

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

EQUITYBUILD, INC., et al.,

Defendants.

Case No. 1:18-cv-5587

Hon. Manish S. Shah

Magistrate Judge Young B. Kim

**REPLY STATEMENT OF CLAIMANT THOROFARE ASSET BASED LENDING REIT
FUND IV, LLC FOR 1700-08 JUNEWAY TERRANCE (PROPERTY NO. 1)**

Consistent with the Receiver’s recommendation, as the first to file its purchase-money mortgage lien of record, claimant Thorofare Asset Based Lending Reit Fund IV, LLC (“Thorofare”) holds the priority, first position, interest in the Group 2 property located at 1700-08 W. Juneway Terrace, Chicago, Illinois, 60626 (the “Juneway Property”). Thorofare is therefore entitled to the proceeds of the sale of the Juneway Property under state and federal law.

Only the Certain Individual Investors challenge Thorofare’s priority on the basis of purported inquiry notice, but their challenge is meritless, given the undisputed nature of Thorofare’s purchase-money loan. Through its diligence, Thorofare ensured that its loan funds went directly in escrow and out to the third-party seller of the Juneway Property—a seller completely unaffiliated with Equitybuild. Thorofare simply had nothing to further inquire about.

ARGUMENT

Thorofare recorded its corrected purchase-money mortgage on April 12, 2017—almost two months earlier than the EBF Investor-Lenders recorded their mortgage. (*Compare* Dkt 1563-2 with Dkt. 1563-3.) At the time that it recorded its purchase-money mortgage, Thorofare had no notice of any prior mortgage liens on the Juneway Property. Neither the SEC nor the Receiver challenge

Thorofare’s priority position as to the Juneway Property—indeed the Receiver affirmatively recommends that Thorofare receive priority.

The only arguments¹ challenging Thorofare’s priority come from the Certain Individual Investors, but their arguments—based on the notion that Thorofare was on notice of the EBF Investor-Lenders’ mortgage by virtue of Thorofare’s general knowledge of Equitybuild’s “business model”—ignore the fact that Thorofare obtained its mortgage by directly funding the purchase of the property. The Certain Individual Investors alternatively argue that even if Thorofare’s mortgage lien is found to have priority, the EBF Investor-Lenders are nevertheless entitled to priority by virtue of an “equitable lien.” For his part, though the Receiver agrees that Thorofare is entitled to priority, he nevertheless recommends that Thorofare’s recovery should be limited to its principal and subject to the “netting rule.” For the following reasons, these arguments lack merit.

I. Thorofare Was the First to Record its Mortgage Lien and There is No Evidence Thorofare Was on Notice of the EBF Investor-Lenders’ Mortgage.

It is undisputed that Thorofare holds the first-in-time recorded mortgage lien on the Juneway Property. (*See* Dkt. 1571 at 8 (Receiver acknowledging Thorofare’s “purchase money mortgage was recorded first in time and apparently without notice of the investor-lenders’

¹ Claimant Capital Investors, LLC presents a similar argument, suggesting Thorofare was better positioned to ferret out Equitybuild’s fraud and that if had “done a proper investigation into [Equitybuild] and the Cohens, [Thorofare] would likely have seen the issues underlying the ponzi [sic] scheme.” (Dkt. 1560 at 2.) This argument fails for the same reasons as the Certain Individual Investors’ inquiry notice argument. To the extent other claimants challenge Thorofare’s priority on the Juneway Property (*see* Dkt. 1566), Thorofare reiterates its lien priority for the reasons expressed herein, as well as in its position statement (Dkt. 1563). Notably, numerous individuals in their separate position statements assert, often as the only basis for their position, that Equitybuild told them they would have a first lien. But Thorofare was not only told by Equitybuild, in writing, and in signed mortgage documentation, that it had a first position lien on the Juneway Property, but the record index for the Juneway Property showed no prior liens at the time Thorofare closed on its purchase-money mortgage.

mortgage.”); *see also* Dkt. 1564 at 18 (acknowledging the Thorofare mortgage was recorded months before the EBF Investor-Lenders’ mortgage). Further, Thorofare did not have actual or constructive notice of the EBF Investor-Lenders’ mortgage lien on the Juneway property. Based on Thorofare’s earlier-in-time recorded mortgage lien and lack of notice, the Receiver accordingly—and correctly—recommends that Thorofare has priority with respect to the Juneway Property. (Dkt. 1571 at 8-10; *see also In re Bruder*, 207 B.R. 151, 156 (N.D. Ill. Bankr. 1997) (citations omitted) (In Illinois, “the first to record, without notice, has superior rights to those who record later.”)).

To combat the unequivocal effect of Thorofare’s earlier recorded lien—which Thorofare recorded after ensuring that its loan proceeds were paid directly to the seller, not Equitybuild (*see* Reply Ex. 1, April 6, 2017 Seller’s Statement, excerpted from Thorofare Proof of Claim (“POC”), at 405)—the Certain Individual Investors suggest, in a single paragraph argument citing no legal authority, that Thorofare should be deemed to have been on inquiry notice of the EBF Investor-Lenders’ mortgage recorded two months later. Specifically, the Certain Individual Investors argue Thorofare “should have known about the Individual Investors’ Investments in the Juneway Property” because “any Institutional Lender should have been aware that Equitybuild’s business model relied on those investments and granted mortgage liens in exchange for them.” (Dkt. 1564 at 18.) “Having failed to adequately investigate this,” the Certain Individual Investors argue, “Thorofare’s mortgage should not be given higher priority than the Individual Investors’ mortgage.” (*Id.*)

Illinois law confirms Thorofare’s lien priority. In Illinois, “a purchaser is placed on ‘inquiry notice’ when facts revealed in the title search process would cause a reasonable individual to think twice about completing the transaction.” *Stump v. Swanson Dev. Co. LLC*, 2014 IL App (3d)

110784 ¶ 104. Importantly, “[i]t is well established that the burden of proof is upon the person charging notice.” *Krueger v. Oberto*, 309 Ill. App. 3d 358, 368 (2d Dist. 1999); *see also Reed v. Eastin*, 379 Ill. 586, 592 (1942) (“The burden of proof is, of course, upon the person charging notice to prove it.”) Yet the Certain Individual Investors fail to point to any evidence that Thorofare was, in fact, on notice of any competing mortgage on the Juneway property, let alone that Equitybuild’s “business model”² should have somehow tipped Thorofare off to a competing mortgage on the Juneway Property—nor is there any such evidence.³ Moreover, even if Thorofare were deemed on inquiry notice (which it was not) and failed to investigate further, it would be charged only “with notice of any facts that may have been discovered by the inquiry.” *Id.* At the time Thorofare closed on its purchase-money mortgage, the record index for the Juneway Property showed no prior liens and Equitybuild represented in the loan documents that it was granting a first lien position to Thorofare. There was nothing more that Thorofare could or should have done to ensure its mortgage lien priority.

Although the Receiver rightly concedes Thorofare’s mortgage priority and that Thorofare was not on inquiry notice, the Receiver nevertheless recommends that “Thorofare should not be entitled to a distribution in excess of its principal,” on the basis of “circumstances and conduct . . . which the Receiver believes important for the Court to consider” and “consistent with principles of inquiry notice.” (Dkt. 1571 at 8-9.) Specifically, the Receiver presents a singular instance of Thorofare’s purported “conduct,” arguing Thorofare was “clearly aware that Equitybuild’s

² In any case, Equitybuild did not have a single, discoverable “business model.” As described in the SEC’s Complaint, Equitybuild’s “business model” evolved over time, using multiple means, utilizing both mortgages and investor funds. (*See, e.g.*, Dkt. 1 (SEC Complaint).) Hence, it is not accurate to suggest that Equitybuild had a singular “business model” which would have alerted Thorofare to any alleged wrongdoing on the part of Equitybuild.

³ Notwithstanding their burden, the Certain Individual Investors also declined to seek leave to include expert testimony in support of their position on these issues.

business was sketchy and run by a ‘fugitive from justice,’” referencing an email between Thorofare employees discussing Jerry Cohen’s background, and that “more could (indeed, should) have been done by Thorofare, consistent with principles of inquiry notice, that would have uncovered additional issues associated with” Equitybuild. (Dkt. 1571 at 9, citing Receiver Exs. 13-15.)

The legal defects in this argument are discussed in section III below, however the argument is also factually deficient. Thorofare did “investigate further.” *See Stump*, 2014 IL App (3d) 110784 at ¶ 104. After a background check revealed outstanding tax liens, a felony matter (which had been dismissed 24 years prior), and 20+ year old bankruptcy filings against Cohen (Dkt. 1571 at 58), Equitybuild provided Letters of Explanation to Thorofare, at Thorofare’s request. (*See* Reply Ex. 3 (THOROFARE_JUNEWAY0009078).) These letters explained (1) the tax liens were related to loans Cohen co-guaranteed for a family member, who failed to keep current on the taxes unbeknownst to Cohen (*see* Reply Ex. 4 (THOROFARE_JUNEWAY0009081)); (2) the felony matter was based on a miscommunication concerning Cohen’s move to Florida, and the felony charge was dropped after Cohen learned of and promptly resolved the matter (Reply Ex. 5 (THOROFARE_JUNEWAY0009083); *see also* Dkt. 1571 at 55 (background check reporting “Research identified a felony case . . . filed in Collier County, Florida against ‘Jerome Harvey Cohen’ on November 3, 1993” and “dismissed on November 15, 1993”)); and (3) the bankruptcy filing related to the same loans Cohen co-guaranteed with his family member and after all lenders were satisfied, Cohen concluded his dealings with the family member approximately 17 years prior (Reply Ex. 6 (THOROFARE_JUNEWAY0009082)).

Accordingly, before making its purchase-money mortgage loan, Thorofare received explanations for each questioned aspect of Cohen’s background. Importantly, and contrary to the Receiver’s assertion, *none* of the explanations “uncovered additional issues associated with the

Cohens' fraud, including, *e.g.*, that Equitybuild's business model was to crowdfund its investments" or that "Equitybuild was doing so at the same time and on the same property that Thorofare was financing." (Dkt. 1571 at 9-10.)

II. Illinois Law Does Not Permit A Subsequent Mortgagee To Take Priority Via An "Equitable Lien" Absent A Showing Of Equitable Subrogation, Which The Certain Individual Investors Have Not Asserted, Let Alone Proven.

The Certain Individual Investors further argue, in the alternative, that even if the Court finds that Thorofare has priority, the Court should nevertheless hold that the EBF Investor-Lenders have an "equitable lien" on the Juneway Property, entitling them to the proceeds of the sale of the Juneway property ahead of Thorofare. (Dkt. 1564 at 19-20.) Conceding that "the holder of an equitable lien cannot take priority over the interest of a party who acquires an interest in a property without notice of the equitable interest," the Certain Individual Investors again rely on the concept of inquiry notice. (*Id.* at 20 (citing *Stump*, 2014 IL App (3d) 110784).) Specifically, they contend "the Institutional Lenders' due diligence, with reasonable inquiry, should have uncovered facts sufficient for the Court to conclude that each had actual notice and knowledge of the Individual Investors' loans, [and] that those loans remained outstanding." (*Id.* at 20.)

However, simply claiming an "equitable lien" does not provide a basis for the Court to grant priority to the EBF Investor-Lenders over Thorofare's first-in-time recorded purchase-money mortgage. Rather, Illinois law requires a subsequent mortgagee attempting to assert the priority of its lien over a prior recorded mortgage to establish the elements of equitable subrogation. Specifically, a subsequent mortgagee must show (1) words or conduct by the prior mortgagee amounting to a misrepresentation or concealment of a material fact; (2) knowledge by the prior mortgagee that the representations were untrue; (3) the truth respecting the representations was unknown to the subsequent mortgagee; (4) the prior mortgagee intended or

expected that the subsequent mortgagee would act on the representations; (5) the subsequent mortgagee relied on the prior mortgagee's representations; and (6) the subsequent mortgagee acted because of the prior mortgagee's misrepresentations and is prejudiced as a result. *See Walker v. Ocwen Loan Servicing, LLC*, 2016 IL App (3d) 150034-U, ¶ 32 (citing *Chemical Bank v. American Nat'l Bank & Tr. Co.*, 180 Ill. App. 3d 219, 226 (1st Dist. 1989)).

The Certain Individual Investors do not state, even in a conclusory manner, any of these elements, let alone prove them. *See id.* (“Proof of these elements must be clear, precise and unequivocal.”). Most importantly, these elements require some level of misconduct on the part of the prior mortgagee directed toward the subsequent mortgagee, which the Certain Individual Investors have not and cannot show. Indeed, there is no evidence that Thorofare had any relationship or contact with the EBF Investor-Lenders, let alone made any representations to the EBF Investor-Lenders that would cause them to believe their mortgages would have priority over Thorofare’s purchase-money mortgage.

