

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

(Mark one)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2020

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 1-08546

TRINITY PLACE HOLDINGS INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

No. 22-2465228
(I.R.S. Employer Identification No.)

340 Madison Avenue, New York, New York
(Address of Principal Executive Offices)

10173
(Zip Code)

Registrant's telephone number, including area code: (212) 235-2190

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol	Name of each exchange on which registered
Common Stock \$0.01 Par Value Per Share	TPHS	NYSE American

Securities registered pursuant to Section 12(g) of the Act: NONE

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer ☐

Accelerated Filer

☐

Non-Accelerated Filer ☒

Smaller Reporting Company ☒

Emerging Growth Company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes ☐ No ☒

As of June 30, 2020, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was approximately \$28,222,000.

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distributions of securities under a plan confirmed by a court.

Yes ☒ No ☐

As of March 31, 2021, there were 32,442,635 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement relating to the registrant's 2021 Annual Meeting of Stockholders to be filed hereafter are incorporated by reference into Part III of this Annual Report on Form 10-K.

Form 10-K Index

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PART I

Item 1. BUSINESS

Overview

Trinity Place Holdings Inc., which we refer to in this report as “Trinity,” “we,” “our,” or “us”, is a real estate holding, investment, development and asset management company. Our largest asset is currently a property located at 77 Greenwich Street in Lower Manhattan (“77 Greenwich”). 77 Greenwich was previously a vacant building that we demolished. It is under development as a mixed-use project consisting of a 90-unit residential condominium tower, retail space and a New York City elementary school. We also own a newly built 105-unit, 12-story multi-family property located at 237 11th Street in Brooklyn, New York (“237 11th”), acquired in May 2018, and, through joint ventures, a 50% interest in a newly built 95-unit multi-family property known as The Berkley, and a 10% interest in a newly built 234-unit multi-family property located one block from The Berkley at 250 North 10th Street (“250 North 10th”) acquired in January 2020, also in Brooklyn, New York. In addition, we own a property occupied by retail tenants in Paramus, New Jersey. See Item 2. Properties for a more detailed description of our properties. In addition to our real estate portfolio, we also control a variety of intellectual property assets focused on the consumer sector, a legacy of our predecessor, Syms Corp. (“Syms”). We also had approximately \$232.0 million of federal net operating loss carry forwards (“NOLs”) at December 31, 2020, which can be used to reduce our future taxable income and capital gains.

We continue to evaluate new investment opportunities, with a focus on newly constructed multi-family properties in New York City as well as properties in close proximity to public transportation in the greater New York metropolitan area. We consider investment opportunities involving other types of properties and real estate related assets, as well as repurchases of our common stock, taking into account our cash position, liquidity requirements, and our ability to raise capital to finance our growth. In addition, we may selectively consider potential acquisition, development and fee-based opportunities, as well as disposition, sale or consolidation opportunities.

Business and Growth Strategies

Our primary business objective is to maximize the risk adjusted, time adjusted return on investment in our portfolio of properties and new acquisitions and investments across all points of the economic cycle. Our strategies to achieve this objective include the following:

- **Legacy Properties.** Continue the development of 77 Greenwich and the development, redevelopment, repositioning and potential disposition of our legacy retail property in Paramus, New Jersey;
- **New Acquisitions and Investments.** Identify additional acquisition and investment opportunities, including high-quality, multi-family real estate in New York City and other select submarkets, that is designed to meet the demands of today’s tenants who desire newly constructed and efficiently designed apartment buildings located in close proximity to public transportation, and manage those facilities so as to become the landlord of choice for existing and prospective tenants. We may also identify retail and office properties that present opportunities for us to leverage our redevelopment, development and repositioning expertise. From time to time we may selectively consider opportunistic acquisitions of assets which increase our market share or provide access to new markets, which exhibit an opportunity to improve or preserve returns through repositioning through a combination of capital improvements and shift in marketing strategy, changes in management focus and leasing, as well as assets or interests in assets that offer strong long-term fundamentals, but which may be out of favor in the short term;
- **Joint Ventures.** Continue to explore joint venture opportunities with existing property owners in desirable locations, who seek to benefit from our deep market knowledge along with our management expertise, and with strategic institutional partners, leveraging our skills as owners and operators; and
- **Capital Structure.** Enhance our capital structure through a variety of sources of capital, including debt and equity, and proactively manage our debt maturities.

Competition

The markets in which our properties are located are inherently competitive. With respect to our operating properties currently located in Brooklyn, New York and Paramus, New Jersey, and any future real estate assets that we acquire, invest in or develop, we will be competing for some of the same tenants, contractors, lenders and potential purchasers or investors with respect to other properties within the same markets, but owned by other investors, many of whom have greater resources than we do.

Competitive factors with respect to 77 Greenwich may have a more material effect on us as it is currently our most significant real estate asset. Various municipal entities are making and have indicated an intent to continue to make significant investments in the immediate vicinity of 77 Greenwich to support the growth of the downtown Manhattan neighborhood as a vibrant 24/7 community to work, live and visit. Several privately funded commercial and residential developments are being constructed or have been proposed and office buildings are being converted to residential use to take advantage of the increasing desirability of the neighborhood. The impact of these changing supply and demand characteristics is uncertain, and they could positively or negatively impact our plan to maximize the value of 77 Greenwich.

In addition, we face competition in identifying and closing on new investment and acquisition opportunities, including from larger and more established real estate firms with greater capital resources and access to financing.

Regulatory Matters

Environmental Compliance

Under various federal, state and local laws, ordinances and regulations, a current or previous owner or operator of real estate may be required to investigate and remediate hazardous or toxic substances at a property, and may be held liable to a governmental entity or to third parties for property damage or personal injuries and for investigation and clean-up costs incurred by the parties in connection with the contamination. These laws often impose liability without regard to whether the owner or operator had knowledge of, or was responsible for, the release of the hazardous or toxic substances. The presence of contamination or the failure to remediate contamination may adversely affect the owner's ability to sell or lease real estate or to borrow using the real estate as collateral.

Other federal, state and local laws, ordinances and regulations require abatement or removal of asbestos-containing materials in the event of demolition or certain renovations or remodeling, the cost of which may be substantial for certain redevelopment projects that a potential purchaser would want to undertake with respect to any particular parcel of real estate we own. Such laws, ordinances and regulations also govern emissions from and exposure to asbestos fibers in the air. Federal and state laws also regulate the operation and removal of underground storage tanks. In connection with the ownership and management of certain properties, we could be held liable for the costs of remedial action with respect to these regulated substances or related claims.

Zoning and Planning

In connection with any development or redevelopment of our properties, whether currently owned or acquired in the future, we will be required to comply with applicable zoning, land-use, building, occupancy, and other laws and regulations. In many cases, we are and will continue to be required to obtain governmental permits, site plan approvals and/or other authorizations, or seek variances, prior to proceeding with planned development, acquisition or other activities.

The Zoning Resolution of the City of New York, effective as of December 15, 1961, as amended (the "Zoning Resolution"), governs the use and development of properties in New York City. Properties in New York City may be developed on an as-of-right basis, i.e. without any discretionary city approvals, unless the proposed use or bulk does not comply with the applicable provisions of the Zoning Resolution. Discretionary approvals may be requested from the New York City Planning Commission or the Board of Standards and Appeals. Discretionary approvals are subject to hearing and public participation requirements and are also subject to environmental review pursuant to the State Environmental Quality Review Act, as implemented by the City Environmental Quality Review.

Chapter 11 Cases and Plan of Reorganization of Syms

Trinity is the successor to Syms, which also owned Filene's Basement. In September 2012, the Syms Plan of Reorganization (the "Plan") became effective and Syms and its subsidiaries consummated their reorganization under Chapter 11 through a series of transactions and emerged from bankruptcy. As part of those transactions, reorganized Syms merged with and into Trinity, with Trinity as the surviving corporation and successor issuer pursuant to Rule 12g-3 under Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

In March 2016, we satisfied our final payment and reserve obligations under the Plan. In February 2018, the bankruptcy court entered the final decree pursuant to which the chapter 11 cases of the reorganized debtors were closed. In January 2020, we made our final payment of \$109,000 to the multiemployer pension plan claim, which was the final legacy claim to the Plan to be paid. As of December 31, 2020, the Syms sponsored pension plan was overfunded by approximately \$344,000 (see Note 8 – Pension Plans and Note 9 – Commitments – Legal Proceedings to our consolidated financial statements for further information).

Intellectual Property Assets

We control a variety of intellectual property assets focused on the consumer sector, a legacy of our predecessor, Syms, including FilenesBasement.com, our rights to the Stanley Blacker® brand, as well as the intellectual property associated with the Running of the Brides® event and An Educated Consumer is Our Best Customer® slogan. In addition, various trademarks are controlled and/or owned by us, including "Filene's Basement"®, "Stanley Blacker"®, "Running of the Brides"® and "An Educated Consumer is Our Best Customer,"® and have been registered with the United States Patent and Trademark Office.

Human Capital Resources

As of December 31, 2020, we had a total of nine employees, all of which were full-time, in executive, management, finance, accounting, operations and administrative capacities.

General Information about Trinity

Trinity is incorporated in Delaware. Trinity maintains its headquarters at 340 Madison Avenue, Suite 3C, New York, New York, 10173, and the telephone number is (212) 235-2190.

Available Information

Our website address is www.trinityplaceholdings.com or www.tphs.com. References in this document to our website are not and should not be considered part of this Annual Report on Form 10-K, and the information on our website is not incorporated by reference into this Annual Report.

Item 1A. RISK FACTORS

Our business, operations and financial condition are subject to various risks. Some of these risks are described below, and stockholders should take such risks into account when evaluating us or any investment decision involving us. This section does not describe all risks that may be applicable to us, our industry or our business, and it is intended only as a summary of certain material risk factors. Additional risks and uncertainties that we do not presently know about or that we currently believe are not material may also adversely affect our business. More detailed information concerning certain of the risk factors described below is contained in other sections of this Annual Report on Form 10-K. Stockholders should also refer to the other information contained in our periodic reports, including the Cautionary Note Regarding Forward-Looking Statements section, our consolidated financial statements and the related notes and Management's Discussion and Analysis of Financial Condition and Results of Operations section for a further discussion of the risks, uncertainties and assumptions relating to our business.

Risk Factors Related to Our Business

Our business, financial condition, results of operations and stock price has been and will continue to be materially adversely impacted by the outbreak of COVID-19 and such impact could continue to be material.

