

AMENDMENT NO. 1 TO SUBLEASE AGREEMENT

THIS AMENDMENT NO. 1 TO SUBLEASE AGREEMENT (this “Amendment”) dated as of June 10, 2024, by and between the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at One West Street, 4th floor, Mineola, NY 11501 (the “Agency”), and THE BREEZE AT LONG BEACH LLC, a limited liability company organized and existing under the laws of the State of Delaware, having an office at 300 Jericho Turnpike, Jericho, NY 11753 (the “Company”).

WITNESSETH:

WHEREAS, ENGEL BURMAN AT THE BEACH LLC (the “Applicant”), on behalf of itself and entities formed or to be formed on its behalf (including, without limitation, the Company), presented an application for financial assistance (the “Application”) to the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) consisting of the following: (A)(1) the acquisition of an interest in an approximately 6.04 acre parcel of land located between Long Beach Boulevard, Shore Road and Riverside Boulevard, City of Long Beach, Nassau County, New York (Section: 59; Block: 116; Lots: 39 and 40 (formerly known as Lot 38) (the “Original Land”), (2) the construction of an approximately 620,000 square foot mixed-use building, transit oriented development (collectively, the “Building”) on the Original Land, together with related improvements to the Original Land, including, but not limited to, a parking garage, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the “Equipment”) necessary for the completion thereof (collectively, the “Project Facility”), all of the foregoing for use by the Applicant and/or entities formed on its behalf as (i) a mixed use, including residential use, facility structure on Lot 39 (the “Non-Rental Project Land”) consisting of approximately two-hundred (200) residential condominium housing units (the “Non-Rental Project Facility”) and (ii) a mixed use, including residential use, facility structure on Lot 40 (the “Rental Project Land”) consisting of approximately two-hundred-thirty-eight (238) residential rental housing units (30 of which units shall be affordable/workforce units) (the “Rental Project Facility”) and approximately 6,500 square feet of retail space, together with two (2) levels of structured parking (each such parking and retail components located within and apportioned amongst the Rental Project Facility and the Non-Rental Project Facility; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes (but only with respect to the Rental Project Facility), mortgage recording taxes and/or sales and use taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase), license or sale of the Rental Project Facility and Non-Rental Project (collectively, the “Project

Facility”) to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on August 25, 2020 (the “Authorizing Resolution”), the Agency determined to proceed with the Project, to grant the Financial Assistance and to enter into the “straight lease transaction” contemplated by a certain Sublease Agreement dated as of August 1, 2021 (the “Lease”) between the Agency and the Company; and

WHEREAS, the Company simultaneously executed and delivered or caused to be executed and delivered to the Agency (A) a certain Uniform Project Agreement dated as of August 1, 2021 (the “Uniform Project Agreement”) between the Company and the Agency, which appointed the Company as the Agency’s agent and set forth additional terms for the straight lease of the Rental Project Facility, (B) a certain Company Lease Agreement dated as of August 1, 2021 (the “Company Lease”) between the Company and the Agency, which conveyed to the Agency a leasehold interest in and to the Rental Project Facility, and (C) a bill of sale dated the Closing Date (the “Bill of Sale to Agency”), which conveyed to the Agency all right, title and interest of the Company in and to the Rental Equipment (as defined in the Lease) to be installed in the Rental Project Facility; and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement dated as of August 1, 2021 by and between the Company and the Agency, as amended by that certain Amendment No. 1 to Payment in Lieu of Taxes Agreement dated as of the date hereof by and between the Company and the Agency (as amended, collectively, the “PILOT Agreement”), the Company has agreed to make certain payments in lieu of real property taxes with respect to the Rental Project Facility only, and such obligation is secured by a Mortgage and Assignment of Leases and Rents dated as of August 1, 2021 from the Company and the Agency, as mortgagors, to the County of Nassau, as mortgagee (the “PILOT Mortgagee”), as amended and restated by that certain Amended and Restated Mortgage and Assignment of Leases and Rents dated as of the date hereof from the Company and the Agency, as mortgagors, to the PILOT Mortgagee (as amended, collectively, the “PILOT Mortgage”), pursuant to which the Agency and the Company have granted a first lien mortgage on the Rental Project Facility to secure the Company’s obligations under the PILOT Agreement; and