Moreover, equitable subrogation is available only where no prejudice results. *Id.* at ¶ 30 (citing *Detroit Steel Prods. Co. v. Hudes*, 17 Ill. App. 2d 514, 521 (4th Dist. 1958)). Here, if equitable subrogation were applied, Thorofare as the first lender would be harmed—“[a]llowing [the EBF Investor-Lenders’ mortgages] to leapfrog over [Thorofare’s] would make [Thorofare’s] mortgage subject to a mortgage that was non-existent at the time of execution.” *Id.* at ¶ 36; *see also Firstmark Standard Life Ins. Co. v. Superior Bank FSB*, 271 Ill. App. 3d 435, 439 (1st Dist. 1995) (a mortgage “becomes effective when it is recorded”); *5210 Wash. Investors LLC & Arthur Bertrand v. Equitybuild, Inc.*, 2023 Ill. Cir. LEXIS 79, *10 (“[A] mortgage is not a lien on a property until it has been recorded.”).

Additionally, to the extent Thorofare could be charged with knowledge of facts it “should have uncovered” with “reasonable inquiry”—the same holds true for the EBF Investor-Lenders, further undermining the notion that they are entitled to an “equitable lien” under the circumstances. Indeed, the same evidence of Equitybuild’s “business model” was equally available to the EBF Investor Lenders, who were likewise capable of “a simple Google search.” (Dkt. 1564 at 3.) It is well established that “[w]here one of two innocent persons must suffer by reason of the fraud or wrong conduct of another, the burden must fall upon him who put it in the power of the wrongdoer to commit the fraud or do the wrong.” *M&T Bank v. Mallinckrodt*, 2015 IL App (2d) 141233, ¶ 52. *see also Walker*, 2016 IL App (3d) 150034-(U), ¶ 34 (“The doctrine of equitable subrogation was created to place the loss on the party upon whom it should fall. In this case, the loss falls on defendant, who was in the best position to prevent it.”) (citation omitted)). Here, any wrongdoing was done by the EBF Investor-Lenders’ agent, EBF, in misrepresenting to the EBF Investor-Lenders what their lien position would be. Simply put, absent proof supporting equitable subrogation, Illinois law does not and cannot burden Thorofare, a third party to the relationship between EquityBuild and the EBF Investor-Lenders, with the responsibility for the EBF Investor-Lenders’ agent’s actions.

III. Thorofare Is Entitled To The Entirety Of Its Secured Claim Up To The Amount Of The Net Proceeds.

The Receiver argues that Post-Receivership interest and late fees, attorneys’ fees, and other ancillary charges permitted by the applicable loan documents should be denied, even to the victorious priority secured creditor. (*See* Dkt. 1571 at 11-16.) Specifically, the Receiver contends “Thorofare’s recovery should be limited to its principal investment lost as a result of the Equitybuild Ponzi scheme.” (*Id.* at 11.) The Receiver’s argument is grounded primarily in (i) general concepts of equitable discretion, and (ii) general assertions regarding the alleged Ponzi

scheme. (Dkt. 1571 at 11-16.) There are fatal defects as well as procedural issues that preclude adopting the Receiver's propositions.

a. A Secured Creditor Is Entitled To The Complete Recovery Authorized Under Illinois Law.

The notion that the Court may override a secured mortgagee's rights violates the fundamental precept that equity follows law. *See, e.g., In re BNT Terminals, Inc.*, 1991 Bankr. LEXIS 421, *20 (Bankr. N.D. Ill. Feb. 21, 1991) (declining to reinstate liens "premised upon 'basic concepts of equity'" because "equity follows law and [defendant's] lawyers have failed to articulate what the basic concepts of equity are that the Court should apply."). At least one court⁴ has explicitly considered whether a court administering an equity receivership has "general authority to ignore state law in the name of equity" in order to distribute receivership proceeds on a pro rata basis, rather than in accordance with state law priority rules. *In re Real Prop. Located at [Redacted] Jupiter Drive*, No. 2:05-CV-01013-DB, 2007 U.S. Dist. LEXIS 65276 (Utah D. Ct. Jun. 7, 2007). In that case, the court confirmed it *did not* have such broad authority, rejecting an argument that the "the district court's discretion in supervising a receivership includes the ability to deny 'state law remedies' in dealing with receivership assets." *Id.* at *11 (quoting competing investor's brief). Citing Supreme Court authority for the proposition that it is "well-established that a 'receiver appointed by a federal court takes [a] property subject to all liens, priorities or privileges existing or accruing under the laws of the State,'" the court agreed it was "governed by

⁴ To be clear, the substance of the opinion in *Jupiter* was drafted by a Special Master, whom the court appointed to determine which investors were entitled to what portion of what remained in the investment pool. After conducting "a de novo review of the [Special Master's] Report and Recommendation and the objections to it," the court adopted the Special Master's report. (*See In re Real Prop. Located at [Redacted] Jupiter Drive*, No. 2:05-CV-01013-DB (Utah D. Ct.), "Order Adopting the First Report and Recommendation of the Special Master," Dkt. 272 at 1-2.) In light of the district court's adoption of the Special Maser's report, and for ease of reference, Thorofare refers to the *Jupiter* opinion as coming from the court.

the general rule that state law regarding lien priorities is to be respected in receiverships.” *Id.* at *12. Further observing that “[t]he United States Constitution specifically states that contractual rights are not to be impaired,” the court explained that “[t]he consequences may be harsh for the [competing] Investors, but the law is clear. Equity has its limits.” *Id.* at *26-27 (citing U.S. Const. Art. I, § 10, cl. 1).

As in *Jupiter*, the Court should decline the Receiver’s invitation to abandon Illinois lien priority rules in favor of equity. Illinois law is clear that the recording of a mortgage creates a security interest in real estate for the payment of the underlying indebtedness. *See* 765 ILCS 5/11 (“Such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient mortgage in fee to *secure the payment of the moneys therein specified.*”) (emphasis added); *see also Ogle v. Koerner*, 140 Ill. 170, 179 (1892) (“A mortgage. . . vests in the party secured a lien upon the mortgage premises” and “[b]y virtue of that lien the mortgagee is entitled to . . . the proceeds of the sale [of the property in foreclosure] applied to the payment of the debt secured.”). Illinois law further explicitly deems mortgages effective from and after the time of filing on the record, and “not before.” *See* 765 ILCS 5/30 (“[M]ortgages . . . shall take effect and be in force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers, without notice; and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers, without notice, until the same shall be filed for record.”). Accordingly, as the first to record its purchase-money mortgage lien without notice, Illinois law entitles Thorofare to the payment of the amounts secured by its mortgage.

For Thorofare, in addition to the principal, its promissory note and the mortgage secured thereby specify that it is entitled to interest. (Dkt. 1563-2; *see also* Reply Ex. 7 (April 6, 2017 Promissory Note secured by Thorofare’s Juneway mortgage).) The Receiver, however, contends

“[a]s a general rule, in equity receiverships, interest on a debtor’s obligations ceases to accrue at the inception of the proceeding,” relying on the Supreme Court’s decision in *Vanston Bondholders Protective Committee v. Green*, 329 U.S. 156, 163 (1946). (Dkt. 1571 at 12 (“the *Vanston* Court made clear that interest is not permitted in a federal equity receivership. . .”).) However, the *Vanston* case was limited to a challenge to the potential recovery of interest on interest in which the subordinate creditors “concede[d] that the first mortgage bondholders should receive simple interest on the principal due them.” *Vanston*, 329 U.S. at 159. The Receiver’s other cited cases are similarly distinguishable.⁵

Moreover, while *Vanston* “has never . . . been legislatively or judicially overruled,” it has, however, been “superseded in the respects that section 506(b) provides.” *In re Urban Communicators PCS Ltd. P’ship*, 379 B.R. 232, 252-53 (Bankr. S.D.N.Y. 2007), *rev’d on other grounds*. For its part, Bankruptcy Code Section 506(b)—which applies with full force in these proceedings⁶—dictates that “[t]o the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim,” a secured claimant is allowed “interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement . . . under which such claim arose.” 11 U.S.C. § 506(b). The *Jupiter* opinion is

⁵ *SEC v. Capital Cove Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856 (C.D. Cal., Oct. 13, 2015) (concerning default interest); *In re Hollstrom*, 133 B.R. 535, 539 (Bankr. D. Colo. 1991) (concerning default interest); *Duff v. Cent. Sleep Diagnostics, LLC*, 801 F.3d 833, 844 (7th Cir. 2015) (involving question of whether a receivership court had the discretion to treat claimants’ names as confidential, not whether the court could ignore state and federal rights of secured creditors in their collateral).

⁶ Contrary to the Receiver’s suggestion (*see* Dkt. 1571 at 14 n.6), “equitable considerations” should not serve as a basis to avoid the applicability of Local Rule 66.1, providing “the administration of estates by receivers or other officers shall be similar to that in bankruptcy cases,” thus bringing 11 U.S.C. § 506(b) reasonably into the Court’s consideration. Notably, the Receiver contends Thorofare “knowing very much who they [were] doing business with” constitutes “inequitable conduct.” (Dkt. 1571 at 15.) But, as described, this alleged “knowledge” applies with equal force to all Equitybuild investors. (*See infra*.)

instructive on this point, as well. “Having reviewed the cases and the treatises,” the *Jupiter* court held that the “institution of a receivership does not stop the running of interest contracted for by a secured party any more than it interferes with the priority afforded such a party by state law.” *Id.* at *23 (citing *Clark on Receivers*, § 660, noting that “appointment of a receiver cannot deprive a party to the suit or a claimant of his contractual rights.”).

As noted, the Thorofare mortgage and loan documents confirm it is entitled to interest. (*See* Dkt. 1563-2; *see also* Reply Ex. 7.) In addition to the Thorofare loan documents themselves, Bankruptcy Code Section 506(b) requires a secured claimant such as Thorofare to receive all amounts due under its loan agreement, up to the amount of its secured collateral, too. *See* 11 U.S.C. § 506(b); *see also In re Cella III, LLC*, 625 B.R. 19, 25–26 (Bankr. E.D. La. 2020) (holding secured creditors are secured and entitled to recover interest up to the value of the property); *In re Croatan Surf Club, LLC*, No. 11-00194-8-SWH, 2012 Bankr. LEXIS 2369, at *6 (Bankr. E.D.N.C. May 25, 2012) (holding same); *In re Broomall Printing Corp.*, 131 B.R. 32, 35–37 (Bankr. D. Md. 1991) (holding same); *Liberty Nat. Bank & Tr. Co. of Louisville v. George*, 70 B.R. 312, 313 (W.D. Ky. 1987) (holding same). Indeed, as the Seventh Circuit has recognized, “when a specific [Bankruptcy] Code section addresses an issue, a court may not employ its equitable powers to achieve a result not contemplated by the Code.” *In re Fesco Plastics Corp.*, 996 F.2d 152, 154 (7th Cir. 1993).

Thorofare is thus entitled to interest on its loan. The only question therefore is on what principal balance that interest is calculated. Thorofare should be entitled to calculate and receive interest on the entire outstanding principal balance of the loan before any proposed setoff, given that Thorofare could not setoff any funds prior to this time. (*See* Dkt. 16 at 3.) If for any reason the Court disagrees, at a minimum, and subject to its rights of appeal, Thorofare would be entitled

to recover interest calculated on the outstanding principal balance of the loan after deduction of any reserves or other sums determined by the Court.

b. The Receiver Has Not Met His Burden Of Proving That The Ponzi Scheme Presumption Applies As To Thorofare.

The Receiver improperly assumes the Ponzi scheme presumption applies to trigger the so-called “netting rule.” *See In re Taneja*, 2012 Bankr. LEXIS 3554, *14 (Bankr. E.D. Va. July 30, 2012) (“A party seeking to raise a [Ponzi scheme] presumption has the burden of proving the predicate facts that give rise to the presumption.”). Specifically, the Receiver argues the Cohens’ operation of a Ponzi scheme “was alleged with specificity by the SEC in its Complaint, and the Cohens did not deny the Ponzi scheme having entered into a Consent Judgment.” (Dkt. 1571 at 15.)

But the factual circumstances specific to Thorofare undercut the applicability of the Ponzi scheme presumption to it. Indeed, Thorofare never sent Equitybuild any money. Instead, Thorofare disbursed funds through escrow to the Chicago Metropolitan Housing Development, the seller from whom the property was being purchased. (*See* Reply Ex. 1; *see also* Reply Ex. 2.) Put differently, Thorofare’s disbursed loan funds went directly to the seller as compensation for the acquisition of the Juneway Property without the funds passing through Equitybuild’s hands, and Thorofare is thus a first position lender secured by a purchase-money mortgage. Accordingly, the Chicago Metropolitan Housing Development received Thorofare’s loan proceeds, not funds from prior or future Equitybuild investors, and Thorofare’s loan is thus fundamentally outside any Ponzi scheme. Accordingly, because Thorofare’s loan was a purchase-money loan, and the Cohens’ consent judgment alone is inadmissible as evidence of a Ponzi scheme as to the Juneway Property,⁷

⁷ Consent judgments are not admissible evidence of the allegations stated therein. *See, e.g., Carpenters Health & Welfare Fund v. The Coca-Cola Co.*, 2008 U.S. Dist. LEXIS 112503, *14

the application of the Ponzi scheme presumption is not established. Therefore, the “netting rule” cannot apply to Thorofare’s mortgage on the Juneway Property.

