Project 24/7 starting February 1, 2024.

64. Also, the City began installing a 14-foot-high stagger-perforated steel-sheet fence around the Project on February 23, 2024.

65. Notwithstanding the police presence and the in-progress steel-sheet fencing, there was a second highly publicized intrusion on February 27, 2024 when two small groups of individuals ran past the LAPD at night and through an area that still had chain-link fencing.

66. Contrary to some media reports that there was no security present, the individuals arrested were caught by Oceanwide's security, who then took them off of the Property and turned them over to the LAPD for arrest and booking.

67. Some of the immediate, important uses for the DIP funding will be to: (1) increase the number of security guards at the Project so LAPD may be relieved of stationing units at the Project, (2) gate the ground-floor access points to the stairwells, and (3) block off the ground floor access points to all vehicle ramps.

68. The Debtor further plans to abate the graffiti.

69. After the Petition Date, the Debtor successfully negotiated and finalized the terms of Debtor In Possession Financing Term Sheet ("Proposed DIP Financing") with B.H. Capital Ventures, LLC (the "DIP Lender"), a copy of which is attached as **Exhibit 2**. The Proposed DIP Financing calls for a new secured credit facility in the amount of $10 million. The terms of the Proposed DIP Financing are described in further detail in the DIP Financing Motion.

70. Despite the limited time available to secure DIP financing, Debtor and it advisors engaged in a broad search for financing to fit the Debtor's needs and contacted 20 prospective lenders. It received 2 executed NDAs, 2 parties declined to provide offers and 2 parties provided term sheets. The DIP Lender is one of the 2 parties that provided a term sheet.

71. The provisions of the Proposed DIP Financing were extensively negotiated. Proposed counsel for the Debtor was included in negotiations along with the DIP Lender and its counsel, who is extremely well versed in debtor in possession financing and bankruptcy law in general.

72. I, along with the Debtor's management, the proposed financial advisor and counsel carefully considered the terms sheets and I believe, in my business judgment, that the Proposed DIP Financing is in the best interest of creditors and provides the most favorable terms that the Debtor were able to obtain, especially under the circumstances.

73. Moreover, the Debtor has an urgent need for the Proposed DIP Financing which will ensure that the Debtor is able to maintain its operations, preserve health and safety in the community, while pursuing a value-maximizing sale. Without prompt post-petition financing, the debtor will be unable to pay wages, pay for security and insurance, preserve and maximize the value of its estate to the detriment of all stakeholders.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 12th day of March, 2024 in Los Angeles, California.

Bradley D. Sharp

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CA 90401-2386

EXHIBIT 1

<u>Group chart re Oceanwide Real Estate Group (USA) Corp and Oceanwide Plaza LLC</u>