The impact of the outbreak of COVID-19 on our results and operations has been and will continue to be significant. The extent of the impact going forward will largely depend on future developments, which are highly uncertain and cannot be predicted, including the severity and duration of the outbreak, in New York City in particular, the success of actions taken to contain or treat COVID-19, actions taken by governmental entities, companies and individuals in response to the pandemic and reactions to such actions, the impact on local and broader economic activity and capital markets and new information with respect to the foregoing and other aspects of COVID-19. The extent to which the COVID-19 pandemic will impact the Company's business, operations and financial results in the future will depend on numerous evolving factors that the Company is not able to predict, including, but not limited to, the impact on sales of residential condominium units at our most significant asset, 77 Greenwich, which has been material, the impact on the timeline for construction of 77 Greenwich and completion of the remediation and restoration project at 237 11th; the impact on the timing of the 237 11th litigation due to backlog in the New York City court system and the slowdown in judicial proceedings, and the receipt of any payments we may receive in connection with the litigation; our ability to obtain maturity extensions and covenant modifications on acceptable terms; increased operating costs related to cleaning and disinfecting our properties; the effect of the pandemic on the Company's tenants and their ability to make rental payments; and the effect of the eviction moratorium (in effect from March 2020 through May 1, 2021, subject to further extension) imposed by New York State and the impact of decisions of the NYC Rent Guidelines Board on our ability to raise rents. The report of our independent registered public accounting firm covering our December 31, 2020 consolidated financial statements contains a paragraph entitled "Going Concern Uncertainty" that states that the maturity of our 237 11th and 77 Greenwich mortgage loans in June 2021 and January 2022, respectively, for which there can be no assurance of refinance or extended maturity, raises substantial doubt about our ability to continue as a going concern. Although we believe we have good relations with our lenders and have seen indications of recovery in the financing markets and the New York City real estate market, including significant early interest in refinancing the two loans, and we anticipate that we will be able to refinance, extend or amend or obtain waivers as needed with respect to the loans, or enter into other financing arrangements sufficient to fund any cash needs, there can be no assurance that we will be able to do so on terms satisfactory to us, if at all, and any defaults may result in cross-defaults under our Corporate Credit Facility. These developments and events have and will continue to adversely impact the Company's business, financial condition, results of operations or stock price, which has been and is anticipated to continue to be material. See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operation – Liquidity and Capital Resources – COVID-19 Pandemic, Liquidity and Going Concern for further information.

We have not generated an operating profit and consequently our business plan is difficult to evaluate and our long-term viability cannot be assured.

Since our formation, we have generated limited revenues and had negative cash flow from operations. The development of our business plan has required, and will continue to require, substantial capital expenditures. There can be no assurance that our business will be successful, that we will be able to achieve or maintain a profitable operation, or that we will not encounter unforeseen difficulties that may deplete our capital resources more rapidly than anticipated. There can be no assurance that we will achieve or sustain profitability or positive cash flows from our operating activities.

We have limited cash resources, generate minimal revenues from operations, and are reliant on external sources of capital to fund ongoing operations.

Our revenue generating activities have not yet produced sufficient funds for profitable operations. In addition, we are required to set aside specified minimum levels of liquidity, inclusive of cash and line of credit capacity, in connection with the development and financing of 77 Greenwich, subject to release in certain circumstances. As of December 31, 2020, this amount was \$10.0 million. As a result, these amounts are not available for investment or operating activities. Accordingly, our continued operation will be dependent upon the success of future operations and will require raising additional capital on acceptable terms. We have relied and will continue to rely substantially upon equity and debt financing to fund our ongoing operations. There can be no assurance that additional sources of capital will be available to us on commercially favorable terms should our capital requirements exceed cash available from operations and existing

cash and cash equivalents. In addition, our inability to access the capital markets on favorable terms, because of a low stock price, unfavorable market conditions, or otherwise, could affect our ability to execute our business plan as scheduled. If we are unable to raise capital on market terms, our ability to grow through new acquisitions and investments, and thus become profitable, could be materially adversely impacted.

A significant part of our current business plan is focused on the development of 77 Greenwich, and an inability to execute this business plan due to adverse trends in the New York City residential condominium market or otherwise could have a material adverse effect on our financial condition and results of operations.

Our business plan includes the development or redevelopment of our legacy commercial real estate properties and in particular the development of 77 Greenwich, which currently is our largest asset. As a result, our revenues and future growth are heavily dependent on the success of implementing our business plan for 77 Greenwich, which is currently under development.

Our plans for 77 Greenwich call for 90 luxury residential condominium apartments, in addition to a retail condominium unit and a New York City elementary school condominium unit. A variety of factors determine New York City residential condominium trends and will ultimately impact the sales and pricing of the residential condominium units at 77 Greenwich. These factors include, among others, available supply, changes in interest rates, the availability of home mortgages, foreign exchange rates, foreign buyer patterns, local employment trends, and prices and velocity of sales. Sales of residential condominium units in general, and in particular in New York City, have historically experienced greater volatility than detached single family houses, which may expose us to more risk. These and other factors fluctuate over time. Based on a number of reports, there is a historically high number of unsold units in newly constructed luxury residential condominiums in New York City, which has resulted in demand and pricing pressures. When we commenced sales in the spring of 2019, the New York City market was in a period of softness, in particular downtown Manhattan. This was exacerbated by the impact of the COVID-19 pandemic. Due to current market conditions in New York City, several competing residential condominium projects located in downtown Manhattan, specifically in the Financial District, have been put on hold. The status of unsold residential condominium units in 2021 and beyond is inherently uncertain. Closings on sales are currently anticipated to occur toward the end of 2021. An inability to successfully execute our business plan with respect to 77 Greenwich would likely have a material adverse effect on our financial condition and results of operations.

We are subject to leverage at both our parent company and our subsidiaries and face risks generally associated with our debt, including an increased risk of default on our obligations and an increase in debt service requirements that could adversely affect our financial condition and results of operations.

We have incurred substantial indebtedness in furtherance of our activities, at both the parent company level and subsidiary level, resulting in an increased risk of default on our obligations and in an increase in debt service requirements, which could adversely affect our financial condition and results of operations. As a result, we are subject to the risks associated with debt financing, including the risk that our cash flow will be insufficient to meet required payments of principal and interest, the risk that we may fail to repay or refinance existing debt as it matures, which may result in forced disposition of assets on disadvantageous terms or have other adverse consequences, and the risk that if we refinance any of our debt, we may do so on refinancing terms less favorable than the terms of our existing debt.

All of our properties secure loans. The failure by our borrower subsidiaries to make scheduled repayments under the loan agreements, or the default of any of the obligations under the loans, would have an adverse impact on our financial condition, results of operations and cash flows. Upon the occurrence of an event of default, the applicable subsidiary may be required to immediately repay all amounts outstanding under the respective loan and the lenders may exercise other remedies available to them, including foreclosing on the respective property securing the loan.

See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources and Note 10 – Loans Payable and Secured Line of Credit to our consolidated financial statements, for further discussion regarding our financing activities.

Covenants in our loan agreements could limit our flexibility and adversely affect our financial condition.

The terms of our loan documents contain a number of financial and other restrictive covenants, including restrictions on debt, liens, business activities, equity repurchases, distributions and dividends, disposition of assets and transactions with affiliates, as well as financial covenants regarding corporate loan to value, net worth and liquidity. These covenants may limit our flexibility to pursue certain acquisitions or investments or incur additional debt. If we fail to meet or satisfy any of these covenants, we would be in default under these agreements and our indebtedness could be declared due and payable. In addition, our lenders could terminate their commitments, require the posting of additional collateral and enforce their interests against existing collateral. If we were to default under our loan agreements, our financial condition would be adversely affected.

Investment returns from 77 Greenwich and other properties we may acquire and/or develop may be less than anticipated.

Our development of 77 Greenwich and other properties we acquire and/or develop are exposed to risks, including the following:

- we may sell condominium units at 77 Greenwich and other acquired or developed properties at prices, and/or lease commercial and residential properties at current or future properties, that are less than the prices projected at the time we decide to undertake the acquisition or development;
- the velocity of leasing at commercial and residential properties, and/or condominium sales at future acquisition or developed properties may fluctuate depending on a number of factors, including market and economic conditions, and may result in our investments being less profitable than we expected or not profitable at all; and
- operating expenses and real estate taxes may be greater than projected at the time of acquisition or development, resulting in our investment being less profitable than we expected.

Our investment in property development for 77 Greenwich and other properties may be more costly than anticipated.

We intend to continue to develop or redevelop our current and future properties. Our current and future development and construction activities, including with respect to 77 Greenwich, may be exposed to the following risks:

- we may be unable to proceed with the development of properties other than 77 Greenwich because we cannot obtain financing on favorable terms, or at all;
- we may incur construction costs for a development project that exceed our original estimates due to increases in interest rates, increased materials, labor, leasing or other costs, and increases in unforeseen costs such as those related to COVID-19, which could make completion of the project less profitable because market rents or condominium unit sales prices, as applicable, may not increase sufficiently to compensate for the increase in construction costs;
- we may be unable to obtain, or face delays in obtaining, required zoning, land-use, building, occupancy, and other governmental permits and authorizations, which could result in increased costs and could require us to abandon our activities entirely with respect to a project;
- we may abandon development opportunities after we begin to explore them and as a result we may lose deposits or fail to recover expenses already incurred;
- we may expend funds on and devote management's time to projects which we do not complete;
- we may be unable to complete construction and/or leasing of our rental properties and sales of our condominium projects (currently limited to 77 Greenwich) on schedule, or at all; and

- we may suspend development projects after construction has begun due to changes in economic conditions or other factors, and this may result in the write-off of costs, payment of additional costs or increases in overall costs when the development project is restarted.

Our revenues and the value of our portfolio are affected by a number of factors that affect investments in leased commercial and residential real estate generally.

We are subject to the general risks of investing in and owning leasable real estate in connection with our existing retail and residential properties and new properties or investments in leasable real estate. These risks include the ability to secure leases with new tenants, renew leases with existing tenants, the non-performance of lease obligations by tenants, leasehold improvements that will be costly or difficult to remove or certain upgrades that may be needed should it become necessary to re-rent the leased space for other uses, rights of termination of leases due to events of casualty or condemnation affecting the leased space or the property or due to interruption of the tenant's quiet enjoyment of the leased premises, and obligations of a landlord to restore the leased premises or the property following events of casualty or condemnation, and potentially, as occurred at 237 11th, damages arising from defective construction. The occurrence of any of these events, particularly with respect to leases at our commercial real estate property, or issues that affect numerous residential units, could adversely impact, and in the case of 237 11th, has adversely impacted, our results of operations, liquidity and financial condition.

In addition, if our competitors offer space at net effective rental rates below our current net effective rates or market rates, we may lose current or potential tenants to other properties in our markets. Additionally, we may need to reduce net effective rental rates below our current rates or offer incentives in order to retain tenants upon expiration of their leases or to attract new tenants. Our results of operations and cash flow may be adversely affected as a result of these factors.

We may be unable to lease vacant space, renew our current leases, or re-lease space as our current leases expire.

Leases at our properties may not be renewed or such properties may not be re-leased at favorable rental rates. If the rental rates for our properties decrease, our tenants do not renew their leases or we do not re-lease a significant portion of our available space, including vacant space resulting from the remediation of damaged units, tenant defaults or space that is currently unoccupied, and space for which leases are scheduled to expire, our financial condition, results of operations and cash flows could be materially adversely affected. There are numerous commercial developers, real estate companies, financial institutions and other investors with greater financial resources than we have that compete with us in seeking tenants who we desire to lease space in our properties.

The bankruptcy of, or a downturn in the business of, any of the major tenants at our commercial real estate properties that causes them to reject their leases, or to not renew their leases as they expire, or renew at lower rental rates, may adversely affect our cash flows and property values. In addition, retailers at our properties face increasing competition from e-commerce, outlet malls, discount shopping clubs, direct mail and telemarketing, which could reduce rents payable to us and reduce our ability to attract and retain tenants at our properties leading to increased vacancy rates at our properties.

In addition, if we are unable to renew leases or re-lease a property, the resale value of that property could be diminished because the market value of a particular property will depend in part upon the value of the leases of such property.