Even if the Court were inclined to apply the “netting rule,” the Receiver’s calculations are not correct. For example, the Receiver seeks to “net” out a total of \$230,312.50 (consisting of the \$54,375 loan origination fee, the \$5,000 loan processing fee, the \$10,937.50 prepaid interest, and the \$160,000 interest reserve) from the principal as though and to the same extent as if Equitybuild had paid them to Thorofare. (*See id.*) But the fees and prepaid interest were merely amounts Thorofare lent Equitybuild, in that Equitybuild was required to repay these amounts to Thorofare, and do not represent any funds Equitybuild actually received in hand via any disbursement; in other words, they are not profit to Thorofare nor a draw or source of funds for Equitybuild investors. The \$160,000 interest reserve likewise was not disbursed to Equitybuild, but rather held by Thorofare. (Dkt. 1563-1, at 15 (¶ 5 of Mortgage) (“(\$160,000) of the Loan shall be funded . . . to a reserve account controlled by Mortgagee [Thorofare] (the “Delta Interest Reserve”), which funds shall by utilized by Mortgagee for application to monthly installments...”).) Accordingly, the \$160,000 interest reserve, fees and prepaid interest totaling \$230,312.50 never entered Equitybuild’s hands and is analogous to any other amounts Equitybuild owed but never paid, which amounts the Receiver has not otherwise proposed to net against claim recoveries. (*See* Dkt. 1571 at 17.)

The Receiver also proposes reducing the principal balance by \$291,750.62, representing his estimate of the pre-filing interest payments made on the Thorofare Juneway loan. (*Id.* at 36.)

(N.D. Ga. Apr. 23, 2008) (a consent judgment “falls squarely into the class of evidence deemed inadmissible pursuant to Rule 408”). This rule serves the “high public policy value of encouraging entities . . . to settle their disputes with . . . governmental agencies,” and avoids the “chilling effect” that “would likely” result from admitting the consent judgment as evidence of wrongdoing by private litigants.” *Id.* at *3.

But the Receiver nowhere cites evidence that Equitybuild ever paid Thorofare any of this amount. Rather, the Receiver estimates this amount based on “a non-default per-diem interest owed rate of \$664.58” and “multiplying the 439 days between 5/1/2017 and 7/31/2018 by this per diem rate.” (*Id.*, Ex. 8.) Without evidence that Equitybuild paid Thorofare this amount—i.e., evidence that Thorofare received money invested by other Equitybuild investors—netting is not permitted.

Finally, and in any event, the time for the Receiver to disclose a fraudulent conveyance claim against Thorofare has passed. (*See* Dkt. 1476; Dkt. 1532.) Without the disclosure of a claim against Thorofare under the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160, or otherwise, the Receiver cannot meet his burden to prove such a claim as required to trigger the “netting rule.” In fact, the only two cases that the Receiver cites to support his argument that netting should apply are both wholly focused on analyzing whether netting was appropriate upon proof and application of the applicable Uniform Fraudulent Transfer statute for each case. *See Scholes v. Lehmann*, 56 F.3d 750, 757-58 (7th Cir. 1995) (analyzing whether netting was appropriate by applying predecessor statute to Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160, while also discussing analysis under current statute); *Donell v. Kowell*, 533 F.3d 762 (9th Cir. 2008) (analyzing netting while applying California’s Uniform Fraudulent Transfer Act). Under such circumstances, the netting rule should not apply to Thorofare’s secured claim.

CONCLUSION

For the above reasons, and for those stated in Thorofare’s Position Statement (Dkt. 1563), Thorofare’s mortgage interest in the Juneway Property is senior to the mortgage interest of the EBF Investor-Lenders as a matter of law. Thorofare is therefore entitled to receive the funds liquidated by the Receiver’s sale of the Juneway Property in the amounts due as specified in its loan documents. *See* Dkt. 1563-2; *see also* Reply Ex. 7).

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Respectfully submitted,

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bnatarelli@dykema.com

*Attorneys for Claimant Thorofare Asset
Based Lending Reit Fund IV, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2024, I electronically filed the foregoing **REPLY STATEMENT OF CLAIMANT THOROFARE ASSET BASED LENDING REIT FUND IV, LLC** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record, and further caused the foregoing to be served upon all members of Claims Group 2 by email to the distribution list ebgroup2service@rdaplw.net.

/s/ Andrew R. DeVooght _____
Andrew R. DeVooght

EXHIBIT 1

SELLER'S STATEMENT

Date: April 6, 2017

GFNo: 40018401

Sale From: Chicago Metropolitan Housing Development Corporation
225 West Wacker Drive, suite 1550
Chicago, IL 60606

To: 1700 Juneway LLC
1700-1708 West Juneway Terrace
Chicago, IL 60626

Property: 1700-1708 West Juneway Terrace Chicago, IL 60626
1700-1708 West Juneway Terrace
Chicago, IL 60626

Sales Price	\$2,400,000.00
Reimbursements/Credits	
30-Day or Less Delinquent Rents Credited to Seller	\$3,309.38
Total Reimbursements/Credits	\$3,309.38
Gross Amount Due to Seller	\$2,403,309.38

Less: Charges and Deductions	
Transfer Taxes to Greater Illinois Title Company	\$3,600.00
County Transfer Tax	\$1,200.00
State Transfer Tax	\$2,400.00
Fees to Greater Illinois Title Company	\$1,175.00
Commercial Escrow Fee	\$930.00
Commitment Update Fee	\$160.00
Water Processing Fee	\$85.00
CPL to Chicago Title Insurance Company	\$50.00
State of Illinois Policy Fee to Chicago Title Insurance Company	\$3.00
Additional Title Services to Greater Illinois Title Company	\$135.00
Wire Transfer Fee	\$135.00
Title Insurance to Greater Illinois Title Company	\$1,960.00
Exam & Insurance	\$1,960.00
Real Estate Tax Prorations - 2016	From 7/1/2016 thru 12/31/2016 \$13,535.92
Real Estate Tax Prorations - 2017	From 1/1/2017 thru 4/4/2017 \$7,378.19
Payoff of first mortgage loan	\$1,612,338.04
Commission - Kass Management to Kass Management	\$46,700.00
Commission - Selling to Kale Realty	\$46,100.00
Escrow for Buyers fines/court costs in connection with AH Case to Miner, Barnhill and Galland, P.C.	\$2,000.00
Water Certification to City of Chicago Water Department	\$50.00
Sellers Attorney Fees to Miner, Barnhill and Galland, P.C.	\$14,500.00
Sellers credit to buyer in connection with Porch Repair	\$80,000.00
Sellers credit to buyer for Survey Upgrade	\$750.00
Credit to Buyer for Tenant Security deposits: R. Dixon	\$885.03
Credit to Buyer for Tenant Security Deposits - E. Lozada	\$825.02
Collected Rents	\$7,888.09
Credit to Buyer for Prepaid rent - per Rent Roll	\$0.61
Total Charges and Deductions	\$1,839,873.90
Net Amount Due to Seller	\$563,435.48

Printed at: 04/06/2017 (12:03 pm)

Compliments of Greater Illinois Title Company

GFNo: 40018401

Page 2

Seller understands the Closing or Escrow Agent has assembled this information representing the transaction from the best information available from other sources and cannot guarantee the accuracy thereof. The lender involved may be furnished a copy of this statement.

Seller understands that tax and insurance prorations and reserves were based on figures for the preceding year or supplied by others or estimates for the current year, and in the event of any change for current year, all necessary adjustments must be made between Purchaser and Seller direct.

The undersigned hereby authorizes Greater Illinois Title Company to make expenditure and disbursements as shown above and approves same for payment. The undersigned also acknowledges receipt of Loan Funds, if applicable, in the amount shown above and a receipt of a copy of this Statement

Greater Illinois Title Company

Chicago Metropolitan Housing Development Corporation

By


Karyn Kutrubis

By

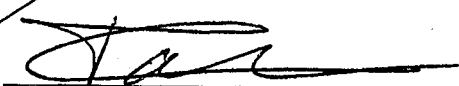

Rafael Leon
Executive Director

EXHIBIT 2



333 S. Hope Street, 36th Floor
Los Angeles, CA 90071

Phone: 213.229.2868

Fax: 213.229.2870

www.swesq.com

Christopher M. Dargan
cdargan@swesq.com

April 6, 2017

Greater Illinois Title Company
120 North LaSalle Street Suite 900
Chicago Illinois 60602
Attention: Karyn Kutrubis
Email: Karyn.Kutrubis@gitc.com

Re: **1700 W. Juneway, Chicago, IL**
CTT Loan Policy Pro Forma No. 40018401

Ladies and Gentlemen:

1. This letter constitutes the escrow instructions of our client, THOROFARE ASSET BASED LENDING REIT FUND IV, LLC, a Delaware limited liability company (“**Lender**”), to Greater Illinois Title Company, as escrow holder, (“**Escrow Holder**”) with respect to Escrow Holder’s escrow No. 40018401 (“**Escrow**”) and Lender’s making of a loan in the principal amount of \$2,175,000.00 (“**Loan**”) to 1700 JUNEWAY LLC, an Illinois limited liability company (“**Borrower**”). The Loan shall be secured by that certain real property and improvements located at 1700 W. Juneway, Chicago, IL that is legally described in that certain pro forma loan policy of title insurance (the “**Pro Forma**”) attached hereto as Exhibit A issued by Greater Illinois Title Company as issuing agent for Chicago Title Insurance Company (“**Title Company**”) under File No. 40018401. The Mortgage (as defined below) will encumber all of the real property covered by the Pro Forma (the “**Property**”). The Loan transaction is currently scheduled to close Escrow on or before April 6, 2017 (“**Scheduled Closing Date**”), and the date on which the close of Escrow actually occurs is hereafter referred to as the “**Closing Date.**”

2. Delivered directly to Escrow Holder by Borrower or Lender, Escrow Holder will receive the following instruments and perform the following actions:

(a) **Original Signature Pages (and Notary Acknowledgements) From Borrower:**

Greater Illinois Title Company
Attention: Karyn Kutrubis

April 6, 2017
Page 2

(i) Mortgage, Assignment of Leases and Rents and Security Agreement executed and acknowledged by Borrower, as trustor, in favor of Lender (“**Mortgage**”);

(ii) Promissory Note Secured By Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing in the principal amount of the Loan, from Borrower to Lender;

(iii) Holdback and Disbursement Agreement by and between Borrower and Lender;

(iv) Assignment and Subordination of Management Agreement, among Borrower, Lender and Paper Street Realty, LLC DBA Paper Street Properties, an Illinois limited liability company;

(v) Three Party Lockbox Account Agreement, among City National Bank, Borrower and Lender;

(vi) Cash Management Agreement, among Borrower, Lender and Paper Street Realty, LLC DBA Paper Street Properties, an Illinois limited liability company;

(vii) Post-Closing Agreement, from Borrower to Lender;

(viii) Certificate of Borrower and Guarantor from Borrower and Jerome H. Cohen (“**Guarantor**”);

(ix) Full Repayment Guaranty Agreement, from Guarantor in favor of Lender;

(x) Environmental and Hazardous Substances Indemnity Agreement, from Borrower and Guarantor in favor of Lender;

(xi) Pledge and Security Agreement from South Shore Property Holdings LLC, a Delaware limited liability company to Lender;

(xii) Certificate of Member executed by Borrower; and

(xiii) Transfer Separate From Certificate executed by South Shore Property Holdings LLC, a Delaware limited liability company

Greater Illinois Title Company
Attention: Karyn Kutrubis

April 6, 2017
Page 3

(b) **From Lender:**

- (i) The final, Lender approved Mortgage (unsigned);
- (ii) UCC-1 Financing Statement to be filed with the Secretary of State of the State of Illinois (the "**State UCC**");
- (iii) UCC-1 Financing Statement to be recorded in the Official Records (the "**Official Records**") of Cook County, Illinois (the "**County UCC**"); and
- (iv) UCC-1 Financing Statement to be filed with the Secretary of State of the State of Delaware (the "**Pledge UCC**").

(c) Upon receipt of the items listed above in subparagraphs (a) and (b), Escrow Holder shall attach the original Borrower signature page and notary acknowledgement to the Mortgage.