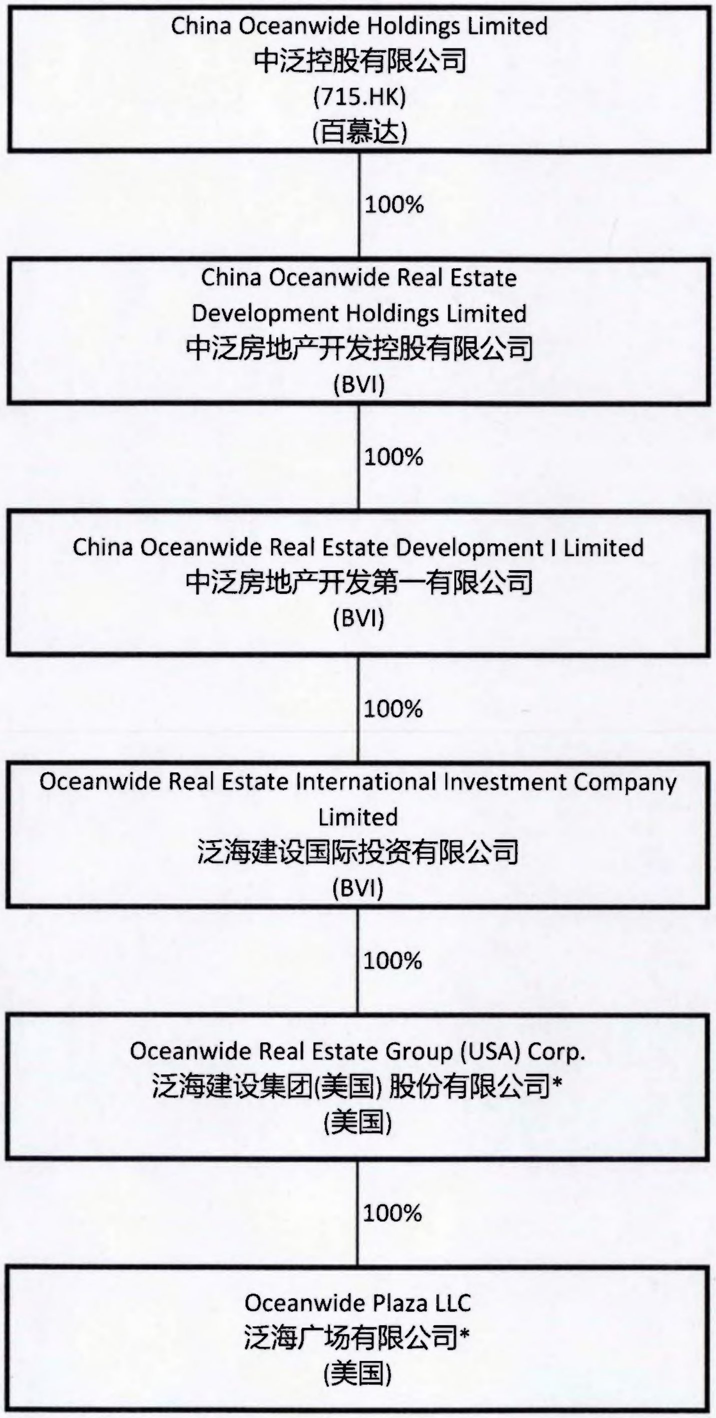

EXHIBIT 2

EXECUTION VERSION

DEBTOR IN POSSESSION FINANCING TERM SHEET

This Term Sheet, together with the transactions contemplated in this Term Sheet, sets forth the binding terms and conditions of the Debtor In Possession Financing (the "**Loan**") to be provided by B.H. Capital Ventures, LLC ("**DIP Lender**") to the Borrower (defined below) secured by, among other things described herein as Collateral, **1101 S. Flower Street, Los Angeles, CA 90015** ("**Property**").

1.	**Borrower:**	Oceanwide Plaza, LLC ("**Borrower**" or "**Debtor**") and its bankruptcy estate ("**Estate**") including, but not limited to, real property and improvements located at the property located at 1101 S. Flower Street, Los Angeles, CA 90015 (the "**Property**"), in the chapter 11 bankruptcy case entitled *In re Oceanwide Plaza LLC,* Case Number 2:24-bk-11057 (the "**Case**"), pending in the United States Bankruptcy Court for the Central District of California ("**the Court**").
2.	**Loan Amount:**	*Ten Million Dollars ($10,000,000)* in total, to be paid at once or in tranches as mutually agreed by Borrower and DIP Lender and approved by the Court (the "**Commitment**"). The Loan shall be evidenced by definitive documents incorporating the terms set forth in this Term Sheet, including, but not limited to, a loan agreement, promissory note, deed of trust, security agreement, UCC-1 financing statement and assignment of rents ("**Loan Documents**") that shall be approved by DIP Lender in its sole discretion and shall be approved by the Court in an interim order approving this Term Sheet (the "**Interim Order**") and a final order approving this Term Sheet (the "**Final Order**") (together, the "**DIP Orders**").
3.	**Loan Maturity Date:**	All amounts owed are due and payable to DIP Lender (the "**Maturity Date**") on the earlier of (i) the acceleration of the Loan following the occurrence of an Event of Default; (ii) sale of the Collateral; and (ii) twelve (12) Months from the Closing Date (defined below). Any sale of the Property shall utilize a standard escrow and DIP Lender shall be paid in full through an escrow with all escrow fees to be paid by Borrower as a condition to any reconveyance or release of DIP Lender's deed of trust, security interests or liens. The term "**Event of Default**" shall mean events of default (following the Cure Period (as defined below)) customary for debtor in possession financing transactions, including (a) the failure by the Debtor to obtain Court approval of the Final Order within sixty (60) days of the date hereof; (b) the filing

		by the Debtor of any pleading seeking to vacate or modify any DIP Order over the objection of the DIP Lender; (c) the failure by the Debtor to make any required payments or comply with any deadline set forth in any DIP Order; (d) any failure to maintain the lien and claim status referenced in Section 13(a), (b), and (c); (e) the filing by the Debtor of (or supporting any other party in the filing of) any pleading seeking entry of a Court order granting any superpriority claim or lien that is senior to or *pari passu* with those granted to the DIP Lender under the DIP Orders; (f) the granting of any superpriority claim or lien senior or *pari passu* with those granted to the DIP Lender under the DIP Orders; (g) the use or application of DIP Loan proceeds in a manner not provided for in the Approved Budget, subject to the permitted variance; (h) the entry of a Court order appointing a chapter 11 trustee or examiner in the Chapter 11 Case with expanded powers; (i) the entry of an order dismissing the Chapter 11 Case or converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code; (j) the sale of any DIP Collateral without the approval of the Court; and (k) any breach by Debtor of the terms of this Term Sheet.
4.	**Extension Option:**	Borrower shall have the one-time right to extend the Maturity Date by six (6) months upon providing written notice to DIP Lender at least ten (10) days prior to the Maturity Date, subject to (i) no Events of Default continuing, and (ii) payment of an extension fee equal to one percent (1.0%) of the outstanding principal balance of the Loan ("**Extension Fee**"), which Extension Fee shall be deferred and paid in full on the extended Maturity Date.
5.	**Closing Date:**	The date of initial funding of the Loan date is the "**Closing Date**".
6.	**Use of Proceeds:**	Loan proceeds shall be used only for the expenses identified on the budget attached as <u>Exhibit A</u> that DIP Lender has approved (or any change to the attached budget that DIP Lender may approve in its sole discretion, subject to approval of such budget by the Court) (the "**Approved Budget**"). Without DIP Lender's consent, Borrower shall be permitted to reallocate amounts between line items in an amount not to exceed 10% with respect to any particular line item, so long as an aggregate cap of 10% is not exceeded.