WHEREAS, in order to finance a portion of the costs of the Rental Project Facility, the Lender (as defined in Article I of the Lease) has heretofore made a (i) mortgage loan to the Company in the maximum principal amount of up to \$100,240,000, and (ii) a mezzanine loan to the sole member of the Company in the maximum principal amount of up to \$49,760,000 (collectively, the “Bank Loan”), which Bank Loan is evidenced by one (1) or more promissory notes and/or loan agreements (together with all modifications, renewals and replacements thereof, collectively, the “Bank Note”); and

WHEREAS, the Company has requested that the Agency consent to the amendment of the Lease and the other Transaction Documents (as defined in the Lease) to modify the legal description, lot lines and tax map number of the Rental Project Land to comply with the requirements of the Nassau County Tax Assessor's Office;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Company and the Agency mutually covenant, warrant and agree as follows:

SECTION 1. DEFINITIONS.

SECTION 1.1 Interpretation. For purposes of this Amendment, unless otherwise defined herein, all capitalized terms used herein including, but not limited to, those capitalized terms used and/or defined in the recitals hereto, shall have the respective meanings assigned to such terms in the Transaction Documents.

SECTION 2. AMENDMENTS.

SECTION 2.1 The definition of "Bank Mortgage" and "Bank Mortgages" in Section 1.1 of the Lease is hereby deleted in its entirety and the following is inserted in place thereof:

"'Bank Mortgage' or 'Bank Mortgages' means, (i) that certain Consolidated, Amended and Restated Fee and Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing made by the Company and the Agency in favor of SM Finance III LLC dated as of June 10, 2024 in the principal amount of \$100,240,000, and (ii) any modifications, consolidations or extensions thereof, including any future mortgages or pledge agreements issued by a future bank or mezzanine lender with the Agency's consent."

SECTION 2.2 The definition of "Lender" in Section 1.1 of the Lease is hereby deleted in its entirety and the following is inserted in place thereof:

"'Lender' means SM Finance III LLC, a Delaware limited liability company, together with its successors and/or assigns."

SECTION 2.3 The definition of "PILOT Agreement" in Section 1.1 of the Lease is hereby deleted in its entirety and the following is inserted in place thereof:

“PILOT Agreement’ means that certain Payment in Lieu of Taxes Agreement dated as of August 1, 2021 by and between the Company and the Agency, as amended by that certain Amendment No. 1 to Payment in Lieu of Taxes Agreement dated as of June 10, 2024 by and between the Company and the Agency.”

SECTION 2.4 The definition of “PILOT Mortgage” in Section 1.1 of the Lease is hereby deleted in its entirety and the following is inserted in place thereof:

“PILOT Mortgage’ means that certain Mortgage and Assignment of Leases and Rents dated as of August 1, 2021 from the Company and the Agency, as mortgagors, to the PILOT Mortgagee, as mortgagee, as amended and restated by that certain Amended and Restated Mortgage and Assignment of Leases and Rents dated as of June 10, 2024 from the Company and the Agency, as mortgagors, to the PILOT Mortgagee.”

SECTION 2.5 The definition of “Uniform Project Agreement” in Section 1.1 of the Lease is hereby deleted in its entirety and the following is inserted in place thereof:

“Uniform Project Agreement’ means that certain Uniform Project Agreement dated as of August 1, 2021 between the Company and the Agency, as amended by that certain Amendment No. 1 to Uniform Project Agreement dated as of June 10, 2024 between the Company and the Agency.”

SECTION 2.6 Section 12.1(B) of the Lease is hereby amended by deleting in its entirety the entry captioned “IF TO MORTGAGE OR MEZZANINE LOAN LENDER “or any administrative agent therefor:” together with the information related thereto, and the following is inserted in place thereof:

“IF TO MORTGAGE LOAN LENDER (or any administrative agent therefor):

SM Finance III LLC
c/o Affinius Capital Management LLC
277 Park Avenue, 39th Floor
New York, NY 10172
Attn: Beth Newman and Brad Cohen
Email: beth.newman@affiniuscapital.com and brad.cohen@affiniuscapital.com

WITH A COPY TO:

SM Finance III LLC
c/o Affinius Capital Management LLC
277 Park Avenue, 39th Floor
New York, NY 10172

Attn: Jeffrey Geisler
Email: jeff.geisler@affiniuscapital.com

WITH A COPY TO:

SitusAMC
5065 Westheimer Road, Suite 700E
Houston, Texas 77056
Attn: CRE Servicing & Asset Management
Email: SAMNotice@situsamc.com and CustomerService@situsamc.com

WITH A COPY TO:

Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, New York 10019-9710
Attention: Stephen Gliatta, Esq.
Email: steve.gliatta@arnoldporter.com”