3. When Escrow Holder has:

- (a) received the documents described above and confirmed that any documents provided in counterparts are on exactly the enclosed form, if any, of such documents;
- (b) confirmed that fee title to the Property is vested solely in Borrower;
- (c) received telephonic or email confirmation from (i) Kevin Miller, Brendan Miller or Rob Cooper on behalf of Lender and (ii) Brian Weinhart or the undersigned of the firm of Steckbauer Weinhart, LLP, that (x) Lender has approved the final settlement statement ("**Lender Approved Settlement Statement**") (not later than the business day immediately preceding the Closing Date, Escrow Holder shall provide the draft settlement statement to the undersigned [fax no. (213) 229-2870], and to Kevin Miller, Brendan Miller and Rob Cooper on behalf of Lender [fax no. (213) 612-7790], and provided further that such draft settlement statement shall in no event be deemed the "Lender Approved Settlement Statement" unless and until Escrow Holder shall have received the telephonic approval of Kevin Miller, Brendan Miller or Rob Cooper to the draft settlement statement) and (y) all other conditions to closing of the Loan transaction have been satisfied; and
- (d) confirmed that Title Company is prepared and irrevocably committed to issue to Lender, an ALTA Extended Coverage Loan Policy of Title Insurance (Form 2006) and

Greater Illinois Title Company
Attention: Karyn Kutrubis

April 6, 2017
Page 4

ALTA endorsements in the aggregate liability amount of **\$2,718,750.00** insuring Lender that the Mortgage constitutes a valid first priority lien on the Property in the form of the Pro Forma **together with any handwritten notations thereon (“Lender’s Title Policy”)**,

then, Title Company and Escrow Holder are authorized and instructed to perform the following acts in the following order on the Closing Date:

(i) Record the Mortgage in the Official Records of Cook County, Illinois.

(ii) Record the County UCC in the Official Records of Cook County, Illinois.

(iii) File the State UCC with the Secretary of State of Illinois.

(iv) File the Pledge UCC with the Secretary of State of Delaware.

(v) Disburse from the funds deposited into Escrow by Borrower and pay to the appropriate payee therefor: (x) the amounts reflected on the Lender Approved Settlement Statement for approved fees and costs incurred in connection with the subject transaction, to be wire-transferred or paid in accordance with wiring instructions or instructions provided by the respective parties separately, (y) all title insurance premiums, endorsement charges, Escrow fees, recording fees, transfer taxes, other closing costs and expenses of the Loan transaction and other costs and charges in accordance with the Lender Approved Settlement Statement, as same may be revised and approved by an officer of Lender on behalf of Lender.

(vi) **Deliver directly to the undersigned, via overnight delivery:** (x) **by the day following the Closing Date**, via overnight delivery, (A) all originals of the instruments provided to Escrow Holder under subparagraphs (ii) through (xiii) of Section 2(a) above; and (B) one copy of the signed Lender Approved Settlement Statement for the Loan transaction; and (y) **as soon as possible following the Closing Date**, via overnight delivery, conformed copy of the Mortgage and County UCC marked to reflect the applicable recording information.

(vii) As soon as possible following the Closing Date, Escrow Holder shall cause Title Company to issue and deliver to Lender, in care of the undersigned, the original and one duplicate of Lender’s Title Policy with all endorsements attached.

Greater Illinois Title Company
Attention: Karyn Kutrubis

April 6, 2017
Page 5

4. If for any reason the closing of the Loan transaction has not occurred in strict accordance with this letter on or before the Scheduled Closing Date, you are to hold the documents delivered to you pursuant to these Escrow instructions pending your receipt of further instructions from the undersigned.

5. Lender shall incur no expense in connection with the Loan transaction described in this letter or with the fulfillment of the requirements contained herein. All costs and expenses incurred by your company with respect to such transaction shall be the sole obligation of, and shall be charged to, Borrower.

Your recordation of the Mortgage and the County UCC and filing of the State UCC and Pledge UCC in accordance with these Escrow instructions shall constitute your acceptance of, and agreement to act in accordance with, these Escrow instructions. However, please sign and return to the undersigned the copy of this letter enclosed for that purpose. Any amendment to the instructions set forth in this letter, or any deviation therefrom, must be authorized by the undersigned.

Greater Illinois Title Company
Attention: Karyn Kutrubis

April 6, 2017
Page 6

Thank you for your assistance with this matter. Please call me with any questions.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Christopher M. Dargan".

Christopher M. Dargan
STECKBAUER WEINHART, LLP

cc Kevin Miller
Brendan Miller
Robert Cooper
Andrew Kim
Tyler Johnson
Brian Weinhart

Greater Illinois Title Company
Attention: Karyn Kutrubis

April 6, 2017
Page 7

THE UNDERSIGNED ACKNOWLEDGES AND ACCEPTS THE FOREGOING ESCROW
HOLDER AND TITLE COMPANY INSTRUCTIONS:

Greater Illinois Title Company
as issuing agent for Chicago Title Insurance Company

By: _____
Karyn Kutrubis
Office Supervisor
Senior Escrow Officer
Commercial Closing Officer

Greater Illinois Title Company
Attention: Karyn Kutrubis

April 6, 2017
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EXHIBIT A
PRO FORMA
[ATTACHED]



A Policy Issuing Agent of Chicago Title Insurance Company

File Number: **40018401**

Pro Forma Loan Policy

Policy #: **PRO FORMA POLICY**

LOAN POLICY OF TITLE INSURANCE

Issued by

Chicago Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, CHICAGO TITLE INSURANCE COMPANY, a Nebraska corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. *Title being vested other than as stated in Schedule A.*
2. *Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from*
 - (a) *A defect in the Title caused by*
 - (i) *forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;*
 - (ii) *failure of any person or Entity to have authorized a transfer or conveyance;*
 - (iii) *a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;*
 - (iv) *failure to perform those acts necessary to create a document by electronic means authorized by law;*
 - (v) *a document executed under a falsified, expired, or otherwise invalid power of attorney;*
 - (vi) *a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or*
 - (vii) *a defective judicial or administrative proceeding.*
 - (b) *The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.*
 - (c) *Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.*
3. *Unmarketable Title.*
4. *No right of access to and from the Land.*
5. *The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to*
 - (a) *the occupancy, use, or enjoyment of the Land;*
 - (b) *the character, dimensions, or location of any improvement erected on the Land;*
 - (c) *the subdivision of land; or*
 - (d) *environmental protection**if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.*
6. *An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.*
7. *The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.*
8. *Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.*
9. *The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage*
 - (a) *forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;*
 - (b) *failure of any person or Entity to have authorized a transfer or conveyance;*
 - (c) *the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;*
 - (d) *failure to perform those acts necessary to create a document by electronic means authorized by law;*
 - (e) *a document executed under a falsified, expired, or otherwise invalid power of attorney;*
 - (f) *a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or*
 - (g) *a defective judicial or administrative proceeding.*
10. *The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.*

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- 11. *The lack of priority of the lien of the Insured Mortgage upon the Title*
 - (a) *as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either*
 - (i) *contracted for or commenced on or before Date of Policy; or*
 - (ii) *contracted for, commenced or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and*
 - (b) *over the lien of any assessments for street improvements under construction or completed at Date of Policy.*
- 12. *The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.*
- 13. *The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title*
 - (a) *resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or*
 - (b) *because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records*
 - (i) *to be timely, or*
 - (ii) *to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.*
- 14. *Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.*

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

CHICAGO TITLE INSURANCE COMPANY



By: *[Signature]* President

ATTEST *[Signature]* Secretary





A Policy Issuing Agent of Chicago Title Insurance Company
File Number: **40018401**

Pro Forma Loan Policy (2006)
Schedule A

Policy #: **PRO FORMA POLICY**

Date of Policy: **PRO FORMA POLICY**

Issued by: **GREATER ILLINOIS TITLE COMPANY
300 E. ROOSEVELT RD.
SUITE 200
WHEATON, IL 60187**

Amount of insurance: **\$2,718,750.00**

Loan number:

**REFER INQUIRIES TO:
PHONE: 630-462-7800
FAX: 630-462-7821**

THIS IS A PRO-FORMA POLICY FURNISHED TO OR ON BEHALF OF THE PARTY TO BE INSURED. IT IS PREPARED IN CONTEMPLATION OF TITLE CLEARANCE AND OTHER DOCUMENTATION THAT HAS NOT YET BEEN RECEIVED. IT DOES NOT REPRESENT THE PRESENT STATE OF TITLE AND IS NOT A COMMITMENT TO INSURE THE ESTATE OR INTEREST AS SHOWN HEREIN, NOR DOES IT EVIDENCE THE WILLINGNESS OF THE COMPANY TO PROVIDE ANY AFFIRMATIVE COVERAGE SHOWN HEREIN. ANY SUCH COMMITMENT MUST BE AN EXPRESS WRITTEN UNDERTAKING ON APPROPRIATE FORMS OF THE COMPANY.

1. Name of insured:
THOROFARE ASSET BASED LENDING REIT FUND IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TOGETHER WITH ITS SUCCESSORS AND/OR ASSIGNS.

2. The estate or interest in the land that is encumbered by the insured mortgage is:
FEE SIMPLE

3. Title is vested in:
PRO FORMA VESTING: 1700 JUNEWAY LLC, AN ILLINOIS LIMITED LIABILITY COMPANY.;
ACTUAL VESTING AS OF FEBRUARY 21, 2017: CHICAGO METROPOLITAN HOUSING DEVELOPMENT CORPORATION, AN ILLINOIS NON-PROFIT CORPORATION

4. The insured mortgage, and its assignments, if any, are described as follows:
MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING DATED AS OF ~, 2017 AND RECORDED ~, 2017 AS DOCUMENT NO. ~, MADE BY 1700 JUNEWAY LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, TO THOROFARE ASSET BASED LENDING REIT FUND IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO SECURE AN INDEBTEDNESS OF \$2,175,000.00.





A Policy Issuing Agent of Chicago Title Insurance Company

File Number: **40018401**

Pro Forma Loan Policy (2006)
Schedule A (continued)

Policy #: **PRO FORMA POLICY**

5. The Land referred to in this Policy is described as follows:

SEE ATTACHED EXHIBIT "A"

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biesiada- 04/04/2017

This policy is valid only if Schedule B is attached.

THOROFARE_JUNEWAY0012892



A Policy Issuing Agent of Chicago Title Insurance Company
File Number: **40018401**

Pro Forma Loan Policy (2006)
Schedule A (continued)
Policy #: **PRO FORMA POLICY**

EXHIBIT "A"

**THE WEST 22 FEET OF LOT 6 AND ALL OF LOTS 7 AND 8 AND THE EAST 22 FEET OF LOT 9 IN
BLOCK 2 IN DAVID P. O'LEARY'S SUBDIVISION OF PART OF THE SOUTH 1/2 OF THE NORTHEAST
1/4 OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN,
IN COOK COUNTY, ILLINOIS.**





A Policy Issuing Agent of Chicago Title Insurance Company
File Number: **40018401**

Pro Forma Loan Policy (2006)
Schedule B

Policy #: **PRO FORMA POLICY**

NOTWITHSTANDING THE PROVISIONS OF THE CONDITIONS OF THIS POLICY, ALL ENDORSEMENTS, IF ANY, ATTACHED HERETO ARE VALID DESPITE THE LACK OF SIGNATURE BY EITHER THE PRESIDENT, A VICE PRESIDENT, THE SECRETARY, AND ASSISTANT SECRETARY OR VALIDATING OFFICER OR AUTHORIZED SIGNATORY OF THE COMPANY.

EXCEPTIONS FROM COVERAGE

EXCEPT AS PROVIDED IN SCHEDULE B - PART II, THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE (AND THE COMPANY WILL NOT PAY COSTS, ATTORNEYS' FEES OR EXPENSES) THAT ARISE BY REASON OF:

- 1. GENERAL REAL ESTATE TAXES FOR THE YEARS 2016 AND 2017.

TAX NO. 11-30-205-011, VOL. 505.

NOTE: THE FIRST INSTALLMENT OF THE 2016 TAXES HAS BEEN PAID.

NOTE: THE SECOND INSTALLMENT OF THE 2016 TAXES AND THE 2017 TAXES ARE NOT YET DUE AND PAYABLE.

- 2. ANY LIEN, OR RIGHT TO A LIEN, FOR SERVICES, LABOR OR MATERIAL FURNISHED AFTER ~, 2017 (DATE OF POLICY TO BE INSERTED), IMPOSED BY LAW AND NOT SHOWN BY THE PUBLIC RECORDS.