7.	**Right of First Refusal:**	DIP Lender shall have the right of first refusal for all refinancings of the Property so long as the Loan is outstanding (the "**ROFR Right**").
8.	**Interest Rate/Minimum Interest:**	Interest on the Loan shall accrue at Prime (with a floor of 8.50%) plus 3.50bps per annum (provided the maximum interest rate shall not exceed fourteen percent (14%) per annum) starting on the Closing Date, which interest shall be deferred and paid in full on the Maturity Date. There shall be a minimum of $600,000 in interest paid on the Loan (including interest at both the standard rate and at the Default Rate).
9.	**Default Rate:**	18% per annum from and after any Event of Default.
10.	**Fees:**	Borrower shall pay to DIP Lender all fees and expenses of DIP Lender related to the Loan or the Property, including but not limited to reasonable attorneys' fees, title insurance fees, recording and reconveyance fees, and any applicable court costs. All such fees shall be deemed fully earned when due and shall be non-refundable. Any and all such fees and expenses of DIP Lender incurred prior to the Closing Date shall be paid from the initial funding of the Loan on the Closing Date. Any and all such fees and expenses of DIP Lender incurred after the Closing Date shall be paid in accordance with a schedule mutually agreeable to DIP Lender and Borrower. Upon repayment of the loan, Borrower shall pay a fee equal to 2.0% of the Commitment (the "**Commitment Fee**"). For clarification purposes, the interest, the Commitment Fee, and (if applicable) the Extension Fee shall not be paid out of the DIP Lender's funding.
11.	**Voluntary Prepayments:**	Voluntary prepayments of $2,000,000 or multiples thereof. Prepayments shall not be re-advanced.
12.	**Mandatory Prepayments:**	Any sale of the Property shall occur through an escrow in which DIP Lender shall reconvey or release its deed of trust, mortgage, liens or security interests only upon DIP Lender being paid in full. DIP Lender agrees to provide a payoff demand promptly upon written request from Borrower. In addition, subject to paragraph 13 below, not later than five (5) business days after receipt thereof, Borrower shall pay to DIP Lender to apply to the Loan balance, any cash proceeds from the sale or other disposition of any other property of the Debtor or its Estate, including but not limited

to any recovery by the Debtor or its Estate (net of reasonable and customary fees and expenses relating thereto) in respect of any proceeding, case, matter, asset disposition, casualty event, condemnation, debt issuance recovery or equity issuance by Borrower or any direct or indirect subsidiary of Borrower, or the Estate.

13. Priority and Liens: All amounts owed to DIP Lender by the Borrower and the Estate under the Loan ("**Obligations**") shall at all times be (a) a super-priority administrative expense claim with priority over all other administrative expense claims and other claims against the Borrower and the Estate pursuant to sections 105, 363, 364, 503 and 507 of the Bankruptcy Code, and (b) secured by a first priority senior lien against all unencumbered property of the Borrower and the Estate granted pursuant to sections 105, and 364(c)(2) of the Bankruptcy Code, and (c) secured by a first priority "priming lien" against all property of the Borrower and the Estate that may be subject to a lien or encumbrance under sections 105 and 364(d)(1) of the Bankruptcy Code, including but not limited to any and all County of Los Angeles property taxes, except (1) fees payable to the Clerk of the Bankruptcy Court or the Office of the United States Trustee, and (2) reasonable professional fees and expenses incurred by the Borrower for services rendered and expenses incurred prior to the DIP Lender's delivery of a Default Notice (for which the noticed Event of Default is not subsequently cured in accordance with paragraph 18 below) and to the extent in amount expressly set forth in the Approved Budget, subject to further order of the Bankruptcy Court approving such professional fees, and (3) reasonable professional fees and expenses incurred by Borrower for services rendered and expenses incurred after the DIP Lender's delivery of a Default Notice (for which the noticed Event of Default is not subsequently cured in accordance with paragraph 18 below) in an amount not to exceed the aggregate amount of the professional fees set forth in the Approved Budget, including those set forth in clause (2) above ((1) through (3) above being the "**Carve Out**"), provided that the liens securing the Loan with respect to the Carve Out shall not be subject to surcharge, either pursuant to Bankruptcy Code section 506(c) or otherwise. The Carve Out shall be senior to all liens and claims securing the Loan, and the superpriority claims, and any and all other liens or claims securing the Loan; provided that Borrower agrees that (i) the Carve Out shall not reduce or affect the full amount that is due and owing to DIP Lender under the Loan, and (ii) nothing herein shall be construed to require DIP Lender, in the event that Borrower's assets are insufficient to pay any portion of the Carve Out, to infuse any money in excess of any unfunded amount of the Approved Budget as approved by the Final Order to pay any portion of the Carve Out. Under no circumstances shall professional fees subject to the Carve Out be utilized to fund adverse actions, oppositions or litigation against DIP Lender. Further, the Carve Out applies to the maximum $2 million in professional fees set forth in the Approved Budget, and nothing more.

Borrower may obtain payment of the Carve Out as a borrowing under the Loan and shall deposit the full amount of the Carve Out into a segregated account, which amount and account shall remain subject to all rights and obligations accorded to the Carve Out in this paragraph.