“IF TO MEZZANINE LOAN LENDER (or any administrative agent therefor):

SM Finance III LLC
c/o Affinius Capital Management LLC
277 Park Avenue, 39th Floor
New York, New York 10172
Attention: Beth Newman and Brad Cohen
Email: beth.newman@affiniuscapital.com and brad.cohen@affiniuscapital.com

WITH A COPY TO:

SM Finance III LLC
c/o Affinius Capital Management LLC
277 Park Avenue, 39th Floor
New York, New York 10172
Attention: Jeffrey Geisler
Email: jeff.geisler@affiniuscapital.com

WITH A COPY TO:

SitusAMC
5065 Westheimer Road, Suite 700E
Houston, Texas 77056

Attn: CRE Servicing & Asset Management
Email: SAMNotice@situsamc.com and CustomerService@situsamc.com

WITH A COPY TO:

Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, New York 10019-9710
Attention: Stephen Gliatta, Esq.
Email: steve.gliatta@arnoldporter.com”

SECTION 2.7 Exhibit A to the Lease is hereby deleted in its entirety and Exhibit A attached hereto is inserted in place thereof.

SECTION 2.8 All references in the Lease and the other Transaction Documents to “Lot 40” are hereby deleted and replaced with “Lot 41.”

SECTION 3. CONDITIONS.

SECTION 3.1 Conditions Precedent. This Amendment shall only become effective upon the fulfillment, prior to or contemporaneously with the delivery hereof, of the following conditions precedent:

(A) the execution and delivery by the Company and the Agency of an original or counterpart originals of this Amendment;

(B) the Company and the Guarantor shall deliver such other documents, instruments and agreements as the Agency may reasonably require in connection with the transactions contemplated by this Amendment; and

(C) the Company shall pay the Agency’s Consent Fee in the amount of \$750 and all fees and expenses (including attorneys’ fees and expenses) incurred by the Agency in connection with the preparation, execution and delivery of this Amendment and the closing of the transactions contemplated herein.

SECTION 4. MISCELLANEOUS.

SECTION 4.1 Representations and Warranties.

(A) All terms, conditions, covenants, representations and warranties of the Company contained in the Transaction Documents, except as expressly modified by this Amendment, are ratified, repeated, confirmed and reaffirmed by the Company, as of the date hereof, remain in full force and effect as of the date hereof, and are subject to the terms of this Amendment.

(B) The Company represents and warrants to the Agency that it has the necessary power and has taken all necessary action to make this Amendment the valid and enforceable obligation it purports to be, and that this Amendment constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(C) The Company represents and warrants to the Agency that no Event of Default specified in any of the Transaction Documents has occurred and no event which with notice or lapse of time or both would become such an Event of Default has occurred and is continuing.

SECTION 4.2 Additional Matters. All other documents and legal matters in connection with this Amendment and the transactions contemplated by the Lease as amended by this Amendment shall be satisfactory in form and substance to the Agency.

SECTION 4.3 Survival of Representations and Warranties. All representations and warranties made in this Amendment or any other documents furnished in connection with this Amendment shall survive the execution and delivery of this Amendment and no investigation by the Agency or any closing shall affect the representations and warranties or the right of the Agency to rely upon them.

SECTION 4.4 Reference to Lease. The Lease, the Transaction Documents and any and all other agreements, documents, or instruments heretofore, now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Lease, as amended hereby, are hereby amended so that any reference to the "Lease" or the "Lease Agreement" in the Lease, the Transaction Documents or such other agreements, documents or instruments executed and delivered in connection with the Lease shall mean a reference to the Lease, as amended hereby.

SECTION 4.5 Governing Law. This Amendment, the transactions described herein and the obligations of the parties hereto shall be construed under, and governed by, the

laws of the State of New York, as in effect from time to time, without regard to principles of conflicts of laws.

SECTION 4.6 Successors and Assigns. The Company and the Agency, as such terms are used herein, shall include the legal representatives, successors and assigns of those parties.

SECTION 4.7 Counterparts. This Amendment may be executed in any number of counterparts and by the Company and the Agency on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same Amendment.

SECTION 4.8 Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

SECTION 4.9 Conflicting Provisions. In the event of any conflict in the terms and provisions of this Amendment and the terms and provisions of the Lease, the terms and provisions of this Amendment shall govern.

SECTION 4.10 Entire Agreement. This Amendment constitutes the entire agreement and understanding between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior negotiations, understandings, and agreements between such parties with respect to such transaction.