We may acquire properties subject to known and unknown liabilities and with limited or no recourse to the seller.

Properties we acquire may be subject to known or unknown liabilities with no or minimal recourse to the seller. As a result, if a property is damaged, we may need to pay to have it repaired, and our ability to recover any such payments through insurance, indemnities, litigation or otherwise is uncertain. We have purchased one property subject to unknown construction defects due to water penetration in the walls, 237 11th, and there can be no assurance that we will not do so again. During the pendency of repairs, units were unable to be leased, and following completion of repairs, they need to be re-leased. Also, if a liability were asserted against us arising from our ownership of a property, we might have to pay substantial sums to settle it. Unknown liabilities with respect to properties acquired might include:

- liabilities for repair of damaged properties or faulty construction;
- claims by tenants, vendors or other persons arising from dealing with the former owners of the properties;

- liabilities incurred in the ordinary course of business;
- claims for indemnification by general partners, directors, officers and others indemnified by the former owners of the properties; and
- liabilities for clean-up of undisclosed environmental contamination and/or repair or other remediation of construction defects.

Any of these occurrences could adversely affect our cash flow, even if some or all of the costs are ultimately borne by a third party, and the impact could be material.

Multi-family residential properties may be subject to rent stabilization regulations, which limit our ability to raise rents above specified maximum amounts and could give rise to claims by tenants that their rents exceed such specified maximum amounts.

The Rent Stabilization Law and Code imposes rent control or rent stabilization on certain apartment buildings. The rent stabilization regulations applicable to our multi-family residential properties set maximum rates for annual rent increases, entitle our tenants to receive required services from us and entitle our tenants to have their leases renewed. The limitations established by present or future rent stabilization regulations may impair our ability to maintain rents at market levels at properties subject to such regulations.

Pursuant to the Housing Stability and Tenant Protection Act of 2019, which is a set of New York State laws, vacancy lease increases were eliminated, whereby the landlord was permitted to increase the rent by as much as 20% for a tenant moving into a vacant apartment, to which significant increases in rent for New York City properties were historically attributed.

With respect to certain types of properties in New York City, solely by virtue of the real estate tax exemption under RPTL Section 421-a, the Rent Guidelines Board of New York City, approves renewal lease rent increases. In each of 2018 and 2019, the Rent Guidelines Board approved a 1.5% increase on 12-month lease renewals and a 2.5% increase on 24-month lease renewals. In 2020, the Rent Guidelines Board approved no increase on 12-month lease renewals and no increase for the first year and a 1% increase for the second year of 24-month renewals.

The application of rent stabilization to apartments in our multi-family residential properties will limit the amount of rent we are able to collect, which could have a material adverse effect on our ability to fully take advantage of the investments that we are making in our properties. In addition, there can be no assurances that changes to rent stabilization laws will not have a similar or greater negative impact on our ability to collect rents.

There is a proposed New York State bill (Good Cause Eviction), which, if passed may impose restrictions on rent increases and the right not to renew market rate unit leases. If passed, there will be restrictions on an owner's ability to grow their market rents.

Competition for new acquisitions and investments may reduce the number of opportunities available to us and increase the costs of those acquisitions and investments.

We will face competition for acquisition and investment opportunities from other investors, particularly those investors who are willing to incur more leverage. This competition may adversely affect us by subjecting us to the following risks:

- an inability to acquire a desired property because of competition from other well-capitalized real estate investors, many of whom have greater resources than us, including publicly traded and privately held REITs, private real estate funds, domestic and foreign financial institutions, life insurance companies, sovereign wealth funds, pension trusts, partnerships and individual investors; and
- an increase in the purchase price for the acquisition of such property.

If we are unable to successfully acquire or invest in additional properties, our ability to grow our business would be adversely affected. In addition, increases in the cost of acquisition opportunities could adversely affect our results of operations.

We face risks associated with acquisitions of and investments in new properties.

We may acquire interests in properties, individual properties and portfolios of properties, including potentially large portfolios that could significantly increase our size and alter our capital structure. Our acquisition and investment activities may be exposed to, and their success may be adversely affected by, the following risks:

- we may be unable to finance acquisitions, investments and developments of properties, including with respect to raising capital to contribute as equity, on favorable terms or at all;
- we may be unable to complete proposed acquisitions or other transactions due to an inability to meet required closing conditions;
- we may expend funds on, and devote management time to, opportunities which we do not complete, which may include non-refundable deposits;
- we may be unable to lease our acquired properties on the same terms as contemplated as part of our underwriting;
- properties that we acquire or in which we invest may fail to perform as we expected;
- our estimates of the costs we incur in renovating, improving, developing or redeveloping acquired properties may be inaccurate;
- we may not be able to obtain adequate insurance coverage for acquired properties; and
- we may be unable to quickly and efficiently integrate new acquisitions, investments and developments, particularly acquisitions of portfolios of properties, into our existing operations, and therefore our results of operations and financial condition could be adversely affected.

We are subject to the risks associated with joint ventures.

We formed joint ventures with third parties to acquire and operate The Berkley and the 250 North 10th property, both located in Brooklyn, New York. We may become involved in additional joint ventures in the future with respect to current or future properties. Joint venture investments may involve risks not otherwise present for investments made or owned solely by us, including the possibility that our joint venture partner might become bankrupt, or may take action contrary to our instructions, requests, policies or objectives. Other risks of joint venture investments include impasse on decisions, such as a sale, because neither we nor a joint venture partner would have full control over the joint venture, activities conducted by a partner that have a negative impact on the joint venture or us, and disputes with our partner. Also, although our debt documents contain certain restrictions, there is no limitation under our organizational documents as to the amount of our funds that may be invested in joint ventures.

The potential phasing out of LIBOR after 2021 may affect our financial results.

The chief executive of the United Kingdom Financial Conduct Authority ("FCA"), which regulates LIBOR, has announced that the FCA intends to stop compelling banks to submit rates for the calculation of LIBOR after 2021. The U.S. Dollar Libor will continue to be published until 2023. It is not possible to predict the effect of these changes or the establishment of alternative reference rates.

The Alternative Reference Rate Committee ("ARRC"), a committee convened by the Federal Reserve that includes major market participants, and on which the Securities and Exchange Commission ("SEC") staff and other regulators participate, has proposed an alternative rate, the Secured Overnight Financing Rate ("SOFR"), to replace U.S. Dollar LIBOR. Any changes announced by the FCA, ARRC, other regulators or any other successor governance or oversight body, or future changes adopted by such body, in the method pursuant to which U.S. Dollar LIBOR, SOFR, or any other alternative rates are determined may result in a sudden or prolonged increase or decrease in the reported LIBOR rates. If that were to occur, the levels of interest payments we incur and interest payments we receive may change. It is also uncertain whether SOFR or any other alternative rate will gain market acceptance. In addition, although certain of our LIBOR based obligations and investments provide for alternative methods of calculating the interest rate if LIBOR is not reported, uncertainty as to

the extent and manner of future changes may result in interest rates and/or payments that are higher than, lower than or that do not otherwise correlate over time with the interest rates and/or payments that would have been made on our obligations if LIBOR rate was available in its current form. We may also need to renegotiate our LIBOR based obligations, which we may not be successful in doing on a timely basis or on terms acceptable to us.

We may not receive or be able to maintain certain tax benefits if we are not in compliance with certain requirements of the NYC Department of Housing Preservation and Development.

We may not receive or be able to maintain certain existing or anticipated tax benefits related to The Berkley, 237 11th and 250 North 10th properties if we are not in compliance with certain requirements of the NYC Department of Housing Preservation and Development (“HPD”). All of these properties currently benefit from a real estate tax exemption under New York Real Property Tax Law (the “RPTL”) Section 421-a, as a result of a specified percentage of the units in such buildings being designated as affordable rate units or market rate units and/or subject to rent stabilization guidelines, among other requirements. Section 421-a of the New York RPTL provides an exemption from real estate taxes on the amount of the assessed value of newly constructed improvements if certain requirements are met. A property cannot maintain or continue to receive Section 421-a tax benefits without HPD’s determination that all Section 421-a eligibility requirements have and continue to be met. Although HPD has issued final Certificates of Eligibility with respect to the Section 421-a tax benefits for The Berkley, 237 11th and 250 North 10th properties and we are currently in compliance with all applicable Section 421-a requirements for such properties, there can be no assurance that compliance with the Section 421-a requirements for these properties will continue to be maintained. If we are not able to maintain compliance with the requirements of the Section 421-a partial tax exemption program, as applicable to any of these properties, HPD may find that such property is ineligible to receive the tax exemption benefits related to the Section 421-a partial tax exemption program.

Our ability to develop or redevelop our properties and enter into new leases with tenants will depend on our obtaining certain permits, site plan approvals and other governmental approvals from local municipalities, which we may not be able to obtain on a timely basis or at all.

In order to develop or redevelop our properties, we will be required to obtain certain permits, site plan approvals or other governmental approvals from local municipalities. We may not be able to secure all the necessary permits or approvals on a timely basis or at all, which may prevent us from developing or redeveloping our properties according to our business plan. Additionally, potential acquirers or tenants may also need to obtain certain permits or approvals in order to utilize our properties in the manner they intend to do so. The specific permit and approval requirements are set by the state and the various local jurisdictions, including but not limited to city, town, county, township and state agencies having control over the specific properties. Our inability to obtain permits and approvals to develop or redevelop our properties, or the inability of potential purchasers and tenants of our properties to obtain necessary permits and approvals, could severely and adversely affect our business.

We may incur significant costs to comply with environmental laws and environmental contamination may impair our ability to lease and/or sell real estate.

Our operations and properties are subject to various federal, state and local laws and regulations concerning the protection of the environment, including air and water quality, hazardous or toxic substances and health and safety. Under some environmental laws, a current or previous owner or operator of real estate may be required to investigate and clean up hazardous or toxic substances released at a property. The owner or operator may also be held liable to a governmental entity or to third parties for property damage or personal injuries and for investigation and clean-up costs incurred by those parties because of the contamination. These laws often impose liability without regard to whether the owner or operator knew of the release of the substances or caused the release. The presence of contamination or the failure to remediate contamination may impair our ability to sell or lease real estate or to borrow using the real estate as collateral. Other laws and regulations govern indoor and outdoor air quality including those that can require the abatement or removal of asbestos-containing materials in the event of damage, demolition, renovation or remodeling and also govern emissions of and exposure to asbestos fibers in the air. The maintenance and removal of lead paint and certain electrical equipment containing polychlorinated biphenyls (PCBs) are also regulated by federal and state laws. We are also subject to risks associated with human exposure to chemical or biological contaminants such as molds, pollens, viruses and bacteria which, above certain levels, can be alleged to be connected to allergic or other health effects and symptoms in susceptible

individuals. We could incur fines for environmental compliance and be held liable for the costs of remedial action with respect to the foregoing regulated substances or related claims arising out of environmental contamination or human exposure to contamination at or from our properties.

Each of our properties has been subject to varying degrees of environmental assessment. To date, these environmental assessments have not revealed any environmental condition material to our business. However, identification of new compliance concerns or undiscovered areas of contamination, changes in the extent or known scope of contamination, human exposure to contamination or changes in clean-up or compliance requirements could result in significant costs to us.

Compliance or failure to comply with the Americans with Disabilities Act (“ADA”) or other safety regulations and requirements could result in substantial costs.