END OF SCHEDULE B

ISSUED BY:

**GREATER ILLINOIS TITLE COMPANY
300 E. ROOSEVELT RD.
SUITE 200
WHEATON, IL 60187**

GREATER ILLINOIS TITLE COMPANY

AUTHORIZED SIGNATORY

REFER INQUIRIES TO:

**PHONE: 630-462-7800
FAX: 630-462-7821**





A Policy Issuing Agent of Chicago Title Insurance Company
File Number: **40018401**

Pro Forma Loan Policy (2006)
Schedule B Part II

Policy #: **PRO FORMA POLICY**

IN ADDITION TO THE MATTERS SET FORTH IN PART I OF THIS SCHEDULE, THE TITLE TO THE ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN SCHEDULE A IS SUBJECT TO THE FOLLOWING MATTERS, IF ANY BE SHOWN, BUT THE COMPANY INSURES THAT THESE MATTERS ARE SUBORDINATE TO THE LIEN OR CHARGE OF THE INSURED MORTGAGE UPON THE ESTATE OR INTEREST:

1. RIGHTS OF PARTIES IN POSSESSION OF SAID LAND NOT SHOWN BY PUBLIC RECORDS BASED ON ANY UNRECORDED LEASE, OR LEASES, AS TENANTS ONLY WITHOUT RIGHTS OF FIRST REFUSAL OR RIGHTS TO PURCHASE.
2. SECURITY INTEREST OF THOROFARE ASSET BASED LENDING REIT FUND IV, LLC, UNDER A FINANCING STATEMENT NAMING 1700 JUNEWAY LLC AS DEBTOR, AND RECORDED ~, 2017 AS DOCUMENT NO. ~.

END OF SCHEDULE B PART II

ISSUED BY:

**GREATER ILLINOIS TITLE COMPANY
300 E. ROOSEVELT RD.
SUITE 200
WHEATON, IL 60187**

GREATER ILLINOIS TITLE COMPANY

AUTHORIZED SIGNATORY

REFER INQUIRIES TO:

**PHONE: 630-462-7800
FAX: 630-462-7821**



EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of
 - (i) the amount of the principal disbursed as of Date of Policy;
 - (ii) the amount of the principal disbursed subsequent to Date of Policy;
 - (iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;
 - (iv) interest on the loan;
 - (v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
 - (vi) the expenses of foreclosure and any other costs of enforcement;
 - (vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage

before the acquisition of the estate or interest in the Title;

- (viii) the amounts to pay taxes and insurance; and
- (ix) the reasonable amounts expended to prevent deterioration of improvements; but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.
- (e) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;

(B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;

(C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(D) successors to an Insured by its conversion to another kind of Entity;

(E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured, or

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured,

provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;

(F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

(ii) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

(f) "Insured Claimant": An Insured claiming loss or damage.

(g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.

(h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

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(k) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(l) "Title": The estate or interest described in Schedule A.

(m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated

causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the

administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

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(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance,
(ii) the Indebtedness,
(iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or
(iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.

(d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.

(b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) The Company's Right to Recover

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Insured's Rights and Limitations

(i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.

(ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

(c) The Company's Rights Against Noninsured Obligors

The Company's right of subrogation includes the Insured's rights against noninsured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

13. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons.

Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this

policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

16. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Chicago Title Insurance Company, Attn: Claims Department, Post Office Box 45023, Jacksonville, Florida 32232-5023.





A Policy Issuing Agent of Chicago Title Insurance Company

File Number: **40018401**

Pro Forma Loan Policy (2006)
Endorsement

Policy #: **PRO FORMA POLICY**

**ALTA Endorsement Form 9.3-06
(Covenants, Conditions and Restrictions - Loan Policy) Rev. 04-02-12**

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Improvement" means an improvement, including any lawn, shrubbery, or trees, affixed to the Land at Date of Policy that by law constitutes real property.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation of a Covenant that:
 - i. divests, subordinates, or extinguishes the lien of the Insured Mortgage,
 - ii. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or
 - iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness;
 - b. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
 - c. Enforced removal of an Improvement as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
 - d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or

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biesiada- 04/04/2017

This policy is valid only if Schedule A is attached



A Policy Issuing Agent of Chicago Title Insurance Company

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Pro Forma Loan Policy (2006)
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Policy #: **PRO FORMA POLICY**

- c. except as provided in Section 3.d, any Covenant pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.



A Policy Issuing Agent of Chicago Title Insurance Company

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Pro Forma Loan Policy (2006)
Endorsement

Policy #: **PRO FORMA POLICY**

ALTA Endorsement Form 3.1-06 (Zoning - Completed Structure)

1. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy,
 - a. According to applicable zoning ordinances and amendments thereto, the Land is not classified Zone RT-4 Residential Two-Flat, Townhouse and Multi-Unit District.
 - b. The following use or uses are not allowed under that classification:

Detached House; Elderly Housing; Two-Flat; Townhouse and Multi-Unit (3+ units) Residential.
 - c. There shall be no liability under this paragraph 1.b. if the use or uses are not allowed as the result of any lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 1.c. does not modify or limit the coverage provided in Covered Risk 5.

2. The Company further insures the insured against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction,
 - a. prohibiting the use of the Land, with any existing structure, as insured in paragraph 1.b.; or
 - b. requiring the removal or alteration of the structure on the basis that, at Date of Policy, the zoning ordinances and amendments have been violated with respect to any of the following matters:
 - i. Area, width or depth of the land as a building site for the structure;
 - ii. Floor space area of the structure;
 - iii. Setback of the structure from the property lines of the Land;
 - iv. Height of the structure; or
 - v. Number of parking spaces;
with respect to paragraph 2(b) above, the structure is non-conforming, but the structure is permitted to remain by reason of and subject to the provisions of chapter 17-15 of the Chicago zoning ordinance.

3. There shall be no liability under this endorsement based on:
 - a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent



A Policy Issuing Agent of Chicago Title Insurance Company

File Number: **40018401**

Pro Forma Loan Policy (2006)
Endorsement

Policy #: **PRO FORMA POLICY**

jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;

b. the refusal of any person to purchase, lease or lend money on the estate or interest covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.



A Policy Issuing Agent of Chicago Title Insurance Company

File Number: **40018401**

Pro Forma Loan Policy (2006)
Endorsement

Policy #: **PRO FORMA POLICY**

ALTA Endorsement Form 25-06 (Same as Survey)

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by WAYLS SURVEY LTD. DATED APRIL 4, 2017, ORDER NO. 2017-03-77.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.



A Policy Issuing Agent of Chicago Title Insurance Company

File Number: **40018401**

Pro Forma Loan Policy (2006)
Endorsement

Policy #: **PRO FORMA POLICY**

ALTA Endorsement Form 17-06 (Access and Entry - Modified)

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have actual pedestrian access to and from West Juneway Terrace (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing entries along that portion of the Street abutting the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.



A Policy Issuing Agent of Chicago Title Insurance Company

File Number: **40018401**

Pro Forma Loan Policy (2006)
Endorsement

Policy #: **PRO FORMA POLICY**

ALTA Endorsement Form 18-06 (Single Tax Parcel)

The Company insures against loss or damage sustained by the Insured by reason of the Land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate taxes.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements



A Policy Issuing Agent of Chicago Title Insurance Company
File Number: **40018401**

Pro Forma Loan Policy (2006)
Endorsement
Policy #: **PRO FORMA POLICY**

ALTA Endorsement Form 26-06 (Subdivision)

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the subdivision statutes and local subdivision ordinances applicable to the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.



A Policy Issuing Agent of Chicago Title Insurance Company
File Number: **40018401**

Pro Forma Loan Policy (2006)
Endorsement
Policy #: **PRO FORMA POLICY**

ALTA Endorsement Form 22-06 (Location)

The Company insures against loss or damage sustained by the Insured by reason of the failure of a apartment building, known as 1700-1708 West Juneway Terrace, Chicago, IL, 60626, to be located on the land at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.



A Policy Issuing Agent of Chicago Title Insurance Company
File Number: **40018401**

Pro Forma Loan Policy (2006)
Endorsement
Policy #: **PRO FORMA POLICY**

ALTA Endorsement Form 17.2-06 (Utility Access)

The Company insures against loss or damage sustained by the Insured by reason of the lack of a right of access to the following utilities or services:

<input checked="" type="checkbox"/> Water Service	<input checked="" type="checkbox"/> Natural gas service	<input checked="" type="checkbox"/> Telephone service
<input checked="" type="checkbox"/> Electrical power service	<input checked="" type="checkbox"/> Sanitary sewer	<input checked="" type="checkbox"/> Storm water drainage

Either over, under or upon rights-of-way or easements for the benefit of the Land because of:

- (1) a gap or gore between the boundaries of the Land and rights-of-way or easements;
- (2) a gap between the boundaries of the rights-of-way or easements; or
- (3) a termination by a grantor, or its successor, of the rights-of-way or easements.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.



A Policy Issuing Agent of Chicago Title Insurance Company
File Number: **40018401**

Pro Forma Loan Policy (2006)
Endorsement
Policy #: **PRO FORMA POLICY**

ALTA Endorsement Form 8.2-06 (Commercial Environmental Protection Lien)

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.



A Policy Issuing Agent of Chicago Title Insurance Company
File Number: **40018401**

Pro Forma Loan Policy (2006)
Endorsement
Policy #: **PRO FORMA POLICY**

ALTA Endorsement Form 27-06 (Usury)

The Company insures against loss or damage sustained by the Insured by reason of the invalidity or unenforceability of the lien of the Insured Mortgage as security for the Indebtedness because the loan secured by the Insured Mortgage violates the usury law of the state where the Land is located.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.



A Policy Issuing Agent of Chicago Title Insurance Company

File Number: **40018401**

Pro Forma Loan Policy (2006)
Endorsement

Policy #: **PRO FORMA POLICY**

ALTA Endorsement Form 24-06 (Doing Business)

The Company insures against loss or damage sustained by the Insured by reason of the invalidity or unenforceability of the lien of the Insured Mortgage on the ground that making the loan secured by the Insured Mortgage constituted a violation of the "doing business" laws of the State where the Land is located because of the failure of the Insured to qualify to do business under those laws.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.



A Policy Issuing Agent of Chicago Title Insurance Company

File Number: **40018401**

Pro Forma Loan Policy (2006)
Endorsement

Policy #: **PRO FORMA POLICY**

Arbitration Endorsement

Paragraph number 13 of the "Conditions" appearing on the policy jacket is hereby deleted.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.



A Policy Issuing Agent of Chicago Title Insurance Company

File Number: **40018401**

Pro Forma Loan Policy (2006)
Endorsement

Policy #: **PRO FORMA POLICY**

ALTA Endorsement Form 37-06 (Assignment of Rents or Leases)

1. The insurance provided by this endorsement is subject to the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. The Company insures against loss or damage sustained by the Insured by reason of: (a) any defect in the execution of the document entitled Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing referred to in Paragraph 4 of Schedule A; or (b) any assignment of the lessor's interest in any lease or leases or any assignments of rents affecting the Title and recorded in the Public Records at Date of Policy other than as set forth in any instrument referred to in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

EXHIBIT 3

From: Tyler DeRoo [tyler@equitybuild.com]
Sent: 3/31/2017 9:51:52 AM
To: Andrew Kim [andrew.kim@thorofarecapital.com]
CC: Stephen Lee [slee@thebscgroup.com]; Tyler Johnson [tyler.johnson@thorofarecapital.com]; Brendan Miller [brendan@thorofarecapital.com]
Subject: RE: Jerry Cohen Background Report
Attachments: LOE Philadelphia Tax Liens.pdf; LOE Bankruptcy Case.pdf; LOE Dismissed Case.pdf; Jerry REO - Completed.xlsx

Hi Guys,

Attached are the LOX's as well as the REO schedule. I just deleted the erroneous data on line 77, I believe that was just sample data from when this form was originally provided as a template a some time previously. Let me know if you have any questions, otherwise, please advise on any missing documentation.

From: Andrew Kim [mailto:andrew.kim@thorofarecapital.com]
Sent: Thursday, March 30, 2017 7:16 PM
To: Tyler DeRoo <tyler@equitybuild.com>
Cc: Stephen Lee <slee@thebscgroup.com>; Tyler Johnson <tyler.johnson@thorofarecapital.com>; Brendan Miller <brendan@thorofarecapital.com>
Subject: RE: Jerry Cohen Background Report

Sounds good, thanks. Let us review this management agreement. The REO was from the attachment you sent (re-attached), please look at row 77.

From: Tyler DeRoo [mailto:tyler@equitybuild.com]
Sent: Thursday, March 30, 2017 5:14 PM
To: Andrew Kim <andrew.kim@thorofarecapital.com>
Cc: Stephen Lee <slee@thebscgroup.com>; Tyler Johnson <tyler.johnson@thorofarecapital.com>; Brendan Miller <brendan@thorofarecapital.com>
Subject: Re: Jerry Cohen Background Report

Sorry, PMA attached. I'll have the signed LOX first thing AM.

The screen shot you attached references different buildings than the ones on ours, it doesnt look like its a screenshot of the REO i sent over?