All claims and liens of DIP Lender, and the priorities thereof, described herein, in the Loan Documents and in the DIP Orders shall be allowed, valid, enforceable, and perfected without the requirement of filing any deed of trust, mortgage, financing statement or any other instrument or document. With respect to any of the Collateral that is encumbered by valid and enforceable pre-petition liens, DIP Lender's post-petition liens against the Collateral will be granted pursuant to section 364(d)(1) of the Bankruptcy Code and shall constitute first priority liens in and to such Collateral and shall be senior to and prime any pre-petition liens. No other person or entity shall receive or be granted any liens of any type or nature, whether senior to, on parity with, or junior to DIP Lender's post-petition liens, on any of the Collateral, except as permitted by DIP Lender in its sole discretion. Relief pursuant to section 364(d)(1) of the Bankruptcy Code is a condition precedent to funding the Commitment. Subject to entry of the Final Order, any rights to surcharge the DIP Lender or the Collateral under section 506 of the Bankruptcy Code or any other law are waived and released.

Except for County taxes that are not yet due and payable, any lien, security interest and any related claim on any Collateral shall be expressly subordinated and junior in priority to the claims and liens of DIP Lender pursuant to a written subordination agreement approved by DIP Lender in its sole discretion.

EXECUTION VERSION

14.	**Collateral:**	Subject to the terms herein, in the Loan Documents and in the DIP Orders, all the real and personal property of the Borrower and the Estate of any description whatsoever, tangible or intangible, wherever located and whenever arising or acquired, including, without limitation, the Property, and any and all refunds, rents, issues, profits, proceeds, substitutions, or exchanges of the foregoing, including insurance and condemnation proceeds, and all other property of any kind, real or personal, tangible or intangible, including, but not limited to, any and all rights and claims arising under state law, or arising under, in or related to the Bankruptcy Code or rules, or otherwise ("**Collateral**"); provided, however, subject to entry of the Final Order, the Collateral shall include proceeds of claims and causes of action under Chapter 5 and Section 724(a) of the Bankruptcy Code (but not such claims or causes of action themselves).
15.	**Conditions, Representations and Warranties:**	Standard loan conditions, representations, and warranties for a debtor in possession loan, in DIP Lender's sole discretion, all subject to Court approval.
16.	**Covenants**	Standard affirmative and negative covenants for a debtor in possession loan, in DIP Lender's sole discretion, including but not limited to, reports to DIP Lender, and prohibiting Borrower's incurrence of debt or obtaining credit without Court approval.
17.	**Expenses:**	Subject to the terms herein, Borrower shall be responsible for all fees, costs and expenses of DIP Lender including all reasonable fees and expenses of DIP Lender's counsel and professional advisors and shall reimburse such amounts in accordance with paragraph 10 above. All such expenses constitute Obligations.
18.	**Defaults, Remedies and Indemnities**	Upon the occurrence of an Event of Default, and without the necessity of seeking relief from the automatic stay or any further order of the Court, DIP Lender shall provide the Debtor and its counsel with notice of such Event of Default (the "**Default Notice**"), and the Debtor shall have three (3) business days following receipt of the Default Notice in which to cure such Event of Default (the "**Cure Period**"). During the Cure Period, the Debtor and any party-in-interest may seek a hearing before the Court (a "**Remedies Hearing**"), on an emergency basis or otherwise and in any event subject to the Court's availability, to determine

		whether an Event of Default has occurred and not been waived or such other matters as the Court determines to hear. If the Debtor fails to cure the Event of Default within the Cure Period and the Court has not entered an order finding that an Event of Default has not occurred, then the DIP Lender shall be entitled to exercise any right or remedy as provided in the Interim Order, the DIP Term Sheet, or applicable law, without the necessity of seeking relief from the automatic stay or any further order of the Court (but subject and subordinate in all respects to the Carve Out) . Other standard defaults, events of defaults, and remedies for a debtor in possession loan.
19.	**Interest Rate Limitation:**	Any applicable usury laws.
20.	**General:**	Standard general loan and debtor in possession financing provisions on severability, California law, etc., in DIP Lender's sole discretion.
21.	**Overbids**	In the event that the Court approves this Term Sheet (including payment of the Break-Up Fee) and authorizes the Debtor to enter into this Term Sheet and the Debtor thereafter consummates alternative DIP financing with a different lender prior to DIP Lender funding any amounts under this Term Sheet, the Debtor shall immediately pay the DIP Lender a break-up fee equal to DIP Lender's out of pocket costs related to the proposed Loan, plus three percent (3%) of the amount to be made available to the Borrower in connection with the alternative DIP financing (the "**Break-Up Fee**"). The Break-Up Fee shall be an allowed and immediately payable administrative expense of the Debtor and its Estate for providing significant value and benefit to the Debtor, its Estate and creditors, and as an actual and necessary cost and expense of preserving the Estate. The DIP Lender relied on the agreement of the Debtor's officers and professionals to pay the Break-Up Fee in making the Loan available to the Borrower and its Estate. DIP Lender shall be deemed a qualified overbidder should DIP Lender bid on any sale or other disposition of the Property or any alternative DIP financing facility subject to overbids.
22.	**Funding on Term Sheet.**	Should Debtor request, and DIP Lender in its sole discretion agree, to fund any of the Commitment prior to Court approval of signed definitive documentation contemplated

herein, such funding is conditioned upon: (i) a DIP Order approving the terms hereof including findings of fact and conclusions of law acceptable to DIP Lender and setting forth the Borrower's covenants, events of default and DIP Lender's rights and remedies with respect thereto acceptable to DIP Lender; (ii) the recording of a Deed of Trust, UCC-1, and other security documents requested, and in form and content approved, by DIP Lender; and (iii) proof of insurance on the Property which coverage is acceptable to DIP Lender. Definitive documentation shall be completed, signed and approved by the Court by a date mutually agreed to by Debtor and DIP Lender, or it shall be deemed an Event of Default hereunder requiring repayment in full, with all fees included as described herein, within 30 days. If such repayment is not timely made, then DIP Lender shall have the rights and remedies for an Event of Default as set forth in the DIP Order required in this paragraph 22.