The ADA generally requires that public buildings, including our properties, meet certain federal requirements related to access and use by disabled persons. These rules are subject to interpretation and change. Noncompliance could result in the imposition of fines by the federal government or the award of damages to private litigants and/or legal fees to their counsel. If, under the ADA, we are required to make substantial alterations and capital expenditures in one or more of our operating properties, including the removal of access barriers, it could adversely affect our financial condition and results of operations.

Our properties are subject to various federal, state and local regulatory requirements, such as state and local fire and life safety requirements. If we fail to comply with these requirements, we could incur fines or private damage awards. We do not know whether existing requirements will change or whether compliance with future requirements will require significant unanticipated expenditures that will affect our cash flow and results of operations.

The loss of key personnel upon whom we depend to operate our business or the inability to attract additional qualified personnel could adversely affect our business.

We believe that our future success will depend in large part on our ability to retain or attract highly qualified and experienced management and other personnel, including in particular our President and Chief Executive Officer, Matthew Messinger. We may not be successful in retaining key personnel or in attracting other highly qualified personnel. Any inability to retain or attract qualified management and other personnel could have a material adverse effect on our business, results of operations and financial condition.

Our ability to utilize our NOLs to reduce future tax payments may be limited as a result of future transactions.

We had approximately \$232.0 million of federal NOLs as of December 31, 2020. Section 382 of the Internal Revenue Code (the “Code”), limits the ability of a company to utilize its NOLs after an ownership change. For purposes of Section 382, an ownership change occurs if the percentage of the stock of the company owned by persons holding 5% or more of the stock increases by more than 50 percentage points over a rolling three year lookback period. Generally, if an ownership change occurs, the annual taxable income limitation on our use of NOLs is equal to the product of the applicable long-term tax exempt rate and the value of our stock immediately before the ownership change. If we undergo an ownership change, our ability to utilize our NOLs would be subject to significant limitations. In addition, the 2017 tax legislation known as the Tax Cuts and Jobs Act (the “TCJA”) limited the deductibility of NOLs arising in tax years beginning after December 31, 2017 to 80 percent of taxable income (computed without regard to the net operating loss deduction) for the taxable year, and eliminated the ability of taxpayers to carryback such NOLs to prior years. These limitations were modified by the “Coronavirus Aid, Relief, and Economic Security (CARES) Act,” signed into law on March 27, 2020. The CARES Act suspended the 80% limitation on the use of NOLs for tax years beginning before January 1, 2021, and allowed losses arising in taxable years beginning after December 31, 2017 and before January 1, 2021 to be carried back up to five years.

Political and economic uncertainty, and developments related to outbreaks of contagious diseases, including COVID-19, could have an adverse effect on us.

We cannot predict how current political and economic uncertainty, including uncertainty related to taxation and increases in interest rates, will affect our critical tenants, joint venture partners, lenders, financial institutions and general economic

conditions, including consumer confidence and the volatility of the stock market and real estate market. In addition, we cannot predict the continued impact of COVID-19 or the potential outbreak of other contagious diseases in the future.

These issues pose a risk to us in that they may cause consumers to postpone discretionary spending in response to tighter credit, reduced consumer confidence and other macroeconomic factors affecting consumer spending behavior, resulting in a downturn in the business of our tenants and an impact on potential purchases of our residential condominium units. In the event current political and economic uncertainty results in financial turmoil affecting the banking system and financial markets or significant financial service institution failures, there could be a new or incremental tightening in the credit markets, low liquidity, and extreme volatility in fixed income, credit, currency and equity markets. Each of these could have an adverse effect on our business, financial condition and operating results.

Breaches of information technology systems could materially harm our business and reputation.

We collect and retain on information technology systems certain financial, personal and other sensitive information provided by third parties, including tenants, vendors and employees. We also rely on information technology systems for the collection and distribution of funds.

There can be no assurance that we will be able to prevent unauthorized access to sensitive information or the unauthorized distribution of funds. Any loss of this information or unauthorized distribution of funds as a result of a breach of information technology systems may result in loss of funds to which we are entitled, legal liability and costs (including damages and penalties), as well as damage to our reputation, that could materially and adversely affect our business and financial performance.

Risks Related to Our Common Stock

Our common stock is thinly traded and the price of our common stock has fluctuated significantly.

Our common stock, currently listed on the NYSE American, is thinly traded. We cannot assure stockholders that an active market for our common stock will develop in the foreseeable future or, if developed, that it will be sustained. In addition, we may determine the benefits of listing our shares on the NYSE American do not merit the associated costs. As a result of these factors, stockholders may not be able to resell their common stock. Because our common stock is thinly traded, even small trades can have a significant impact on the market price of our common stock, as was the case in 2018 through 2020 when our stock price decreased significantly on low volume. For instance, our stock price has ranged from a high of \$7.45 per share in May 2018, to a low of \$1.11 per share in April 2020 even though we believe we have executed our business plan and significantly de-risked our development of 77 Greenwich. Volatility in the market price of our common stock and lack of liquidity may prevent stockholders from being able to sell their shares at or above the price paid for such shares. The market price of our common stock could fluctuate significantly for various reasons, many of which are beyond our control, including:

- changes in the real estate markets in which we operate;
- our ability to develop or redevelop or successfully sell units in 77 Greenwich or at other properties in the future;
- our ability to identify new acquisition and investment opportunities and/or close on those acquisitions or investments;
- the potential issuance of additional shares of common stock including at prices that are below the then-current trading price of our common stock;
- volatility in global and/or U.S. equities markets;
- our financial results or those of other companies in our industry;
- the public's reaction to our press releases and other public announcements and our filings with the SEC;
- new laws or regulations or new interpretations of laws or regulations applicable to our business;

- changes in general conditions in the United States and global economies or financial markets, including those resulting from war, incidents of terrorism or responses to such events;
- sales of common stock by our executive officers, directors and significant stockholders;
- changes in generally accepted accounting principles, policies, guidance, or interpretations; and
- other factors described in our filings with the SEC, including among others in connection with the risks noted in this Annual Report on Form 10-K.

In addition, until our common stock is more widely held and actively traded, small sales or purchases may cause the price of our common stock to fluctuate dramatically up or down without regard to our financial health or business prospects. Downward fluctuations can impair, and have impaired, our ability to raise equity capital on acceptable terms.

Stockholders may experience dilution of their ownership interests upon the issuance of additional shares of our common stock or securities convertible into shares of our common stock.

We may issue additional equity securities in capital raising transactions or otherwise, resulting in the dilution of the ownership interests of our present stockholders. We are currently authorized to issue an aggregate of 120,000,000 shares of capital stock consisting of 79,999,997 shares of common stock, two shares of a class of preferred stock (which were redeemed in accordance with their terms and may not be reissued), one share of a class of special stock and 40,000,000 shares of blank check preferred stock. Outstanding as of December 31, 2020 were 32,172,107 shares of our common stock, one share of special stock, and warrants to purchase 7,179,000 shares of our common stock.

We have in the past and we may in the future raise additional capital through public or private offerings of our common stock or other securities that are convertible into or exercisable for our common stock. Any future issuance of our equity or equity-linked securities may dilute then-current stockholders' ownership percentages and could also result in a decrease in the fair market value of our equity securities, because our assets would be owned by a larger pool of outstanding equity. We may also issue such securities in connection with hiring or retaining employees and consultants, as payment to providers of goods and services, in connection with future acquisitions and investments, development, redevelopment and repositioning of assets, or for other business purposes. Our board of directors may at any time authorize the issuance of additional common stock without stockholder approval, unless the approval of our common stockholders is required by applicable law, rule or regulation, including NYSE American regulations, or our certificate of incorporation. The terms of preferred or other equity or equity-linked securities we may issue in future transactions may be more favorable to new investors, and may include dividend and/or liquidation preferences, anti-dilution protection, pre-emptive rights, superior voting rights and the issuance of warrants or other derivative securities, among other terms, which may have a further dilutive effect. Our outstanding warrants also contain these types of provisions. Also, the future issuance of any such additional shares of common stock or other securities may create downward pressure on the trading price of our common stock. There can be no assurance that any such future issuances will not be at a price or have conversion or exercise prices below the price at which shares of the common stock are then traded.

A decline in the price of our common stock, including as a result of a sale of a substantial number of shares of our common stock, may impair our ability to raise capital in the future.

A decline in the price of our common stock, whether as a result of market conditions, sales of a substantial number of shares of our common stock, or other reasons, such as has occurred since mid-2018, may make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem reasonable or appropriate, which would impair our ability to raise capital.

Capital-raising transactions resulting in a large amount of newly issued shares that become readily tradable, or other events that cause current stockholders to sell shares, could place downward pressure on the trading price of our stock. In addition, the lack of a robust resale market may require a stockholder who desires to sell a large number of shares of common stock to sell the shares in increments over time to mitigate any adverse impact of the sales on the market price of our stock.

If our stockholders sell, or the market perceives that our stockholders intend to sell for various reasons, including the ending of restrictions on resale of substantial amounts of our common stock in the public market, including shares issued upon the exercise of outstanding options, the market price of our common stock could fall. A significant amount of restricted shares previously issued by us have been registered for resale on registration statements filed with the SEC.

More than 50% of our shares of common stock are currently controlled by four of our stockholders who may have the ability to influence the election of directors and the outcome of matters submitted to our stockholders.

More than 50% of our shares of common stock are controlled by four of our stockholders. As a result, these stockholders may have the ability to significantly influence the outcome of issues submitted to our stockholders for a vote. The interests of these stockholders may not always coincide with our interests or the interests of other stockholders, and they may act in a manner that advances their best interests and not necessarily those of other stockholders. The concentration of ownership could also deter unsolicited takeovers, including transactions in which stockholders might otherwise receive a premium for their shares over then current market prices.

The holder of our special stock and one of our lenders each have the right to appoint a member to our board of directors and, consequently, the ability to exert influence over us.

In connection with the investment in us by Third Avenue Trust, on behalf of Third Avenue Real Estate Value Fund (“Third Avenue”), a beneficial holder of 18.8% of our common stock at December 31, 2020, Third Avenue was issued one share of a class of special stock and our certificate of incorporation was amended to provide that, subject to the other terms and conditions of our certificate of incorporation, from the issuance of the one share of special stock and until the “Special Stock Ownership Threshold” of 2,345,000 shares of common stock is no longer satisfied, Third Avenue has the right to elect one director to the board of directors. In addition, pursuant to the terms of the credit agreement and letter agreement we entered into in December 2019 with the lender under our Corporate Credit Facility (the “CCF Lender”), the CCF Lender has the right to elect one director to the board of directors, or, at the election of the CCF Lender, a board observer may be selected in lieu of a board member, so long as certain conditions are met as described in more detail in Note 10 – Loans Payable and Secured Line of Credit and Note 11 – Stockholders’ Equity. As a result, for so long as these board appointment rights are in effect, Third Avenue and the CCF Lender may be able to exert influence over our policies and management, potentially in a manner which may not be in our best interests or the best interests of the other stockholders.

In order to protect our ability to utilize our NOLs and certain other tax attributes, our certificate of incorporation includes certain transfer restrictions with respect to our stock, which may limit the liquidity of our common stock.

To reduce the risk of a potential adverse effect on our ability to use our NOLs and certain other tax attributes for U.S. Federal income tax purposes, our certificate of incorporation contains certain transfer restrictions with respect to our stock by substantial stockholders. These restrictions may adversely affect the ability of certain holders of our common stock to dispose of or acquire shares of our common stock and may have an adverse impact on the liquidity of our stock generally.