Tyler DeRoo
C. 847.420.2095

On Mar 30, 2017, at 7:11 PM, Andrew Kim <andrew.kim@thorofarecapital.com> wrote:

Thanks, Tyler. Something looks off on the REO schedule – please see below. Additionally, appears that you attached a Management Profile, but this doesn't appear to be a draft management agreement form. Look forward to getting those LOX's on the background items we've discussed.

<image003.png>

From: Tyler DeRoo [mailto:tyler@equitybuild.com]
Sent: Thursday, March 30, 2017 2:46 PM
To: Andrew Kim <andrew.kim@thorofarecapital.com>
Cc: Stephen Lee <slee@thebscgroup.com>; Tyler Johnson <tyler.johnson@thorofarecapital.com>; Brendan Miller <brendan@thorofarecapital.com>
Subject: Re: Jerry Cohen Background Report

Hi Guys,

Please find attached:

Contingent Liability Cert
Updated Signed PFS
Updated REO Schedule
AML/KYC Form
2 months Tikkun bank statements (Jerry's personal liquidity holding account)
Rent Roll Cert
PMA Draft
Freddie Mac PM Profile
2013 Tax Return
2014 Tax Return

Im working on the LOX's currently and i cannot seem to find the bank reference sheet. Can you please send?

Tyler DeRoo
C. 847.420.2095

On Mar 30, 2017, at 11:04 AM, Andrew Kim <andrew.kim@thorofarecapital.com> wrote:

All – Following up on the below. Can we have a call at 1:45 PM PT / 4:45 PM ET to dicuss?

From: Andrew Kim
Sent: Wednesday, March 29, 2017 5:39 PM
To: Stephen Lee <slee@thebscgroup.com>; 'Tyler DeRoo' <tyler@equitybuild.com>
Cc: Tyler Johnson <tyler.johnson@thorofarecapital.com>; Brendan Miller <brendan@thorofarecapital.com>
Subject: Jerry Cohen Background Report

Steve/Tyler – Background report came from Jerry Cohen and a few things popped up. Can we discuss the topics highlighted below? Also, please send us a letter of explanation if available.

Research identified that Cohen has been the subject of at least 10 property tax liens by the City of Philadelphia, PA in the past calendar year. The active tax liens against Cohen include:

o On March 22, 2017, the City of Philadelphia filed a Real Estate Tax Lien Petition against Commercial General Mortgage and Jerry Cohen in the amount of \$5,447.17 in connection with the property located at 3046 Ruth Street. A hearing is scheduled for July 5, 2017.

o On March 16, 2017, the City of Philadelphia filed a Real Estate Tax Lien Petition against Jerry H. Cohen and Steven A. Cohen in the amount of \$8,051.27 in connection with the property located at 20 South Ruby Street. A hearing is scheduled for June 20, 2017.

o On January 23, 2017, the City of Philadelphia filed a Real Estate Tax Lien Petition against Jerry H. Cohen and Steven A. Cohen in the amount of \$11,811.37 in connection with the property located at 3857 Reno Street. An Affidavit of Service of the Complaint on Cohen and Steven A. Cohen was filed on March 1, 2017.

o On December 30, 2016, the City of Philadelphia filed a Real Estate Tax Lien Petition against Jerry H. Cohen and Steven A. Cohen in the amount of \$14,203.47 in connection with the property located at 4976 Kershaw Street. An Affidavit of Service of the Complaint on Cohen and Steven A. Cohen was filed on March 20, 2017.

- In January 1995, Cohen filed the Chapter 11 Bankruptcy Petition in the U.S. Bankruptcy Court for the Eastern District of Pennsylvania (Philadelphia). On June 21, 1995, Cohen converted the bankruptcy to a Chapter 7 (liquidation) filing. The bankruptcy process was fairly lengthy. On March 2, 2000, the court approved the Trustee's report and discharged the case. Documents from the bankruptcy were not readily available.

Research identified a felony case #11-1993-CF-001754-AXX-XX filed in Collier County, Florida against "Jerome Harvey Cohen" on November 3, 1993. The Docket Sheet identified the offense as "fugitive from justice" warrant that originated in Philadelphia, Pennsylvania. The offense date is listed as November 1, 1993. The case was dismissed on November 15, 1993. Please note that the date of birth listed on the Docket Sheet is October 4, 1954, which is one year different from the subject's October 4, 1953. The Collier County Clerk has no further information about this case. An in-person file request in Philadelphia would be required to identify additional information.

Regards,

Andrew Kim

Associate Director, Origination

O 213.873.4011

C 909.802.0818

E andrew.kim@thorofarecapital.com

vCard | [LinkedIn](#) | [Twitter](#)

Thorofare Capital, Inc.

633 West Fifth Street, Suite 2200

Los Angeles, California 90071

[Directions](#) | [Website](#) | BRE# 01940861

EXHIBIT 4

Jerome H. Cohen
1050 8th Ave N
Naples, FL 34145
Ph. (239) 537-5055
Email: jerryco@reagan.com


March 31, 2017

RE: 2016-17 Philadelphia Property Tax Liens

To Whom It May Concern:

This letter serves to explain the circumstances surrounding several tax lien filings in Philadelphia, PA from late 2016 to early 2017. In the early 1990's, my cousin, Stephen A. Cohen, began purchasing, renovating, and leasing smaller multifamily apartment buildings (4 units or less) and single family residences to build a portfolio of income producing assets. His financial means were limited and as such asked me to back him financially in a largely silent role, to which I agreed. Over the succeeding years in the early 1990's he built a small portfolio by purchasing and renovating assets, refinancing them into long term loans upon completion, for which I was a co-guarantor, but since I had moved to Florida in 1993, I was not actively involved in the management of the assets. After a couple years it became apparent to me that his underwriting assumptions for acquisition were wholly inaccurate; his renovation costs were consistently low, his construction timelines were consistently short, and rents and collections were lower than I was told at the onset, resulting in the net income of the portfolio being unable to sustain the debt service in the high interest rate environment at the time. This resulted in our selling off the portfolio as the negative cash flow was simply too great to absorb. The portfolio took some time to liquidate, but when it finally was, and all debts were released, there remained several assets that Stephen retained control and ownership of. We have not had any significant contact after the late 1990's, and this portfolio has subsequently never crossed my mind. Furthermore, as the remaining assets were not refinanced with other debt and no other transfers of ownership have occurred, my name has never been officially removed from title, and apparently my cousin has failed to keep current on his property tax payments, something that has not previously happened, and I am currently looking into methods by which I can remove myself from title without involving Stephen as I do not anticipate much co-operation from him. I trust that this letter will adequately answer any questions surrounding this case, and if there should be any further questions, please feel free to contact me at your convenience.

Sincerely,



Jerome H. Cohen

EXHIBIT 5

Jerome H. Cohen
1050 8th Ave N
Naples, FL 34145
Ph. (239) 537-5055
Email: jerryc@reagan.com

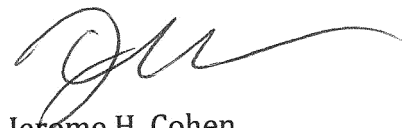
March 31, 2017

RE: Case #11-1993-CF-001754-AXX-XX

To Whom It May Concern:

This letter serves to explain the circumstances surrounding a felony case filed in Collier County, Florida, on or around November 3, 1993. In early 1993 I moved from Pennsylvania to Florida and despite my having filed a change of address with the post office, but not with the creditor directly, so bills from a creditor were not making it to my new address. After the move, I had forgotten about the debt which was still active. After not receiving any correspondence from me over the course of 6 months, and subsequently learning of my move, the creditor swore out a criminal complaint against me on the premise that I had left the state to skip out on the debt. This led to the issuance of a warrant out of a Philadelphia court which was served with a subsequent felony criminal complaint filed at my new residence in Collier County Florida. Upon learning of this, I immediately flew to Philadelphia and resolved the matter directly with the creditor after which the case was promptly dropped because of this simple miscommunication. I trust that this letter will adequately answer any questions surrounding this case, or if there should be any further questions, please feel free to contact me at your convenience.

Sincerely,



Jerome H. Cohen

EXHIBIT 6

Jerome H. Cohen
1050 8th Ave N
Naples, FL 34145
Ph. (239) 537-5055
Email: jerryc@reagan.com


March 31, 2017

RE: 1995 Chapter 11 Bankruptcy Case

To Whom It May Concern:

This letter serves to explain the circumstances surrounding a 1995 chapter 11 bankruptcy case filed in the Eastern District U.S. Bankruptcy court in Philadelphia, PA, filed on or around January 1995. In the early 1990's, My cousin, Stephen A. Cohen, began purchasing, renovating, and leasing smaller multifamily apartment buildings (4 units or less) and single family residences to build a portfolio of income producing assets. His financial means were limited and as such asked me to back him financially in a largely silent role, to which I agreed. Over the succeeding years in the early 1990's he built a small portfolio by purchasing and renovating assets, refinancing them into long term loans upon completion, for which I was a co-guarantor, and since I had moved to Florida in 1993, I was not actively involved in the management of the assets. After a couple years it became apparent to me that his underwriting assumptions for acquisition were wholly inaccurate; his renovation costs were consistently low, his construction timelines were consistently short, and rents and collections were lower than I was told at the onset, resulting in the net income of the portfolio being unable to sustain the debt service in the high interest rate environment at the time. As the cash flow issues accrued, lenders were unwilling to renegotiate the loans, and a chapter 11 filing became the only route to restructure the portfolio. Since both myself and my cousin were involved, we both filed bankruptcy, which compounded with multiple lenders attached to the portfolio, resulted in the bankruptcy becoming more complicated and we were forced to change the filing to chapter 7 on or around June of 1995. The portfolio took some time to liquidate, but when it finally was, and all lenders were satisfied, there remained several assets that Stephen retained control and ownership of, and the case was finally discharged in 2000, after which my dealings with Stephen were concluded and we have not had any significant contact since. I trust that this letter will adequately answer any questions surrounding this case, and if there should be any further questions, please feel free to contact me at your convenience.

Sincerely,



Jerome H. Cohen

EXHIBIT 7

**PROMISSORY NOTE SECURED BY MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE
FILING**

\$2,175,000.00

April 6, 2017

FOR VALUE RECEIVED, and upon the terms and conditions set forth herein, 1700 JUNEWAY LLC, an Illinois limited liability company, having an address for purposes of notices and legal process at 201 N. Westshore Drive, Unit 1501, Chicago, IL 60601 (“**Borrower**”), promises to pay to **THOROFARE ASSET BASED LENDING REIT FUND IV, LLC**, a Delaware limited liability company, or order (collectively, “**Lender**”), at 633 W. Fifth Street, Suite 2200, Los Angeles, California 90071 or at any such other place as may be designated in writing by Lender, the principal sum of TWO MILLION ONE HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$2,175,000.00), in lawful money of the United States of America, together with interest thereon to be computed from the date hereof at the Interest Rate (as defined below), and to be paid in accordance with the terms of this Promissory Note Secured by Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (this “**Note**”).

1. **INTEREST.** The term “**Interest Rate**” as used herein shall mean (a) from and after the date hereof through the initial Maturity Date, an interest rate equal to ten percent (10%) per annum, and (b) if the initial Maturity Date is extended pursuant to Section 2.1(c) below, then during the Extension Term (as defined below), an interest rate equal to eleven (11%) per annum. Interest shall be computed based on the daily rate produced assuming a three hundred sixty (360) day year, multiplied by the actual number of days elapsed during each interest accrual period. Borrower understands and acknowledges that such interest accrual method results in more interest accruing on the Loan than if either a thirty (30) day month and a three hundred sixty (360) day year or the actual number of days and a three hundred sixty five (365) day year were used to compute the accrual of interest on the Loan. Lender shall determine the Interest Rate applicable to the Indebtedness (as hereinafter defined) in accordance with this Note and its determination thereof shall be conclusive in the absence of manifest error. The books and records of Lender shall be prima facie evidence of all sums owing to Lender from time to time under this Note, but the failure to record any such information shall not limit or affect the obligations of Borrower under the Loan Documents (as defined below).