23.	**Binding Nature.**	To the maximum extent permitted by applicable law, this Term Sheet, once fully-executed and delivered by both DIP Lender and Borrower, shall constitute a legally binding and enforceable agreement between DIP Lender and Borrower with regard to the matters set forth herein, subject to termination by Lender or Borrower if the Interim Order is not entered by March 19, 2024.

[Signatures continued on next page.]

EXECUTION VERSION

IN WITNESS WHEREOF, the parties hereto have duly executed this Term Sheet as of this 12th day of March, 2024.

DIP LENDER

B.H. Capital Ventures, LLC

JXT

By: Arsalan Gozini
Its: President

BORROWER

Oceanwide Plaza LLC

By:
Its:

Exhibit A

Approved Budget

[See attached]

Oceanwide Plaza LLC

13 Week DIP Budget

(All amounts in dollars)	3/4 - 3/10	3/11 - 3/17	3/18 - 3/24	3/25 - 3/31	4/1 - 4/7
Payroll and Supplies					
Payroll and Payroll Benefits	62,922	49,741	824	51,434	830
Office Supplies & Licenses	536	439	23	23	143
Bank Fees	100	-	-	600	-
Total Payroll and Supplies	**63,558**	**50,180**	**847**	**52,057**	**973**
Insurance					
Liability Insurance (5)		30,330		70,000	
Building Insurance (6)					150,000
Directors and Officers/Employee Liability (7)				300,000	
Total Insurance	**-**	**30,330**	**-**	**370,000**	**150,000**
Taxes					
Franchise Tax, California	3,200	2,700	-	-	-
Franchise Tax, Delaware	9,336	3,200			
Business Personal Property Tax		3,000			
Past Due Property Tax (8)					
Real Property Tax (9)			-	-	-
Total Taxes	**12,536**	**8,900**	**-**	**-**	**-**
State and City Licenses					
Agent for Service of Process, California(2)	200	-	-	-	-
Agent for Service of Process, Delaware(2)	700	-	-	-	-
Total State and City Licenses	**900**	**-**	**-**	**-**	**-**
Project Operations					
Site Security (3)	70,166	29,752	29,752	29,752	30,744
Portable Toilet	972	-	-	324	-
Site Cleaning/Trash/Bathrooms/Water Removal	-	-	-	11,000	-
Utility	10,474	-	-	11,094	-
Fence Maintenance	-	-	-	1,500	-
Hoists (Repair and Maintenance)	424,505	-	-	78,505	-
Scaffold Rental	12,125	-	-	8,000	-
Trench Plate Rental	9,577	-	-	9,577	-
Street Use Permit	13,677	-	-	2,877	-
Graffiti Abatement	-	-	-	341,400	-
Barricade Ground Floor Entrances (Stairs & Ramps)	-	-	-	160,000	-
Fire Extinguishers Purchase	25,000				
LAPD Fees	16,000				
Storm Water Pollution Prevention Plan Annual Fee	750				
Total Project Operations	**583,246**	**29,752**	**29,752**	**654,029**	**30,744**
Professional Fees					
Chief Restructuring Officer	-	50,000	-	-	50,000
Financial Advisor	-	75,000	-	-	50,000
Legal Services - Bankruptcy	-	350,000	-	-	350,000
Legal Services - Construction Litigation	5,500	50,000	-	-	50,000
Legal Services - Employment	-	2,000	-	-	1,000
Legal Services - Land Use	-	-	-	-	20,000
Legal Services - Other	-	50,300	1,000	-	50,000
Payroll Tax Service	-	-	-	1,500	-
Real Estate Broker	-	-	-	-	50,000
Tax Consultant		50,000			
Total Professional Fees	**5,500**	**627,300**	**1,000**	**1,500**	**621,000**
Others					
Contingency	192,308	192,308	192,308	192,308	192,308
Loan Fees (4)					
Interest Reserve (4)					
Total Others	**192,308**	**192,308**	**192,308**	**192,308**	**192,308**
Total	**858,048**	**938,770**	**223,907**	**1,269,893**	**995,025**