We have not paid dividends on our common stock in the past and do not expect to pay dividends on our common stock for the foreseeable future. Any return on investment may be limited to the value of our common stock.

We have never paid a cash dividend on our common stock. We expect that any income received from operations will be devoted to our future operations and growth. We do not expect to pay cash dividends on our common stock in the near future. Payment of dividends in the future will depend upon our profitability at the time, cash available for those dividends, and such other factors as our board of directors may consider relevant. If we do not pay dividends, our common stock may be less valuable because a return on an investor’s investment will only occur if our stock price appreciates.

Our charter documents and Delaware law could prevent a takeover that stockholders consider favorable and could also reduce the market price of our stock.

Our certificate of incorporation and bylaws and Delaware law contain provisions that could delay or prevent a change in control of us. These provisions could also make it more difficult for stockholders to elect directors and take other corporate

actions. In addition to the matters identified in the risk factors above relating to the provisions of our certificate of incorporation, these provisions include:

- a classified board of directors with two-year staggered terms;
- limitations in our certificate of incorporation on acquisitions and dispositions of our common stock designed to protect our NOLs and certain other tax attributes; and
- authorization for blank check preferred stock, which could be issued with voting, liquidation, dividend and other rights superior to our common stock.

These and other provisions in our certificate of incorporation and bylaws and under Delaware law could discourage potential takeover attempts, reduce the price that investors might be willing to pay in the future for shares of common stock and result in the market price of the common stock being lower than it would be without these provisions.

Our certificate of incorporation designates the Court of Chancery in the State of Delaware as the exclusive forum for certain actions or proceedings that may be initiated by our stockholders, which could discourage claims or limit stockholders' ability to make a claim against the Company, our directors, officers, and employees.

The Company's certificate of incorporation provides that the Court of Chancery of the State of Delaware is the exclusive forum for any derivative action or proceeding brought on the Company's behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against the Company arising pursuant to the Delaware General Corporation Law, the Company's certificate of incorporation or bylaws; or any action asserting a claim against the Company that is governed by the internal affairs doctrine. This provision is not intended to apply to claims arising under the Securities Act and the Exchange Act. To the extent the provision could be construed to apply to such claims, there is uncertainty as to whether a court would enforce the provision in such respect, and the Company's stockholders will not be deemed to have waived the Company's compliance with federal securities laws and the rules and regulations thereunder.

The exclusive forum provision may discourage claims or limit stockholders' ability to submit claims in a judicial forum that they find favorable and may create additional costs as a result. If a court were to determine the exclusive forum provision to be inapplicable and unenforceable in an action, we may incur additional costs in conjunction with our efforts to resolve the dispute in an alternative jurisdiction, which could have a negative impact on our results of operations.

Because we are a U.S. real property holding corporation, non-U.S. holders of our common stock could be subject to U.S. federal income tax on the gain from its sale, exchange or other disposition.

Because we are a U.S. real property holding corporation, which we refer to as "USRPHC," under the Foreign Investment in Real Property Tax Act of 1980 and applicable U.S. Treasury regulations, which we refer to collectively as the "FIRPTA Rules," unless an exception applies, certain non-U.S. investors in our common stock could be subject to U.S. federal income tax on the gain from the sale, exchange or other disposition of shares of our common stock, and such non-U.S. investors could be required to file a United States federal income tax return. In addition, the purchaser of such common stock may be required to withhold 15% of the purchase price and remit such amount to the U.S. Internal Revenue Service.

Under the FIRPTA Rules, we are a USRPHC because our interests in U.S. real property comprise at least 50% of the fair market value of our assets. Our common stock trades on the NYSE American. So long as it continues to do so, and is regularly quoted by brokers or dealers making a market in our common stock, our common stock will be treated as "regularly traded on an established securities market" (within the meaning of the FIRPTA Rules). As a result, (i) a non-U.S. investor who, actually or constructively, holds no more than 5% of our common stock would not be subject to U.S. federal income tax on the gain from the sale, exchange or other disposition of our common stock under the FIRPTA Rules, and (ii) a purchaser of such stock from a non-U.S. investor would not be required to withhold any portion of the purchase price of such stock, regardless of the percentage of our common stock held by such non-U.S. investor. Any of our common stockholders that are non-U.S. persons should consult their tax advisors to determine the consequences of investing in our common stock.

Forward-looking statements may prove inaccurate.

See Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations—Cautionary Note Regarding Forward-Looking Statements," for additional disclosure regarding forward-looking statements.

Item 1B. UNRESOLVED STAFF COMMENTS

None.

Item 2. PROPERTIES

Below is certain information regarding our real estate properties as of December 31, 2020:

Property Location	Type of Property	Building Size (estimated rentable square feet)	Number of Units	Leased at December 31, 2020
<u>Owned Locations</u>				
77 Greenwich, New York, New York (1)	Property under development	—	—	N/A
Paramus, New Jersey (2)	Property under development	77,000	—	100.0 %
237 11 th Street, Brooklyn, New York (3)	Multi-family	80,000	105	20.0 %
Total		157,000	105	
<u>Joint Ventures</u>				
223 North 8 th Street, Brooklyn, New York - 50% (4)	Multi-family	65,000	95	91.6 %
250 North 10 th Street, Brooklyn, New York - 10% (5)	Multi-family	158,000	234	87.2 %
Total		223,000	329	
Grand Total		380,000	434	

- (1) **77 Greenwich.** We are currently nearing completion of the development stage for the development of an over 300,000 gross square foot mixed-use building that corresponds to the approximate total of 233,000 zoning square feet. The plans call for the development of 90 luxury residential condominium apartments, 7,500 square feet of retail space, almost all of which is street level, a 476-seat elementary school serving New York City District 2, including the adaptive reuse of the landmarked Robert and Anne Dickey House, and construction of a new handicapped accessible subway entrance on Trinity Place. In early April 2020, New York State required all non-essential construction projects be shut down due to the impact of the COVID-19 pandemic. As a result, the construction of 77 Greenwich was temporarily suspended. Construction recommenced mid-April, initially on a modified basis, as certain work was deemed "essential" construction. Since June 2020, a full crew has been on site and operating in accordance with applicable guidelines in response to the COVID-19 outbreak. As of December 31, 2020, 100% of the building enclosure is complete (excluding the hoist area), drywall was installed through floor 28, tile and stone through floor 24, and wood flooring and kitchen cabinets through floor 20. We have also completed the build-out and furnishing of the model units in the building. The attorney general's office approved our condominium offering plan in April 2019. Marketing of residential units for sale commenced during the spring 2019 and the Company has commenced entering into sales agreements with purchasers of the residential condominium units. Although sales activity has recently begun to increase from 2020 levels, through December 31, 2020 sales activity was limited due to being adversely impacted by the pandemic and the local New York City economy. In December 2017, we closed on a \$189.5 million construction facility, which was paid down by \$8.0 million in December 2020. We draw down proceeds under the construction facility as costs related to the construction are incurred, with an aggregate of \$139.0 million having been drawn as of December 31, 2020. We currently anticipate that the proceeds available under the construction facility, together with equity funded by us to date and contributions by the New York City School Construction Authority (the "SCA"), will be sufficient to fund the construction and development of 77 Greenwich without us

making any further equity contributions (see Note 10 – Loans Payable and Secured Line of Credit to our consolidated financial statements for further information).

We entered into an agreement with the SCA, whereby we agreed to construct a school to be sold to the SCA as part of our condominium development at 77 Greenwich. Pursuant to the agreement, the SCA agreed to pay us \$41.5 million for the purchase of their condominium unit and reimburse us for the costs associated with constructing the school, including a construction supervision fee of approximately \$5.0 million payable to us. Payments for construction are made by the SCA to the general contractor in installments as construction on their condominium unit progresses. Payments to us for the land and construction supervision fee commenced in January 2018 and continued through October 2019 for the land and will continue through the second quarter of 2021 for the construction supervision fee, with an aggregate of \$46.0 million having been paid to us as of December 31, 2020 from the SCA, with \$500,000 remaining to be paid. We have also received an aggregate of \$48.2 million in reimbursable construction costs from the SCA through December 31, 2020. The SCA closed on the purchase of the school condominium unit with us in April 2020, at which point title transferred to the SCA, and the SCA is now proceeding to complete the buildout of the interior space, which is planned to become an approximately 476 seat public elementary school. Upon conveyance, we recognized a gain on the sale of approximately \$20.0 million and an additional gain of \$4.2 million related to the recognition of our deferred construction supervision fee, and our liquidity requirement on the 77 Greenwich Construction Facility decreased from \$15.0 million to \$10.0 million. The pace of completion of the buildout by the SCA has been impacted by COVID-19 and its scheduled timeline is currently anticipated to be August 2022.

Prior to the COVID-19 related shutdown of all non-essential construction by New York State in early April 2020, the residential condominium units were scheduled to be completed by the end of 2020. Future delays in construction may result in a delay in our ability to complete the construction project on its original timeline and our ability to sell condominium units. In December 2020, we amended certain provisions of the 77 Greenwich Construction Facility to provide more flexibility under the sales pace covenant and other financial covenants (see Note 10 – Loans Payable and Secured Line of Credit to our consolidated financial statements for further information). Despite the construction delays, we currently expect that the construction project will be completed within budget. We currently anticipate receiving our temporary certificates of occupancy (“TCO”) in stages through the first half of 2021, with the first TCO having been received on March 8, 2021.

- (2) **Paramus Property.** The Paramus property consists of a one-story and partial two-story, 73,000 square foot freestanding building and an outparcel building of approximately 4,000 square feet, for approximately 77,000 total square feet of rentable space. The primary building is comprised of approximately 47,000 square feet of ground floor space, and two separate mezzanine levels of approximately 21,000 and 5,000 square feet. The 73,000 square foot building is leased to Restoration Hardware Holdings, Inc. (NYSE: RH) (“Restoration Hardware”) pursuant to a license agreement that began on June 1, 2016, which is terminable upon two months’ notice, and currently is scheduled to end on March 31, 2021. We are in discussion with Restoration Hardware to extend their license agreement through March 2022. The outparcel building is leased to a long-term tenant whose lease expires on March 31, 2022. The land area of the Paramus property consists of approximately 292,000 square feet, or approximately 6.7 acres. During the year ended December 31, 2020, we collected 100% of rent due.

We are currently exploring options with respect to the Paramus property, including development or sale, among others.

- (3) **237 11th Street.** In May 2018, we closed on the acquisition of a newly built 105-unit, 12-story multi-family apartment building encompassing approximately 93,000 gross square feet (approximately 80,000 rentable square feet) located at 237 11th Street, Park Slope, Brooklyn, New York for a purchase price of \$81.2 million, excluding transaction costs of approximately \$0.7 million. The property also includes 6,264 square feet of retail space, more than half of which is leased to Starbucks Inc. (NQGS:SBUX) and an oral surgeon. Located on the border of the Park Slope and Gowanus neighborhoods of Brooklyn, the property is located one block from the 4th Avenue/9th Street subway station. The 237 11th property offers an array of modern amenities that surpass what is available in the neighborhood’s “brownstone” housing stock. The property also benefits from a 15-year Section 421-a real estate tax exemption.