2. **PAYMENT TERMS.**

2.1. Borrower agrees to pay sums under this Note in installments as follows:

2.1.(a) On the date hereof an amount equal to the earned interest from the date of this Note through and including April 30, 2017;

2.1.(b) Except as may be adjusted in accordance with this Section 2.1(b) and Section 2.1(c) below, Borrower shall pay to Lender consecutive monthly installments of accrued interest for each immediately prior month in an amount equal to the Monthly Payment Amount (as defined below) (together with any other amounts required to be paid under any of the other Loan Documents), commencing on June 1, 2017, and continuing on the first day of

each month thereafter through and including April 1, 2018, with all principal, accrued and unpaid interest and all other amounts then due and owing under the Loan Documents due and payable in full on the date that is twelve (12) months after the date hereof (as such date may be extended pursuant to Section 2.1(c) below, the “**Maturity Date**”). The “**Monthly Payment Amount**” shall equal interest-only payments on the outstanding principal balance of the Loan, calculated at an annual interest rate equal to the Interest Rate, calculated as provided in Section 1 of this Note. Commencing on the date hereof, the Monthly Payment Amount shall equal Thirteen Thousand Five Hundred Sixty-Two and 50/100 Dollars (\$13,562.50). As of the date hereof, interest shall not accrue on the “Capital Improvement Work Holdback” (as such term is defined in that certain Holdback and Disbursement Agreement between Borrower and Lender of even date herewith (the “**Holdback Agreement**”)) provided that interest shall accrue at the Interest Rate under this Note on funds actually disbursed by Lender from, and/or deemed disbursed by Lender from, the Capital Improvement Work Holdback pursuant to the terms of the Holdback Agreement and in any event interest shall accrue on any funds remaining in the Capital Improvement Work Holdback six (6) months from the date hereof, and the Monthly Payment Amount shall be adjusted to reflect such actual or deemed disbursements. For payments of accrued interest for partial months, the Monthly Payment Amount shall be adjusted to equal the pro rata amount for the number of days that interest has accrued during such partial month.

2.1.(c) Provided that (i) no Event of Default (as defined below) shall have occurred and be continuing under this Note or any of the other Loan Documents, (ii) the loan to value ratio of the Loan to the Property (based upon the then current appraised “as is” valuation of the Property as evidenced by an MAI appraisal or MAI appraisal update obtained by Lender at Borrower’s sole cost and expense) does not exceed sixty-five percent (65%), (iii) the “Debt Yield” (as hereinafter defined) shall be at least nine and ½ percent (9.5%), (iv) Borrower shall have replenished the Delta Interest Reserve (as defined in the Mortgage) if the “**Debt Service Coverage Ratio**” (as hereafter defined) is below 1.15x in an amount equal to the difference between the Property’s then current Net Operating Income (as hereafter defined) and the amount of Net Operating Income that would be required to pay the Debt Service (as hereafter defined) at a 1.15x Debt Service Coverage Ratio (as hereafter defined) as determined by Lender, and (v) Borrower shall have reimbursed Lender for all out-of-pocket costs and expenses incurred by Lender in connection with the requested extension, including, without limitation, fees of in-house or outside counsel (and, if requested by Lender, Borrower shall promptly deposit with Lender such amounts as required by Lender for payment of costs expenses Lender expects to incur in connection with the requested extension [e.g., appraisal fees and background check costs]), then Borrower shall have one (1) option to extend the Maturity Date by six (6) months (such period, “**Extension Term**”) by written notice to Lender not less than forty-five (45) days prior to then scheduled Maturity Date (an “**Extension Request Notice**”). Concurrently with Borrower’s delivery of an Extension Request Notice, Borrower shall deliver to Lender in immediately available funds (i) an extension fee in the amount of Twenty Seven Thousand Eight Hundred Seventy Five and 00/100 Dollars (\$27,875.00) (which amount shall be refunded by Lender to Borrower if the applicable extension request is not approved by Lender) and (ii) an extension processing fee in the amount of Two Thousand Nine Hundred Ninety-Five and 00/100 Dollars (\$2,995.00) (provided, however, that if Borrower shall deliver the Extension Request Notice after the date that is forty-five (45) days prior to the then applicable Maturity Date, then, if Lender shall agree to process such Extension Request Notice, the extension processing fee shall be Seven Thousand Nine Hundred Ninety-Five and 00/100 Dollars (\$7,995.00)). Except as expressly set forth in the preceding sentence, Borrower shall have no right to extend the Maturity

Date. Concurrently with Borrower's delivery of an Extension Request Notice pursuant to this Section 2.1(c), and thereafter, within three (3) business days following Lender's request therefor, Borrower shall deliver to Lender statements of income and expense for the Property and any and all other financial information with respect to the Property and Borrower as Lender shall require in its sole discretion. As used herein, the following terms shall have the following meanings:

"Debt Yield" shall mean, the ratio, expressed as a percentage, of (a) the Net Operating Income for the twelve (12) month period ending with the calendar month prior to the calendar month immediately preceding the then scheduled Maturity Date and (b) \$2,175,000.00.

"Net Operating Income" means the amount, if any, by which (a) rent and other revenues actually derived from the ordinary operations of the Property, as determined by Lender in its sole discretion, exceeds (b) operating expenses incurred or applicable to the Property (including all costs incurred in connection with the operating, maintenance and management of the Property such as utilities, repairs, insurance, taxes, advertising expenses, and leasing commissions) as determined by Lender in its sole discretion, including, without limitation, such market-based adjustments to such expenses as Lender shall determine in its reasonable discretion.

"Debt Service Coverage Ratio" means for the period of time for which such calculation is being made by Lender, the ratio of Net Operating Income for such period to Debt Service for such period.

"Debt Service" means the aggregate interest payments due under the Note.

2.1.(d) All accrued and unpaid interest, the unpaid principal balance hereof and any other amounts due and payable under the Loan Documents are due and payable on the earlier to occur of (i) the Maturity Date, or (ii) the date on which the Indebtedness (as such term is defined in Section 5.1 hereof) becomes immediately due and payable hereunder (the **"Acceleration Date"**).

2.2. Prepayment.

2.2.(a) Yield Protection Fee. Borrower shall have the right to pre-pay in whole, but not part, all of the outstanding principal balance, accrued interest and other amounts owing under the Loan Documents; provided that if such pre-payment occurs prior to the expiration of the ninth (9th) full calendar month of the term of this Note, Borrower shall pay to Lender an additional amount equal to the amount by which (1) interest payments that would be payable pursuant to this Note from and after the date of this Note through the end of the ninth (9th) full calendar month of the term of this Note exceeds (2) the interest payments actually made by Borrower under this Note (the **"Yield Protection Fee"**).

2.2.(b) Exit Fee. Upon repayment of this Note in full at any time, Borrower shall pay to Lender an "Exit Fee". Provided that no monetary or material non-monetary Event of Default shall have occurred at any time under this Note or any of the other Loan Documents (other than an Event of Default that has been cured pursuant to the below provisions of this Section 2.2(b)), the Exit Fee shall be Twenty Two Thousand Three Hundred and 00/100 Dollars (\$22,300.00). In the event that an Event of Default has at any time occurred under this Note or any of the other Loan Documents (other than an Event of Default that has

been cured pursuant to the below provisions of this Section 2.2(b))), the Exit Fee shall be One Hundred Thirty Three Thousand Eight Hundred and 00/100 Dollars (\$133,800.00). Borrower acknowledges and agrees that the increase of the Exit Fee in connection with an Event of Default is not a penalty, but is a material inducement for Lender to make the Loan and represents a fair and equitable allocation of risk and loss to Lender upon the occurrence of an Event of Default.

2.3. All parties hereto, whether Borrower, principal, surety, guarantor or endorser, hereby waive demand, notice of demand, presentment for payment, notice of dishonor, protest and notice of protest.

3. MORTGAGE/ADDITIONAL LOAN DOCUMENTS.

3.1. This Note is secured by (a) that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith between Borrower and Lender (the "**Mortgage**"), encumbering that certain real property located in the County of Cook, State of Illinois, with an address of 1700 W. Juneway Terrace, Chicago, Illinois 60626 (the "**Property**"); and (b) certain other instruments and agreements dated of even date herewith from Borrower and/or Guarantor (as defined below) to Lender or between Borrower and/or Guarantor and Lender (collectively said documents and agreements may be referred to herein as the "**Loan Documents**"). All of the terms, covenants, conditions and agreements contained in the Mortgage are hereby incorporated herein and made a part hereof. Notwithstanding anything to the contrary contained in any of the Loan Documents, Borrower acknowledges and agrees that (a) although the "Full Repayment Guaranty Agreement", executed by Jerome H. Cohen, an individual ("**Guarantor**"), forms a part of the Loan Documents, the obligations and liabilities of Guarantor thereunder are not secured by the Mortgage and (b) although the "Environmental and Hazardous Substances Indemnity Agreement", executed by Guarantor and Borrower forms a part of the Loan Documents, the obligations and liabilities of such parties thereunder are not secured by the Mortgage.

4. APPLICATION OF PAYMENTS.

4.1. Intentionally deleted.

4.2. Monthly installments of principal (if required) and interest shall be paid when due, regardless of the prior acceptance by Lender of payments in excess of the regular monthly installment of principal (if required) and interest.

4.3. The designation or allocation by Borrower of the disposition or allocation of any payments made will not be binding upon Lender. Lender may allocate any and all such payments to interest, principal and other fees and charges due hereunder or to any one or more of them, in such amount, priorities and proportions as Lender may determine in its sole discretion.

4.4. Notwithstanding anything to the contrary contained in this Note or the other Loan Documents, if an Event of Default shall occur, Lender shall have the right, in its sole and absolute discretion, to apply any payments made by Borrower to all or any portion of the Indebtedness (as defined below) in such order, priority and amounts as Lender shall determine in its sole and absolute discretion.

5. **DEFAULT AND ACCELERATION.**

5.1. It is hereby expressly agreed that (i) the whole of the principal sum of this Note, (ii) interest, default interest, late charges, fees and other sums, as provided in this Note, (iii) all other monies agreed or provided to be paid by Borrower in this Note, the Mortgage or the Loan Documents, (iv) all sums advanced pursuant to the Mortgage and the other Loan Documents, and (v) all sums advanced and costs and expenses reasonably incurred by Lender in connection with the Indebtedness (as defined below) or any part thereof, any renewal, extension, or change of or substitution for the Indebtedness or any part thereof, or the acquisition or perfection of the security granted pursuant to the Mortgage, whether made or incurred at the request of Borrower or Lender (the sums referred to in (i) through (v) above shall collectively be referred to as the “**Indebtedness**”) shall, **WITHOUT NOTICE** ((unless notice is required under the applicable laws of the State of Illinois before acceleration of the Indebtedness), become immediately due and payable at the option of the holder hereof upon the happening of any of the following events (each, an “**Event of Default**”):

5.1.(a) Borrower fails to pay any amount due to Lender under this Note within ten (10) days from the due date for such payment, or if no due date is provided for, within fifteen (15) days from the date written demand therefor is made (notwithstanding the foregoing provisions of Section 5.1(a), no grace period shall apply to the payment in full by Borrower of all principal, accrued and unpaid interest and other amounts due and owing under the Loan Documents on the Maturity Date pursuant to Section 2.1(b) of this Note);

5.1.(b) Borrower fails to pay any amount due and payable to Lender under the Mortgage or the other Loan Documents within ten (10) days from the date written demand therefor is made;

5.1.(c) Borrower or any Guarantor fails to keep, observe or perform any other promise, condition or agreement contained in this Note, the Mortgage, the Guaranty and/or the Environmental and Hazardous Substances Indemnity Agreement or any of the other Loan Documents or any other documents described herein or delivered in connection herewith or is otherwise in default under the terms, covenants and conditions of the Mortgage or the Loan Documents, and such failure or default is not remedied within thirty (30) days from the date of written notice to Borrower thereof; provided that if such condition is not reasonably susceptible to cure within such thirty (30) day period and Borrower (or such guarantor) is diligently pursuing cure, Borrower (or such guarantor) shall be entitled to an additional reasonable time to cure provided Borrower is diligently pursuing cure not to exceed sixty (60) days;

5.1.(d) There is a material misstatement in any certificate and/or certification delivered in connection with this Note, the Loan Documents or the Mortgage, or any representation, disclosure, warranty, statement, financial information, application and/or other instrument, record, documentation or paper made or furnished by or on behalf of Borrower in connection with this Note shall be materially misleading, untrue or incorrect;

5.1.(e) A receiver, liquidator or trustee shall be appointed for Borrower or for any of its property (except for any receiver, liquidator or trustee appointed at the request of Lender, any servicer of the Loan, or any party affiliated with Lender or acting at the request of or in collusion with Lender (each a “**Lender Party**”)), Borrower shall make an assignment shall be

made for the benefit of creditors, Borrower shall be adjudicated a bankrupt or insolvent, or any petition for bankruptcy, reorganization or arrangement pursuant to the United States Bankruptcy Code, or under the provisions of any federal or state bankruptcy or receiver laws, shall be filed by or against Borrower (except for any such adjudication in an involuntary petition instigated by a Lender Party), unless such appointment, assignment, adjudication or petition was involuntary, in which event only if the same is not discharged, stayed or dismissed within ninety (90) days;

5.1.(f) A final judgment for the payment of money which would materially adversely affect such Borrower's ability to make payments under this Note shall be rendered against Borrower and such party shall not discharge the same or cause it to be discharged within forty-five (45) days from the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered within twenty (20) days, and thereafter to secure a stay of execution pending such appeal;

5.1.(g) Borrower shall have concealed, removed and/or permitted to be concealed or removed any substantial part of its property and/or assets with the intent to hinder, delay or defraud Lender of any of its property and/or assets which may be fraudulent under any federal or state bankruptcy, fraudulent conveyance or similar law now or hereafter enacted, or if Borrower shall have made any transfer of any of its property and/or assets to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid, or if Borrower shall have suffered or permitted to be suffered, while insolvent, any creditor to obtain a lien upon any of its property and/or assets through legal proceedings or distraint which is not vacated within (30) days from the date of entry thereof;

5.1.(h) A default occurs under any lien that is prior or subordinate to the lien of the Mortgage or the holder of any prior or subordinate lien including, without limitation, any fee or leasehold Mortgage who claims a right to disturb Borrower's possession or right to possession, commences a foreclosure action and/or proceeding in connection therewith or any other action or proceeding is begun to collect any lien that is superior or inferior to the Mortgage;

5.1.(i) If any of the events enumerated in Sections 5.1(e) through 5.1(g) above shall happen to Guarantor or any party pledging assets to Lender as additional security for the Indebtedness or any of its property, and such event or occurrence is not remedied or cured within thirty (30) days from the date of written notice thereof;

5.1.(j) Guarantor defaults under or attempts to withdraw, cancel or disclaim liability under any pledge, pledges, guaranty or guaranties given to Lender in connection with the Loan, and such event or occurrence is not remedied or cured within ten (10) days after notice thereof;

5.1.(k) Guarantor shall be charged with a felony involving a crime of moral turpitude; and/or

5.1.(l) Any Event of Default identified in Section 20 of the Mortgage or any other Loan Document.