Oceanwide Plaza LLC

13 Week DIP Budget

13 Week DIP Budget (1)						
(All amounts in dollars)	4/8 - 4/14	4/15 - 4/21	4/22 - 4/28	4/29 - 5/5	5/6 - 5/12	5/13 - 5/19
Payroll and Supplies						
Payroll and Payroll Benefits	-	49,741	824	51,450	500	50,565
Office Supplies & Licenses	23	406	623	23	143	406
Bank Fees	-	-	600	-	-	-
Total Payroll and Supplies	**23**	**50,147**	**2,047**	**51,473**	**643**	**50,971**
Insurance						
Liability Insurance (5)						
Building Insurance (6)						
Directors and Officers/Employee Liability (7)						
Total Insurance	**-**	**-**	**-**	**-**	**-**	**-**
Taxes						
Franchise Tax, California	-	-	-	-	-	-
Franchise Tax, Delaware						
Business Personal Property Tax						
Past Due Property Tax (8)						
Real Property Tax (9)		-	-	-	-	-
Total Taxes	**-**	**-**	**-**	**-**	**-**	**-**
State and City Licenses						
Agent for Service of Process, California(2)	-	-	-	-	-	-
Agent for Service of Process, Delaware(2)	-	-	-	-	-	-
Total State and City Licenses	**-**	**-**	**-**	**-**	**-**	**-**
Project Operations						
Site Security (3)	30,744	30,744	30,744	30,036	29,752	29,752
Portable Toilet	-	-	-	324	-	-
Site Cleaning/Trash/Bathrooms/Water Removal	-	-	-	11,000	-	-
Utility	-	-	-	11,094	-	-
Fence Maintenance	-	-	-	1,500	-	-
Hoists (Repair and Maintenance)	-	-	-	78,505	-	-
Scaffold Rental	-	-	-	8,000	-	-
Trench Plate Rental	-	-	-	9,577	-	-
Street Use Permit	-	-	-	13,677	-	-
Graffiti Abatement	-	-	-	2,500	-	-
Barricade Ground Floor Entrances (Stairs & Ramps)	-	-	-	-	-	-
Fire Extinguishers Purchase						
LAPD Fees						
Storm Water Pollution Prevention Plan Annual Fee						
Total Project Operations	**30,744**	**30,744**	**30,744**	**166,212**	**29,752**	**29,752**
Professional Fees						
Chief Restructuring Officer	-	-	-	50,000	-	-
Financial Advisor	-	-	-	50,000	-	-
Legal Services - Bankruptcy	-	-	-	200,000	-	-
Legal Services - Construction Litigation	-	-	-	50,000	-	-
Legal Services - Employment	-	-	-	1,000	-	-
Legal Services - Land Use	-	-	-	20,000	-	-
Legal Services - Other	-	1,000	-	50,000	-	1,000
Payroll Tax Service	-	-	-	-	-	-
Real Estate Broker	-	-	-	-	-	-
Tax Consultant						
Total Professional Fees	**-**	**1,000**	**-**	**421,000**	**-**	**1,000**
Others						
Contingency	192,308	192,308	192,308	192,308	192,308	192,308
Loan Fees (4)						
Interest Reserve (4)						
Total Others	**192,308**	**192,308**	**192,308**	**192,308**	**192,308**	**192,308**
Total	**223,075**	**274,198**	**225,099**	**830,993**	**222,703**	**274,030**

Oceanwide Plaza LLC

13 Week DIP Budget

(All amounts in dollars)	5/20 - 5/26	5/27 - 6/2	13 Week Total
Payroll and Supplies			
Payroll and Payroll Benefits	-	49,510	368,340
Office Supplies & Licenses	23	23	2,832
Bank Fees	-	600	1,900
Total Payroll and Supplies	**23**	**50,133**	**373,072**
			-
Insurance			
Liability Insurance (5)			100,330
Building Insurance (6)			150,000
Directors and Officers/Employee Liability (7)			300,000
Total Insurance	**-**	**-**	**550,330**
			-
Taxes			
Franchise Tax, California	-	3,500	9,400
Franchise Tax, Delaware			12,536
Business Personal Property Tax			3,000
Past Due Property Tax (8)			-
Real Property Tax (9)	-	-	-
Total Taxes	**-**	**3,500**	**24,936**
			-
State and City Licenses			
Agent for Service of Process, California(2)	-	-	200
Agent for Service of Process, Delaware(2)	-	-	700
Total State and City Licenses	**-**	**-**	**900**
			-
Project Operations			
Site Security (3)	29,752	30,036	431,727
Portable Toilet	-	324	1,944
Site Cleaning/Trash/Bathrooms/Water Removal	-	11,000	33,000
Utility	-	11,094	43,756
Fence Maintenance	-	1,500	4,500
Hoists (Repair and Maintenance)	-	78,505	660,019
Scaffold Rental	-	8,000	36,125
Trench Plate Rental	-	9,577	38,308
Street Use Permit	-	2,877	33,108
Graffiti Abatement	-	-	343,900
Barricade Ground Floor Entrances (Stairs & Ramps)	-	-	160,000
Fire Extinguishers Purchase			25,000
LAPD Fees			16,000
Storm Water Pollution Prevention Plan Annual Fee			750
Total Project Operations	**29,752**	**152,912**	**1,828,137**
			-
Professional Fees			
Chief Restructuring Officer	-	50,000	200,000
Financial Advisor	-	50,000	225,000
Legal Services - Bankruptcy	-	200,000	1,100,000
Legal Services - Construction Litigation	-	50,000	205,500
Legal Services - Employment	-	1,000	5,000
Legal Services - Land Use	-	-	40,000
Legal Services - Other	-	-	153,300
Payroll Tax Service	-	-	1,500
Real Estate Broker	-	-	50,000
Tax Consultant			50,000
Total Professional Fees	**-**	**351,000**	**2,030,300**
Others			
Contingency	192,308	192,308	2,500,000
Loan Fees (4)			TBD
Interest Reserve (4)			TBD
Total Others	**192,308**	**192,308**	**2,500,000**
Total	**222,083**	**749,853**	**7,307,676**

Oceanwide Plaza LLC

13 Week DIP Budget

(1) This budget is a preliminary estimate only based on current information at hand, the Debtor will amend this budget once more information is available.