Due to certain construction defects at 237 11th that resulted in water penetration into the building and damage to certain apartment units and other property, which defects we believe were concealed and which would have required significant invasive work of a type not usually required or permitted, especially on a newly-built asset, to be detected,

we submitted proofs of loss to our insurance carrier for property damage and business interruption (lost revenue) in March 2019. The insurance carrier subsequently disclaimed coverage for the losses and we filed a complaint against the carrier and its administrator, alleging that they breached the insurance policy by denying coverage and requesting a declaration that they are obligated to cover the claimed damage. We also filed legal claims against the seller, its parent company, and the general contractor to recover damages arising from the defective construction. In addition, the general contractor impleaded into that litigation several subcontractors who performed work on the property. Management expects to recover some portion of the cost incurred to repair the property through the litigations and/or settlement negotiations with the seller, its parent company, the general contractor, the subcontractors, and the insurance carrier, although the amount of damages that may be recoverable in litigation and/or potential settlement negotiations are uncertain at this time, as is receipt of any such payments, which has been impacted by the COVID-19 pandemic, including the resulting backlog in the court system and slowdown in the judicial proceedings. We have been in discussions with the seller, its parent company, the general contractor, and the third-party defendants impleaded by the general contractor about engaging in mediation to potentially settle the case involving those parties. A mediation process commenced at the end of February 2021. We incurred significant cash outflows for costs associated with repairs and remediation, which commenced in September 2019. The decrease in occupancy to 20% at December 31, 2020 was due to the clearing of certain floors to prepare for and carry out the remediation work. Remediation and restoration work was delayed for two months in 2020 due to the temporary shutdown of non-essential construction projects in New York from April to June, which resulted in a delay in commencement of our leasing up of the property. Future delays would have a similar impact. Prior to the COVID-19 related shutdown of all non-essential construction by New York State, we expected the building to be approximately 75% remediated by the summer 2020 and to re-introduce the building into the leasing market on or around the same time. As of December 31, 2020, remediation work on floors 4-12 had been completed, other than a few specific units. We expect the remediation and restoration project to be completed by spring 2021. As of December 31, 2020, 58 units had been remediated, many of which are now occupied. We also began leasing efforts for the remediated units, although the pace of leasing in the current environment remains uncertain. Additional units will be introduced back into the market as they become available. During the fourth quarter and year ended December 31, 2020, we collected 100% of rent due, respectively. As of February 28, 2021, the property was approximately 28% leased.

- (4) **223 North 8th Street.** Through a joint venture, we own a 50% interest in the entity formed to acquire and operate The Berkley, a newly built 95-unit multi-family property encompassing approximately 99,000 gross square feet (65,000 rentable square feet) at 223 North 8th Street in North Williamsburg, Brooklyn, New York. The Berkley is in close proximity to public transportation and offers a full amenity package. Apartments feature top-of-the-line unit finishes, central air conditioning and heating and most units have private outdoor space. The property benefits from a 25-year Section 421-a real estate tax exemption. During the fourth quarter ended and year ended December 31, 2020, The Berkley collected approximately 99.5% and 97.8% of rent due, respectively. As of February 28, 2021, the property was approximately 99% leased.
- (5) **250 North 10th Street.** Through a joint venture, we own a 10% interest in the entity formed to acquire and operate 250 North 10th Street, a newly built 234-unit apartment building in Williamsburg, Brooklyn, New York. The property is four blocks from the Bedford Avenue L subway station and a short walk from the Metropolitan Avenue G subway station as well as the J, M, and Z trains at Marcy Avenue. It is located one block from The Berkley. Apartments feature top-of-the-line unit finishes including GE stainless steel appliances, caesarstone countertops, in-unit washers and dryers, individually zoned climate controls, floor to ceiling windows and oak hardwood floors. In addition, the property offers a full amenity package including a concierge, a resident's lounge with roof deck, a fitness center, a café lounge and an expansive terrace, tenant storage, parking, and sweeping views of the neighborhood and Manhattan. The property has approximately eight years remaining on its 15-year Section 421-a real estate tax exemption. Although all apartments are market rate units, they are subject to New York City's rent stabilization law during the remaining term of the Section 421-a real estate tax exemption. During both the fourth quarter ended and year ended December 31, 2020, 250 North 10th Street collected approximately 93.1% of rent due. As of February 28, 2021, the property was approximately 99% leased.

Lease Expirations

As of December 31, 2020, we have one retail lease at our Paramus property with 4,000 square feet of leased space with annualized rent of \$140,000 per year that expires in 2022, a retail lease at the 237 11th property with 2,006 square feet of

leased space with annualized rent of \$130,000 per year that expires in 2027 and a second retail lease at the 237 11th property with 1,074 square feet of leased space with average annualized rent of \$92,675 per year that expires in 2036. All our other leases are residential leases which expire within twelve or twenty-four months of the commencement date.

Corporate Headquarters

We lease our corporate headquarters in New York, New York (approximately 6,271 square feet). The lease expires in March 2025.

Item 3. LEGAL PROCEEDINGS

See Note 9 – Commitments – Legal Proceedings – to our consolidated financial statements for further information regarding the resolution of a claim related to the multiemployer pension plan. In addition to this matter, in the normal course of business, we are also party to routine legal proceedings. Based on advice of counsel and available information, including current status or stage of proceedings, and taking into account accruals where they have been established, management currently believes that any liabilities ultimately resulting from litigation we are currently involved in will not, individually or in the aggregate, have a material adverse effect on our consolidated financial position, results of operations or liquidity.

Item 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

Item 5. MARKET FOR REGISTRANT’S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock trades on the NYSE American. The trading symbol of our common stock is “TPHS”.

Outstanding Common Stock and Holders

As of March 31, 2021, we had 38,840,508 shares issued and 32,442,635 shares outstanding and there were approximately 160 record holders of our common stock.

Recent Sales of Unregistered Securities

None.

Issuer Purchases of Equity Securities

The following table shows the stock repurchase activity by the Company or any “affiliated purchaser” of the Company, as defined in Rule 10b-18(a)(3) under the Exchange Act, by month for the three months ended December 31, 2020:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total number of Shares Purchased As Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs
10/1/20 - 10/31/20	—	—	—	4,516,639
11/1/20 - 11/30/20	—	—	—	4,516,639
12/1/20 - 12/31/20	26,113	—	—	4,516,639
Quarter ending December 31, 2020 (1)	26,113 (2)	\$ 1.00	—	\$ 4,516,639 (3)

(1) In December 2019, our Board of Directors approved a stock repurchase program under which we can buy up to \$5.0 million of shares of our common stock, which is subject to the terms of our Corporate Credit Facility. Repurchases under the stock repurchase program may be made through open market or privately negotiated transactions at times and on such terms and in such amounts as management deems appropriate, subject to market conditions, regulatory requirements and other factors. The program does not obligate the Company to repurchase any particular amount of common stock, and may be suspended or discontinued at any time without notice.

(2) Includes 26,113 shares purchased by an affiliated purchaser of the Company.

(3) Since inception of the share repurchase program through December 31, 2020, the Company has repurchased 250,197 shares of common stock for approximately \$483,361, or an average price per share of \$1.93. As of December 31, 2020, approximately \$4.5 million remained available for share purchase under the share repurchase program, subject to the terms of our Corporate Credit Facility.

Item 7. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion related to our consolidated financial statements should be read in conjunction with the financial statements appearing in Item 8 of this Annual Report on Form 10-K. A detailed discussion of the results of operations for the year ended December 31, 2019 compared to the year ended December 31, 2018 is not included herein and can be found in the Management’s Discussion and Analysis section in the 2019 Annual Report on Form 10-K filed with the SEC on March 13, 2020.

Overview

Trinity Place Holdings Inc. which we refer to in this report as “Trinity,” “we,” “our,” or “us”, is a real estate holding, investment, development and asset management company. Our largest asset is currently a property located at 77 Greenwich Street in Lower Manhattan (“77 Greenwich”). 77 Greenwich was previously a vacant building that we demolished. It is under development as a mixed-use project consisting of a 90-unit residential condominium tower, retail space and a New York City elementary school. We also own a newly built 105-unit, 12-story multi-family property located at 237 11th Street in Brooklyn, New York (“237 11th”), acquired in May 2018, and, through joint ventures, a 50% interest in a newly built 95-unit multi-family property known as The Berkley, located at 223 North 8th Street, Brooklyn (“The Berkley”) and a 10% interest in a newly built 234-unit multi-family property located one block from The Berkley at 250 North 10th Street (“250 North 10th”) acquired in January 2020, also in Brooklyn, New York. In addition we own a property occupied by retail tenants in Paramus, New Jersey. See Item 2. Properties for a more detailed description of our properties. In addition to our real estate portfolio, we also control a variety of intellectual property assets focused on the consumer sector, a legacy of our predecessor, Syms Corp. (“Syms”). We also had approximately \$232.0 million of federal net operating loss carry forwards (“NOLs”) at December 31, 2020, which can be used to reduce our future taxable income and capital gains.

We continue to evaluate new investment opportunities, with a focus on newly constructed multi-family properties in New York City as well as properties in close proximity to public transportation in the greater New York metropolitan area. We consider investment opportunities involving other types of properties and real estate related assets, as well as repurchases of our common stock, taking into account our cash position, liquidity requirements, and our ability to raise capital to finance our growth. In addition, we may selectively consider potential acquisition, development and fee-based opportunities, as well as disposition, sale or consolidation opportunities.

Impact of COVID-19

The impact of the recent outbreak of COVID-19 on our results and operations has been and will continue to be significant. The extent of the impact going forward will largely depend on future developments, which are highly uncertain and cannot be predicted, including the severity and duration of the outbreak, in New York City in particular, the success of actions taken to contain or treat COVID-19, actions taken by governmental entities, companies and individuals in response to the pandemic and reactions to such actions, the impact on local and broader economic activity and capital markets from the COVID-19 pandemic and new information that emerges with respect to the foregoing and other aspects of COVID-19. The extent to which the COVID-19 pandemic will impact the Company’s business, operations and financial results in the future will depend on numerous evolving factors that the Company is not able to predict at this time, including, but not limited to, the impact on sales of residential condominium units at our most significant asset, 77 Greenwich, which has been material, the impact on the timing for construction of 77 Greenwich and completion of the remediation and restoration project at 237 11th; the impact on the timing of the 237 11th litigation due to backlog in the New York City court system and the slowdown in judicial proceedings, and the receipt of any payments we may receive in connection with the litigation; our ability to obtain maturity extensions and covenant modifications on acceptable terms; increased operating costs related to cleaning and disinfecting our properties; the effect of the pandemic on the Company’s tenants and their ability to make rental payments; and the effect of the eviction moratorium (in effect from March 2020 through May 1, 2021, subject to further extension) imposed by New York State and the impact of decisions of the NYC Rent Guidelines Board on our ability to raise rents. These developments and events have and will continue to adversely impact the Company’s business, financial condition, results of operations and stock price, which has been and is anticipated to continue to be material, although in recent months we have seen indications of a recovery in the New York City real estate market and improvements in the financing markets, including early indications of robust interest in the refinancing of our two loans maturing in June 2021 and January 2022, respectively. See Note 1 – Business to our consolidated financial statements and Part II. Item 1A. Risk Factors, of this Annual Report on Form 10-K for further information.