5.2. After the occurrence of an Event of Default, Lender may accept any

payments from Borrower without prejudice to the rights and remedies of Lender provided herein or in the Mortgage or the Loan Documents.

5.3. Borrower hereby represents and warrants that the Property is not its current principal residence, and hereby covenants that during the term of the Note, Borrower shall not ever make the Property its principal residence. Borrower acknowledges that Lender would not have entered into the transaction contemplated by this Note if Borrower occupied the Property or intended to occupy the Property as its principal residence. In the event Borrower occupies the Property as its principal residence at any time during the term of this Note, such action shall cause an immediate Event of Default and the Indebtedness shall be immediately due and payable.

6. **DEFAULT INTEREST/LATE CHARGES.**

6.1. Upon the occurrence of any Event of Default, then, from and after the date of such Event of Default, interest shall accrue on the entire Indebtedness at a rate equal to the lesser of (a) the Interest Rate plus seven percent (7%) or (b) the highest rate permitted by law, computed from said due date until the date such Event of Default is cured (the “**Default Rate**”). The Default Rate shall be computed from the date of the occurrence of the Event of Default until the earlier of the date upon which the Event of Default is cured or the date upon which the Indebtedness is paid in full. Interest calculated at the Default Rate shall be added to the Indebtedness, and shall be deemed secured by the Mortgage and the Loan Documents. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Indebtedness nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default.

6.2. If any payment (or part thereof) provided for herein (excluding, however, the payment of principal on the Maturity Date) shall not be made within ten (10) days from the date due, a late charge of ten percent (10%) of the amount so overdue shall become immediately due and payable to the holder of this Note as liquidated damages for failure to make prompt payment and the same shall be secured by the Mortgage and the Loan Documents. Nothing herein is intended to or shall extend the due dates set forth for payments under this Note. Such late fee may be charged repeatedly, however, said late fee shall not be compounded on prior late fees, but rather, only on the amount outstanding exclusive of prior late fees.

6.3. Lender shall have the right unilaterally to correct patent errors in this Note or any of the other Loan Documents and to fill in any blank spaces herein or in any of the other Loan Documents, so as to conform to the terms upon which the loan evidenced hereby is made.

6.4. Should the Indebtedness or any part thereof be collected at law or in equity, or in bankruptcy, receivership or any collected at law or in equity or any other court proceeding (whether at the trial or appellate level), or should this Note be placed in the hands of attorneys for collection under default, Borrower agrees to pay, in addition to the principal, any late payment charge and interest due and payable hereunder, all reasonable costs of collecting or attempting to collect the Indebtedness, including reasonable attorneys’ fees and expenses and court costs, regardless of whether any legal proceeding is commenced hereunder, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses

are paid by Borrower.

6.5. After the entry of a judgment and/or a foreclosure judgment, Lender shall have the right to continue to charge Borrower and to increase the amount of the judgment for post-judgment reasonable attorneys' fees and costs, post-judgment interest at the Default Rate provided for herein, real estate taxes, utilities, maintenance, security and other charges that may be incurred by Lender.

6.6. Borrower acknowledges and agrees that the loan evidenced by this Note was "arranged" within the meaning of California Civil Code Section 1916.1 by Thorofare Capital, Inc., a licensed California real estate broker. Notwithstanding anything heretofore set forth to the contrary, in no event shall any interest payable under this Note exceed the maximum interest rate permitted under law or the rate that could subject Lender to either civil or criminal liability as a result of being in excess of the maximum interest rate that Borrower is permitted by applicable law to contract or agree to pay. If by the terms of this Note, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of such maximum rate, the interest rate hereinabove set forth or the Default Rate, as the case may be, shall be deemed to be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Indebtedness, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of this Note until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. Borrower agrees to an effective rate of interest that is the rate stated herein plus any additional rate of interest resulting from any other charges in the nature of interest paid or to be paid by or on behalf of Borrower, or any benefit received or to be received by Lender, in connection with this Note.

7. WAIVERS.

7.1. To the maximum extent permitted by applicable law, Borrower and all parties who may become eligible for the payment of all or any part of the Indebtedness, whether principal, surety, guarantor, pledgor, or endorser, hereby waive demand, notice of demand, presentment for payment, notice of intent to accelerate maturity, notice of acceleration of maturity, notice of dishonor, protest, notice of protest and non-payment and all other notices of any kind, except for notices expressly provided for in this Note.

7.2. The liability of Borrower and any guarantor, pledgor or endorser shall be unconditional and shall not be in any manner affected by any indulgence whatsoever granted or consented to by the holder hereof, including, but not limited to any extension of time, renewal, waiver or other modification. No release of any security for the Indebtedness or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Mortgage, or any other guaranty or instrument made by agreement of Lender or any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower or any other person or entity who may become liable for the payment of all or any part of the Indebtedness under this Note.

7.3. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand on Borrower as provided for in this Note. Any failure of the holder of this Note to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other right at any time and from time to time thereafter. Lender or any holder of this Note may accept late payment, or partial payment, even though marked "payment in full" or containing words of similar import or other conditions, without waiving any of its rights. No amendment, modification or waiver of any provision of this Note nor consent to any departure by Borrower therefrom shall be effective, irrespective of any course of dealing, unless the same shall be in writing and signed by Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

7.4. BORROWER AGREES THAT ANY ACTION, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS NOTE MAY BE INITIATED AND PROSECUTED IN THE STATE COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER CONSENTS TO AND SUBMITS TO THE EXERCISE OF JURISDICTION OVER THE SUBJECT MATTER, WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENT THAT ALL SUCH SERVICE OF PROCESS BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED OR OVERNIGHT COURIER TO BORROWER AT ITS ADDRESS SET FORTH ABOVE OR TO ANY OTHER ADDRESS AS MAY APPEAR IN LENDER'S RECORDS AS THE ADDRESS OF BORROWER AS BORROWER MAY, FROM TIME TO TIME, MODIFY SUCH ADDRESS BY WRITTEN NOTICE TO LENDER PURSUANT TO SECTION 47 OF THE MORTGAGE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW).

7.5. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN ANY ACTION, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS NOTE, BORROWER WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THIS NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THIS NOTE, THE LOAN DOCUMENTS, OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY, INTENTIONALLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH OF THEM HAS RELIED ON THIS WAIVER IN ENTERING INTO THIS NOTE AND THE OTHER LOAN DOCUMENTS AND THAT EACH OF THEM WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. BORROWER AND LENDER EACH WARRANT

AND REPRESENT THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

7.6. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER ALSO WAIVES (I) THE RIGHT TO INTERPOSE ANY SET-OFF OR COUNTERCLAIM OF ANY NATURE OR DESCRIPTION, (II) ANY OBJECTION BASED ON FORUM NON CONVENIENS OR VENUE, AND (III) ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES.

8. Intentionally Omitted.

9. **NOTICES.** All notices to be given pursuant to this Note shall be in writing and given in accordance with Section 47 of the Mortgage.

10. **MISCELLANEOUS.**

10.1. Time shall be of the essence with respect to all provisions of this Note.

10.2. If any payment to be made by Borrower shall otherwise become due on a day other than a Business Day (as defined below), such payment shall be made on the prior preceding day which is a Business Day. "Business Day" shall mean any day of the week other than a Saturday, Sunday or federal holiday.

10.3. Borrower represents that it has full power, authority and legal right to execute and deliver this Note, and that this Note constitutes the valid and binding obligation of Borrower.

10.4. Wherever pursuant to this Note it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, without limitation, reasonable legal fees and disbursements of Lender, whether with respect to retained firms, the reimbursement of the expenses of in-house staff, in-house counsel, or otherwise. Borrower shall pay to Lender on demand any and all expenses, including reasonable legal expenses and reasonable attorneys' fees, incurred or paid by Lender in enforcing this Note.

10.5. This Note cannot be changed, modified, amended, waived, extended, discharged or terminated orally or by estoppel or waiver, regardless of any claimed partial performance referable thereto, or by any alleged oral modification or by any act or failure to act on the part of Borrower or Lender.

10.6. The agreements contained herein shall remain in full force and effect, notwithstanding any changes in the individuals or entities comprising Borrower, and the term "Borrower," as used herein, shall include any alternate or successor person or entity, but any predecessor person or entity, and its partners or members, as the case may be, shall not thereby be released from any liability. Nothing in the foregoing shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in Borrower which may be set forth in this Note, the Mortgage or the Loan Documents.

10.7. Titles of articles and sections are for convenience only and in no way define, limit, amplify or describe the scope or intent of any provision hereof.

10.8. If any paragraph, clause or provision of this Note is construed or interpreted by a court of competent jurisdiction to be void, invalid or unenforceable, such voidness, invalidity or unenforceability will not affect the remaining paragraphs, clauses and provisions of this Note, which shall nevertheless be binding upon the parties hereto with the same effect as though the void or unenforceable part had been severed and deleted.

10.9. If more than one person is named in this Note as “Borrower”, each obligation and liability of Borrower shall be the “joint and several” obligation and liability of such party or entity. No person or entity will be a mere accommodation maker; each will be primarily and directly liable.

10.10. The terms and provision of this Note shall be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties or by operation of law. As used herein, the terms “Borrower” and “Lender” shall be deemed to include their respective heirs, executors, legal representative, successors, successors-in-title and assigns, whether by voluntary action of the parties or by operation of law.

10.11. All the terms and words used in this Note, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this Note or any paragraph or clause herein may require, the same as if such work had been fully and properly written in the correct number and gender.

10.12. This Note shall be governed by and construed in accordance with the laws of the State of Illinois without regard to conflicts of laws principles.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK – SIGNATURE PAGE TO FOLLOW]

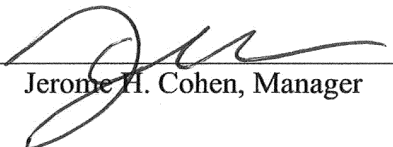
TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY EXPRESSLY (i) WAIVES ANY RIGHTS IT MAY HAVE UNDER APPLICABLE LAW TO PREPAY THIS NOTE, IN WHOLE OR IN PART, WITHOUT PAYMENT OF A PREPAYMENT FEE, UPON ACCELERATION OF THE MATURITY DATE, AND (ii) AGREES THAT ANY PURCHASE OF THE PROPERTY AT A FORECLOSURE SALE OR TRUSTEE'S SALE SHALL BE DEEMED A VOLUNTARY PREPAYMENT HEREUNDER AND LENDER SHALL BE ENTITLED TO RECEIVE OUT OF THE PROCEEDS OF SUCH SALE ALL OF THE AMOUNTS REQUIRED UNDER THIS NOTE, INCLUDING, WITHOUT LIMITATION, THE YIELD PROTECTION FEE AND THE EXIT FEE. BORROWER HEREBY DECLARES THAT THE AGREEMENT TO MAKE THE LOAN EVIDENCED BY THIS NOTE AT THE INTEREST RATE AND FOR THE TERM SET FORTH IN THIS NOTE CONSTITUTES ADEQUATE CONSIDERATION, GIVEN INDIVIDUAL WEIGHT BY BORROWER FOR THIS WAIVER AND AGREEMENT.

IN WITNESS WHEREOF, the undersigned has executed the foregoing instrument as of the date first above written.

BORROWER:

1700 JUNEWAY LLC,
an Illinois limited liability company

By: OFFSITE ASSET MANAGEMENT LLC,
a Delaware limited liability company
its Manager

By: 
Jerome H. Cohen, Manager