(2) Includes payments for the immediate parent entity, Oceanwide Real Estate Group (USA) Corp., and subsidiaries, Oceanwide Plaza I LLC and Oceanwide Plaza II LLC.

(3) Executive Event Services (EES) provides two guards 24-7 at $55/hour/guard. They will be on duty from February 26, 2024 through at least March 3, 2024. Once DIP budget is approved, we have estimated six guards 24-7 at $30 per hour with a vendor to be determined.The actual hourly rate may be plus or minus $5 / hour / guard.

(4) Loan Fees and Interest Reserve are subject to final terms and conditions of the DIP agreement.

(5) Liability insurance is currently quoted for a coverage limit of $2 million plus $5 million. The debtor is looking to increase the coverage limit.

(6) The Building insurance premium is only an estimate, with a coverage limit of $2 million.

(7) D&O insurance premium is only an estimate, with a coverage limit of $4M.

(8) There is currently a past-due property tax bill of approximately $18.5 million.

(9) The April installment of the property tax in the amount of $2,716,054 is due on the week of 4/8 - 4/15.

Oceanwide Plaza LLC

13 Week DIP Budget

(1) This budget is a preliminary estimate only based on
more information is available.
(2) Includes payments for the immediate parent entity,
Oceanwide Plaza I LLC and Oceanwide Plaza II LLC.
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through at least March 3, 2024. Once DIP budget is ap
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Oceanwide Plaza LLC

13 Week DIP Budget

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(2) Includes payments for the immediate parent entity,
Oceanwide Plaza I LLC and Oceanwide Plaza II LLC.
(3) Executive Event Services (EES) provides two guards
through at least March 3, 2024. Once DIP budget is ap
a vendor to be determined.The actual hourly rate may
(4) Loan Fees and Interest Reserve are subject to final
(5) Liability insurance is currently quoted for a coverag
increase the coverage limit.
(6) The Building insurance premium is only an estimate
(7) D&O insurance premium is only an estimate, with a
(8) There is currently a past-due property tax bill of app
(9) The April installment of the property tax in the amou

BRYAN CAVE LEIGHTON PAISNER LLP
SHARON Z. WEISS (State Bar No. 169446)
sharon.weiss@bclplaw.com
120 Broadway, Suite 300
Santa Monica, California 90401-2386
Telephone: (310) 576 2100
Facsimile: (310) 576 2200

Jarret P. Hitchings (*Pro Hac Vice Admission Pending*)
jarret.hitchings@bclplaw.com
One Wells Fargo Center
301 S. College Street, Suite 2150
Charlotte, NC 28202
Telephone (704) 749-8999
Facsimile: (704) 749-8990

[*Proposed] Attorneys for Debtor and Debtor in Possession*

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re: Oceanwide Plaza, Debtor.	Case No. 2:22-bk-11057-DS Hon. Deborah Saltzman Chapter 11 **DECLARATION OF J. MICHAEL ISSA PROPOSED FINANCIAL ADVISOR OF DEBTOR OCEANWIDE PLAZA LLC AND GREG EIDSON, MAI, CCIM, IN SUPPORT OF CHAPTER 11 PETITION AND DEBTOR IN POSSESSION FINANCING** <u>Emergency Hearing:</u> Date: March 14, 2024 Time: 2:00 p.m. Place: Ctrm 1634/Via Zoom 255 East Temple Street Los Angeles, CA 90012

I, J. Michael Issa, declare under penalty of perjury:

1. I am a Senior Managing Director with B. Riley Advisory Services, the proposed Financial Advisor of Oceanwide Plaza LLC (f/k/a Tohigh Construction Investment, LLC), a Delaware limited liability company ("Oceanwide" or the "Debtor") and a debtor and debtor-in-possession in the above-reference chapter 11 bankruptcy case.

2. I am a well-known authority on real estate companies. My clients have included real estate developers, real estate owners, contractors, and lenders to clients in those industries. Services provided to my clients have included debt restructuring including CRO, bankruptcy advisory, capital raising, M&A and financial and operational turnaround. I have served as a board member and interim CFO for a major real estate syndicator. I am highly experienced in all mainstream property types.

3. I have personally managed billions of dollars of debt restructuring on behalf of my clients and I have been Chief Restructuring Officer for many of California's residential, office and retail developers, including some of the largest restructurings and bankruptcies in the last two real estate cycles. I have served as a Chapter 11 Bankruptcy Trustee in the Central District of California, as well as in other Court appointed fiduciary capacities.

4. I am particularly active in the residential segment. I have functioned as CRO, testifying expert in Plan confirmation hearings, and capital provider to single-family developers and merchant builders. I am currently the Court-appointed Independent Manager over a major luxury residential development project in Los Angeles.