Vacancy rates for multifamily properties across all boroughs of New York City have increased since the start of the COVID-19 pandemic, with the largest increases in Manhattan. The work from home phenomenon resulted in significant number of people moving out of urban areas to suburban areas. This has driven a drop in rental rates and an increase in concessions resulting in lower net effective rents primarily on new leases. In recent months, with the implementation of COVID-19 vaccination programs and companies encouraging employees to return to the office, more potential tenants are moving back into New York City, which we anticipate should result in a reduction in concessions over time. New York State imposed a moratorium on tenant evictions in March 2020 that will be in place until May 1, 2021, unless extended

further. Rent collections at our properties have been strong and in line with pre-pandemic collection rates. Notwithstanding these broader market trends, although multifamily property sales transaction volumes decreased in 2020, signs of distress, including discounted sales prices and debt workouts, in the New York City investment market has been almost non-existent over the past year.

Transactions, Development and Other Activities During 2020

Continued Progress in Development of 77 Greenwich

As of December 31, 2020, we completed all 45 stories of the superstructure at 77 Greenwich and 100% of the building enclosure is complete (excluding the hoist area). The project continues to be on schedule and on budget and was approximately 86% complete at December 31, 2020.

Other Activities

- In January 2020, we, along with our joint venture partner TF Cornerstone Group LLC (“TFC”) closed on the acquisition of 250 North 10th property, a market-leading 234-unit apartment building in Williamsburg, Brooklyn located one block from The Berkley.
- In April 2020, the SCA closed on the purchase of the school condominium unit from us. The SCA is now proceeding to complete the buildout of the interior space, which is planned to become an approximately 476 seat public elementary school. The pace of completion of the buildout by the SCA has been impacted by COVID-19 and its scheduled timeline is currently anticipated to be August 2022. Upon conveyance, we recognized a gain on the sale of approximately \$20.0 million and an additional gain of \$4.2 million related to the recognition of our construction supervision fee, and our liquidity requirement on the 77 Greenwich Construction Facility decreased from \$15.0 million to \$10.0 million.
- In June 2020, we amended our senior loan on 237 11th by extending the maturity date to June 2021 and providing for a \$4.25 million delay draw facility to be used to fund a portion of the remediation costs at this property. As of December 31, 2020, remediation work on floors 4-12 had been completed, other than a few specific units. We expect the remediation and restoration project to be completed by spring 2021. As of December 31, 2020, 58 units have been remediated, many of which are now occupied, and our leasing efforts continue, although the pace of leasing in the current environment remains uncertain. Additional units will be introduced back into the market as they become available. See Item 2. Properties for additional information.
- In December 2020, we amended our 77 Greenwich Construction Facility to modify the sales pace covenant and other financial covenants, and paid down the facility by \$8.0 million.
- Simultaneous with the 77 Greenwich Construction Facility amendment, we entered into a new \$7.5 million mezzanine loan with an affiliate of the lender under our Corporate Credit Facility and amended that facility.

Results of Operations

Results of Operations for the Year Ended December 31, 2020 Compared to the Year Ended December 31, 2019

Rental revenues in total decreased by approximately \$3.1 million to \$993,000 for the year ended December 31, 2020 from \$4.1 million for the year ended December 31, 2019. This consisted of a decrease in rent revenues by approximately \$2.7 million to \$911,000 for the year ended December 31, 2020 from \$3.6 million for the year ended December 31, 2019, as well as a decrease in tenant reimbursements by approximately \$397,000 to \$82,000 for the year ended December 31, 2020 from \$479,000 for the year ended December 31, 2019. The decrease in total revenues and its related components was partially due to the sale of the West Palm Beach, Florida property (approximately \$1.2 million) in November 2019 as well as lower occupancy, lower face rents and increased rent concessions at 237 11th due to certain construction related defects that are being repaired.

Other income of \$263,000 consisted mainly of the SCA construction supervision fees we recognized since the closing on the sale of the school condominium to the SCA in April 2020.

Property operating expenses increased by approximately \$2.8 million to \$8.2 million for the year ended December 31, 2020 from \$5.3 million for the year ended December 31, 2019. The increase was principally due to expenses associated with 237 11th, including approximately \$7.1 million in costs incurred during the year ended December 31, 2020 to repair the construction related defects. The increase was partially offset by a reduction expenses from the West Palm Beach, Florida property which was sold in November 2019. These amounts consisted primarily of expenses incurred for utilities, payroll, COVID-19 related supplies and general operating expenses as well as repairs and maintenance at 237 11th.

Real estate tax expense decreased by \$249,000 to \$79,000 for the year ended December 31, 2020 from \$328,000 for the year ended December 31, 2019, due primarily to the sale of the West Palm Beach, Florida property in November 2019.

General and administrative expenses decreased by \$394,000 to \$5.0 million for the year ended December 31, 2020 from \$5.4 million for the year ended December 31, 2019. For the year ended December 31, 2020, approximately \$708,000 related to stock-based compensation, \$2.5 million related to payroll and payroll related expenses, \$980,000 related to other corporate expenses, including board fees, corporate office rent and insurance, and \$788,000 related to legal, accounting and other professional fees which included approximately \$200,000 of legal fees to resolve a legacy Syms claim related to the multiemployer pension plan (see Note 9 – Commitments – Legal Proceedings to our consolidated financial statements for further information regarding the claim). For the year ended December 31, 2019, approximately \$859,000 related to stock-based compensation, \$2.7 million related to payroll and payroll related expenses, \$1.1 million related to other corporate expenses, including board fees, corporate office rent and insurance and \$743,000 related to legal, accounting and other professional fees.

Pension related costs decreased by \$388,000 to \$345,000 for the year ended December 31, 2020 from \$733,000 for the year ended December 31, 2019. These costs represent professional fees and other periodic pension costs incurred in connection with the legacy Syms Pension Plan (see Note 8 – Pension Plans to our consolidated financial statements for further information).

Transaction related costs decreased by \$34,000 to \$133,000 for the year ended December 31, 2020 from \$167,000 for the year ended December 31, 2019. These costs represent professional fees and other costs incurred in connection with the underwriting and evaluation of potential acquisitions and investments for transactions that were not consummated, as well as costs for potential leases at our retail properties that were not consummated.

Depreciation and amortization expense decreased by approximately \$209,000 to \$2.8 million for the year ended December 31, 2020 from approximately \$3.0 million for the year ended December 31, 2019. For the year ended December 31, 2020, depreciation and amortization expense consisted of depreciation for 237 11th of approximately \$1.7 million and the amortization of lease commissions, acquired in-place leases and warrants of approximately \$1.1 million. For the year ended December 31, 2019, depreciation and amortization expense consisted of depreciation for 237 11th and the West Palm Beach, Florida property of approximately \$1.8 million and the amortization of trademarks and lease commissions and acquired in-place leases of approximately \$1.2 million. The decrease in depreciation and amortization expense for the year ended December 31, 2020 compared to December 31, 2019 was primarily due to the in-place lease costs at 237 11th being fully amortized by December 31, 2019 and the sale of the West Palm Beach, Florida property in November 2019.

Gain on sale of condominium of \$24.2 million for the year ended December 31, 2020 consists of the gain on sale of the school condominium to the SCA of \$20.0 million and an additional gain of \$4.2 million related to the recognition of our construction supervision fee which had been deferred. This gain was recorded upon the conveyance of the school condominium to the SCA in April 2020. Gain on sale of real estate for the year ending December 31, 2019 of \$9.5 million was due to the sale of the West Palm Beach, Florida property in November 2019 for consideration of \$19.6 million.

Equity in net loss from unconsolidated joint ventures increased by approximately \$752,000 to \$1.6 million for the year ended December 31, 2020 from approximately \$819,000 for the year ended December 31, 2019 primarily due to higher depreciation and amortization expenses, approximately \$800,000 of which was our portion of the write-off of deferred finance costs in connection with the refinancing of the Berkley Loan during the second quarter of 2020. This was partially

offset by higher rental revenue from the acquisition of 250 North 10th in January 2020. Equity in net loss from unconsolidated joint ventures represents our 50% share in The Berkley and our 10% share in 250 North 10th. For the year ended December 31, 2020, our share of the loss is primarily comprised of operating income before depreciation of \$1.8 million offset by depreciation and amortization of \$2.6 million and interest expense of \$800,000. For the year ended December 31, 2019, our share of the loss, which consisted only of The Berkley, is primarily comprised of operating income before depreciation of \$1.2 million offset by depreciation and amortization of \$1.0 million and interest expense of \$953,000.

Unrealized gain on warrants of \$965,000 represents the change in the mark-to-market of the valuation of warrants during the year ended December 31, 2020.

Interest expense, net increased by \$1.5 million to \$1.4 million for the year ended December 31, 2020 from approximately \$67,000 of interest income, net for the year ended December 31, 2019. For the year ended December 31, 2020, there was approximately \$17.2 million of gross interest expense incurred, \$15.7 million of which was capitalized, and \$57,000 of interest income. For the year ended December 31, 2019, there was approximately \$13.5 million of gross interest expense incurred, all of which was capitalized, and \$67,000 of interest income. The increase in gross interest expense and capitalized interest is due to the larger and growing borrowings outstanding on the 77 Greenwich Construction Facility during the period, as well as new borrowings under the Corporate Credit Facility as described in more detail in the Liquidity and Capital Resources section below.

Interest expense - amortization of deferred finance costs of \$202,000 for the year ended December 31, 2020 represents the amount of amortization of finance costs for our loans and line of credit that were not capitalized as part of real estate under development.

We recorded \$306,000 in tax expense for the year ended December 31, 2020 compared to \$128,000 in tax in expense for the year ended December 31, 2019.

Net income attributable to common stockholders increased by approximately \$8.7 million to \$6.5 million for the year ended December 31, 2020 from a loss of \$2.2 million for the year ended December 31, 2019 as a result of the changes discussed above, principally the gain on sale of the school condominium to the SCA.

Liquidity and Capital Resources

We currently expect that our principal sources of funds to meet our short-term and long-term liquidity requirements for working capital and funds for acquisition and development or redevelopment of properties, tenant improvements, leasing costs, and repayments of outstanding indebtedness will include some or all of the following:

- (1) cash on hand;
- (2) proceeds from new debt financings, increases to existing debt financings and/or other forms of secured or unsecured debt financing;
- (3) proceeds from equity or equity-linked offerings, including rights offerings or convertible debt or equity or equity-linked securities issued in connection with debt financings;
- (4) cash flow from operations; and
- (5) net proceeds from divestitures of properties or interests in properties.

Cash flow from operations is primarily dependent upon the occupancy level of our portfolio, the net effective rental rates achieved on our leases, the collectability of rent, operating escalations and recoveries from our tenants and the level of operating and other costs.

As of December 31, 2020, we had total cash and restricted cash of \$16.1 million, of which approximately \$6.5 million was cash and cash equivalents and approximately \$9.6 million was restricted cash. As of December 31, 2019, we had total cash and restricted cash of \$18.7 million, of which approximately \$9.2 million was cash and cash equivalents and approximately \$9.5 million was restricted cash. Restricted cash represents amounts required to be restricted under our loan agreements, letters of credit (see Note 10 – Loans Payable and Secured Line of Credit to our consolidated financial statements for

further information), deposits on residential condominium sales at 77 Greenwich and tenant related security deposits. In addition, cash and cash equivalents includes cash which, together with availability under our line of credit, is required to be maintained to meet certain liquidity requirements under the 77 Greenwich Construction Facility, described below. This liquidity requirement, inclusive of cash and line of credit availability, decreased to \$10.0 million when we closed on the conveyance of the school condominium to the SCA in April 2020 and decreases further upon the achievement of certain construction related milestones at 77 Greenwich.