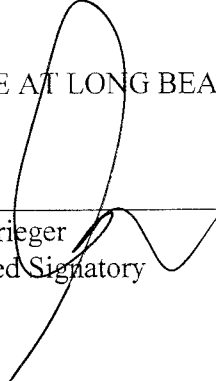
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IN WITNESS WHEREOF, this Amendment No. 1 to Sublease Agreement has been duly executed by the parties hereto as of the day and year first above written.

Company:

THE BREEZE AT LONG BEACH LLC

By:



Steven Krieger
Authorized Signatory

Agency:

NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By:

Sheldon L. Shrenkel
CEO/Executive Director

[Signature Page to Amendment No. 1 to Sublease Agreement]

IN WITNESS WHEREOF, this Amendment No. 1 to Sublease Agreement has been duly executed by the parties hereto as of the day and year first above written.

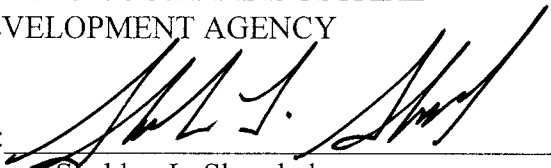
Company:

THE BREEZE AT LONG BEACH LLC

By: _____
Steven Krieger
Authorized Signatory

Agency:

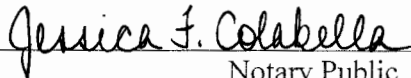
NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By:  _____
Sheldon L. Shrenkel
CEO/Executive Director

[Signature Page to Amendment No. 1 to Sublease Agreement]

STATE OF NEW YORK)
)SS.:
COUNTY OF NASSAU)

On the 6 day of June, 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared Steven Krieger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

JESSICA F. COLABELLA
Notary Public, State of New York
No. 01CO6137529
Qualified in Nassau County

Commission Expires November 28, 2025

STATE OF NEW YORK)
)SS.:
COUNTY OF NASSAU)

On the ___ day of June, 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared Sheldon L. Shrenkel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

[Acknowledgment Page to Amendment No 1 to Sublease Agreement]


STATE OF NEW YORK)
)SS.:
COUNTY OF NASSAU)

On the ___ day of June, 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared Steven Krieger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
)SS.:
COUNTY OF NASSAU)

On the 7th day of June, 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared Sheldon L. Shrenkel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Paul V O'Brien
Notary Public State of New York
No. 02OB6235944
Qualified in Nassau County
Commission Expires February 14, ~~2025~~ 2027

[Acknowledgment Page to Amendment No. 1 to Sublease Agreement]

EXHIBIT A

LEGAL DESCRIPTION

DESCRIPTION OF LOT 2 AS SHOWN ON "PARTITION MAP OF LOTS 1 THRU 23, LOTS 25 THRU 37, BLOCK 116 AND LOTS 1 THRU 70 BLOCK 115, ESTATE OF LONG BEACH, MAP 1, FILED APRIL 20, 1911, MAP NO. 31" SITUATED AT CITY OF LONG BEACH, TOWN OF HEMPSTEAD, COUNTY OF NASSAU, STATE OF NEW YORK.

All that certain plot, piece, or parcel of land, situate, lying and being in the City of Long Beach, Town of Hempstead, County of Nassau and State of New York, bounded and described as follows:

BEGINNING at a point at the intersection of the southerly side of Broadway with the westerly side of Long Beach Boulevard;

RUNNING THENCE along the westerly side of Long Beach Boulevard South 00 degrees 25 minutes 00 seconds East, 400.55 feet to the northerly side of Boardwalk;

THENCE along the northerly side of Boardwalk North 86 degrees 26 minutes 28 seconds West, 412.16 feet;

THENCE North 00 degrees 21 minutes 04 seconds West, 6.26 feet;

THENCE North 89 degrees 48 minutes 21 seconds East, 39.70 feet;

THENCE North 00 degrees 21 minutes 04 seconds West, 109.15 feet;

THENCE North 23 degrees 30 minutes 24 seconds West, 13.75 feet;

THENCE North 00 degrees 24 minutes 00 seconds West, 244.15 feet to the southerly side of Broadway;

THENCE along the southerly side of Broadway North 89 degrees 35 minutes 00 seconds East, 365.69 feet to the westerly side of Long Beach Boulevard and the Point or Place of BEGINNING.

Containing within said bounds: 142,851 sf ~ 3.279 acres