5. I am often engaged as a court-appointed liquidating trustee of portfolios of real property and/or of operating real estate companies. As a Bankruptcy Responsible Officer, I managed a diversified portfolio of 27 properties in four states, ultimately liquidating the assets and making a very meaningful distribution to creditors.

6. I am a CPA, a Certified Turnaround Professional, and hold FINRA Series 79 and 63 Investment Banking licenses. I have twice been named by Daily Report as one of the Three Best Expert Witnesses-Economic in the county.

ADEQUATE PROTECTION AND VALUATION

7. I have been asked to provide expert commentary on the valuation of the property owned by the Debtor as more fully described in the First Day Declaration of Bradley Sharp, in conjunction with the Debtor's application for approval of DIP financing in the amount of $10 million.

8. I have reviewed a 2017 appraisal prepared by CBRE as well as various budgets and other information provided by Debtor including LOIs from prospective Buyers..

9. I have also consulted with Greg Eidson, MAI, CCIM. I work frequently with Mr. Eidson on complex real estate litigation and bankruptcy matters.

10. Mr. Eidson is a Managing Director with B. Riley Advisory Services. Mr. Eidson is a state certified general appraiser in numerous states and holds the MAI (a Member of the Appraisal Institute) designation as well as the CCIM (Certified Commercial Investment Member) designation. He has more than 37 years of experience in real property valuation, brokerage, and consulting.

11. Mr. Eidson has appraisal experience with a wide variety of real estate properties that includes retail; hospitality; office, industrial, multi-family, and mixed-use development projects.

12. Mr. Eidson's valuation opinions have been used in the context of mortgage lending, right-of-way acquisition, bankruptcy court, buy/sell decisions, purchase price allocation, loan monitoring, forced disposition, portfolio performance monitoring and litigation support.

13. Geographically, Mr. Eidson has travelled throughout the United States and

Caribbean and personally worked on residential subdivision developments in Southern California; mixed-use high rise buildings in downtown San Francisco; high rise office buildings in Dallas, Denver, Chicago, and Boston; regional malls in Texas; movie theaters in New York; shipping facilities in Houston; industrial manufacturing and distribution buildings in states from California to Connecticut to Georgia; multi-family apartment developments in North Carolina to Florida and hotels in California and the Caribbean. The purposes of these valuation assignments range from litigation support to portfolio monitoring.

14. Mr. Eidson has provided expert witness testified in Federal Tax Court, Bankruptcy Court, Superior Court, Civil Court, and State Court.

15. At my request, Mr. Eidson has begun a formal appraisal of the Property, however the work to complete that appraisal is substantial. Given the complexity and partially completed status of the Project on the Property, Mr. Eidson's MAI work will not be finalized for approximately four more weeks.

16. Given the urgency of the Court's consideration and approval of the DIP financing, I make the following interim comments regarding the Property's valuation. When I refer to "we" below, I am referring to the fact that Mr. Eidson and I have collaborated on this work and declaration, and the opinions expressed are ours jointly. Mr. Eidson's signature below is with respect to these joint representations.

"AS IS" VALUATION COMMENTARY AND METRICS

17. We extracted information from the 2017 Appraisal, gathered updated data re: CoStar Submarket Data and condominium sales data, and recalculated a current estimate of value for the Property. This calculation suggests that the "when completed and stabilized" market value is approximately $1.7 billion. We note that the "when completed and stabilized" market value from the 2017 Appraisal was $1,525,000,000. The primary intended use of the Property is

luxury residential condominiums. Luxury residential condominium values (price per square foot) have increased approximately 14% since 2017. We are advised by Debtor in the form of a detailed budget, and concur that the likely cost to complete the Project is approximately $1 billion.

18. For an estimate of the "As Is" value of the Property, we reduce the current updated "when complete and stabilized" value by 10 percent for contingency. We then deduct the estimated cost to complete of $1 billion. This calculation yields an estimated "as is" value of the Property of $446,407,000.

19. We are advised that the secured creditors against the Property are owed approximately $371 million, the estimated Property value suggests that the secured creditors are adequately protected.

LAND VALUATION

20. The land value was estimated at $200 million in the 2017 Appraisal based on seven comparisons presented in that report.

21. The 2017 land value alone represents approximately 55 percent of the amount owing to the secured creditors.

COST BASIS VALUE

22. We are advised and believe that the Debtor has spent $1.2 billion on the project to date. This amount is credible given it generally reconciles with the amounts paid to, and the claims asserted by, various secured and unsecured creditors. Deducting our previous estimate of 10 percent for contingency suggests an "as is" Property value of approximately $1 billion based on the Cost Approach.

BUYER INTEREST

23. We are advised by Debtor that there is active Buyer interest in the Property in its

"as is" condition, there are two signed LOIs with on-going due diligence efforts, and there appears to be a high likelihood of one or more binding offers upon completion of potential buyers' diligence. Each of the two LOI's state purchase prices of $850 million subject to completion of diligence. This proposed price is consistent with the Costs expended to date as noted in the preceding section. Note that $850 million is more than double the amount of the undisputed secured claims in this case.

CONCLUSION

24. This preliminary analysis suggests that the undisputed secured creditors who hold estimated total claims of $365 million are adequately protected by the value of the Property.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 12 day of March, 2004 in Newport Beach, California.

J. Michael Issa

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 12 day of March, 2004 in Atlanta, Georgia.

Greg Eidson