Corporate Credit Facility

In December 2019, we entered into a credit agreement (the “Corporate Credit Facility”) with an affiliate of a global institutional investment management firm as initial lender (the “CCF Lender”) and Trimont Real Estate Advisors, LLC, as administrative agent (the “Corporate Facility Administrative Agent”), pursuant to which the CCF Lender agreed to extend us credit in multiple draws aggregating \$70.0 million, which may be increased by \$25.0 million subject to satisfaction of certain conditions and the consent of the CCF Lender. Draws under the Corporate Credit Facility may be made during the 32-month period following the closing date of the Corporate Credit Facility (the “Closing Date”). The Corporate Credit Facility matures on December 19, 2024, subject to extensions until December 19, 2025 and June 19, 2026, respectively, under certain circumstances. The proceeds of the Corporate Credit Facility may be used for investments in certain multi-family apartment buildings in the greater New York City area and certain non-residential real estate investments approved by the CCF Lender in its reasonable discretion, as well as in connection with certain property recapitalizations and in specified amounts for general corporate purposes and working capital. The Corporate Credit Facility bears interest at a rate per annum equal to the sum of (i) 5.25% and (ii) a scheduled interest rate (the “Cash Pay Interest Rate”) based on six-month periods from the Closing Date, which Cash Pay Interest Rate, from the Closing Date until the six-month anniversary of the Closing Date initially equaled 4.0% and increases by 125 basis points in each succeeding six-month period, subject to increase during the extension periods. A \$2.45 million commitment fee was payable 50% on the initial draw with the remaining 50% payable as amounts under the Corporate Credit Facility are drawn, with any remaining balance due on the last date of the draw period, and a 1.0% exit fee is payable in respect of Corporate Credit Facility repayments. As of December 31, 2020, we had paid \$1.85 million of the commitment fee. The Corporate Credit Facility may be prepaid at any time subject to a prepayment premium on the portion of the Corporate Credit Facility being repaid. At December 31, 2020, the Corporate Credit Facility had an outstanding balance of \$35.75 million and an effective interest rate of 9.5%. Accrued interest totaled approximately \$1.5 million at December 31, 2020. The Corporate Credit Facility was undrawn at December 31, 2019. (See Note 10 – Notes Payable and Secured Line of Credit to our consolidated financial statements for further discussion).

In connection with the December 22, 2020 transaction noted below, the Company entered into an amendment to the Corporate Credit Facility (the “Corporate Facility Amendment”) pursuant to which, among other things, (i) the CCF Lender and the Corporate Facility Administrative Agent permitted the Company to enter into the Mezzanine Loan Agreement (as defined below), the amendment to the 77 Greenwich Construction Facility (as defined below) and related documents, (ii) the commitment made by the CCF Lender under the Corporate Credit Facility was reduced by the amount of the Mezzanine Loan (as defined below) from \$70.0 million to \$62.5 million, subject to increase by \$25.0 million upon satisfaction of certain conditions and the consent of the CCF Lender, and (iii) the multiple on invested capital, or MOIC, amount that would be due and payable by the Company upon the final repayment of the loan pursuant to the Corporate Credit Facility if no event of default exists and is continuing under the Corporate Credit Facility at any time prior to December 22, 2022, was amended to combine the Corporate Credit Facility and the Mezzanine Loan for purposes of calculating the MOIC, to the extent not previously paid, if any.

In connection with the Corporate Credit Facility, we also entered into a warrant agreement with the CCF Lender pursuant to which we issued to the CCF Lender ten-year warrants (the “Warrants”) to purchase up to 7,179,000 shares of our common stock. In connection with the Corporate Facility Amendment, the exercise price of the Warrants was amended from \$6.50 per share to \$4.50 per share, payable in cash or pursuant to a cashless exercise (see Note 11 – Stockholders Equity – Warrants to our consolidated financial statements for further discussion regarding the warrants).

237 11th Loans

In May 2018, in connection with the acquisition of 237 11th, we entered into two-year interest-only financings with an aggregate principal amount of \$67.8 million, comprised of a \$52.4 million mortgage loan (the “237 11th Loan”) with Canadian Imperial Bank of Commerce (“CIBC”) and a \$15.4 million mezzanine loan with RCG LV Debt VI REIT, LLC bearing interest at a blended average rate of 3.72% over the 30-day LIBOR, each with a one-year extension option upon satisfaction of certain conditions. The mezzanine loan was repaid in full in February 2020. In June 2020, the maturity of the 237 11th Loan was extended to June 2021 and the 237 11th Loan was amended to include a delayed draw facility of \$4.25 million, which is being drawn now that most of the \$3.6 million of remediation reserves we funded in connection with the amendment have been used. As of December 31, 2020, \$723,000 of the delayed draw funds had been drawn. We also funded an interest reserve account of \$0.8 million which we are required to replenish over time. In conjunction with the amendment, a LIBOR floor of 50 basis points was put in place, the spread was increased by 25 basis points to 2.25% and the exit fee was increased by 50 basis points to 1.0%. At December 31, 2020, the 237 11th Loan had a balance of \$53.2 million and an effective interest rate of 2.75%. The blended effective interest rate at December 31, 2019 for both the 237 11th Loan and the mezzanine loan was approximately 5.48%. The 237 11th Loan is non-recourse to us except for our environmental indemnity agreements, certain non-recourse carve-out and carry guaranties covering among other things interest and operating expenses, and in the case of the mortgage loan, a guaranty of 25% of the principal amount, decreasing to 10% of the principal balance upon the debt yield ratio becoming equal to or greater than 7.0%. The 237 11th Loan is prepayable at any time in whole, and under certain circumstances in part, upon payment of a 0.50% deferred commitment fee (unless the loan is refinanced with the mortgage lender in which case no such fee is payable).

From time to time, properties that we own, acquire or develop may experience defects, including concealed defects, or damage due to natural causes, defective workmanship or other reasons. In these situations, we pursue our rights and remedies as appropriate with insurers, contractors, sellers and others. Due to certain construction defects at 237 11th that resulted in water penetration into the building and damage to certain apartment units and other property, which defects we believe were concealed and which would have required significant invasive work of a type not usually required or permitted, especially on a newly-built asset, to be detected, we submitted proofs of loss to our insurance carrier for property damage and business interruption (lost revenue) in March 2019. The insurance carrier subsequently disclaimed coverage for the losses and we filed a complaint against the carrier and its administrator, alleging that they breached the insurance policy by denying coverage and requesting a declaration that they are obligated to cover the claimed damage.

We also filed legal claims against the seller, its parent company, and the general contractor to recover damages arising from the defective construction. In addition, the general contractor has impleaded into that litigation several subcontractors who performed work on the property. Management expects to recover some portion of the cost incurred to repair the property through the litigations and/or settlement negotiations with the seller, its parent company, the general contractor, the subcontractors, and the insurance carrier, although the amount of damages that may be recoverable in litigation and/or potential settlement negotiations are uncertain at this time, as is the receipt of any such payments, which has been impacted by the COVID-19 pandemic, including the resulting backlog in the court system and slowdown in judicial proceedings.

We have been in discussions with the seller, its parent company, the general contractor, and the third-party defendants impleaded by the general contractor about engaging in mediation to potentially settle the case involving those parties. A mediation process commenced at the end of February 2021. We incurred significant cash outflows for costs associated with repairs and remediation, which commenced in September 2019. The decrease in occupancy to 20% at December 31, 2020 was due to the clearing of certain floors to prepare for and carry out the remediation work. Remediation and restoration work was delayed for two months in 2020 due to the temporary shutdown of non-essential construction projects in New York from April to June, which resulted in a delay in commencement of our leasing up of the property. Future delays would have a similar impact. Prior to the COVID-19 related shutdown of all non-essential construction by New York State, we expected the building to be approximately 75% remediated by the summer 2020 and to re-introduce the building into the leasing market on or around the same time. As of December 31, 2020, remediation work on floors 4-12 has been completed, other than a few specific units. We expect the remediation and restoration project to be completed by spring 2021. As of December 31, 2020, 58 units had been remediated, many of which are now occupied. We also began leasing efforts for the remediated units, although the pace of leasing in the current environment remains uncertain. Additional units will be introduced back into the market as they become available. During the fourth quarter ended December 31, 2020, we collected approximately 100% of rent due.

77 Greenwich Construction Facility

In December 2017, we closed on a \$189.5 million construction facility for 77 Greenwich (the “77 Greenwich Construction Facility”) with Massachusetts Mutual Life Insurance Company as lender and administrative agent (the “77 Greenwich Lender”). We draw down proceeds as costs related to the construction of the new mixed-use building are incurred. The balance of the 77 Greenwich Construction Facility was approximately \$139.0 million at December 31, 2020. The 77 Greenwich Construction Facility has a four-year term ending January 2022 with an extension option for an additional year under certain circumstances. The collateral for the 77 Greenwich Construction Facility is the borrower’s fee interest in 77 Greenwich, as well as related collateral and a pledge of equity in the borrower. The 77 Greenwich Construction Facility bears interest on amounts drawn at a rate per annum equal to the greater of (i) LIBOR plus 8.25% and (ii) 9.25% (see Note 10 – Loans Payable and Secured Line of Credit to our consolidated financial statements for further discussion). The effective interest rate at December 31, 2020 and 2019 was 9.25% and 10.01%, respectively. Although there can be no assurances, we currently anticipate that the proceeds available under the 77 Greenwich Construction Facility, together with equity funded by us to date, will be sufficient to complete the construction and development of 77 Greenwich without us making any further equity contributions. In connection with the 77 Greenwich Construction Facility, we executed certain guaranties and environmental indemnities, including a recourse guaranty under which we are required to satisfy certain net worth and liquidity requirements.

In early April 2020, New York State required all non-essential construction projects be shut down due to the impact of the COVID-19 pandemic. As a result, the construction of 77 Greenwich was temporarily suspended. Construction recommenced mid-April, initially on a modified basis, as certain work was deemed “essential” construction. Since June 2020, a full crew has been on site and operating in accordance with applicable guidelines in response to the COVID-19 outbreak. Future delays in construction may result in a delay in our ability to complete the construction project on its original timeline and our ability to sell condominium units. Despite the construction delays, we currently expect that the construction project will be completed within budget. We currently anticipate receiving our temporary certificates in stages through the first half of 2021.

On December 22, 2020, we entered into an amendment to the 77 Greenwich Construction Facility, pursuant to which, among other things, the sales pace covenants were amended and extended to provide for a reduction in the gross value of condominium sales at the 77 Greenwich and to afford more favorable cure rights than previously existed if a required sales threshold is not satisfied. The sales pace covenants will be tested on April 1, 2021, July 1, 2021 and October 2, 2021. Additionally, the outside date by which we are required to have substantially completed construction of all improvements to 77 Greenwich was extended to November 30, 2021 and the liquidity requirements will be reduced based on construction progress. We currently anticipate that Temporary Certificates of Occupancy, upon the granting of which, and in conjunction with our condominium offering plan being declared effective, unit purchasers may occupy their units (“TCOs”), will be issued significantly sooner than such outside date, with the first TCO having been received on March 8, 2021. In connection with entering into the amendment to the 77 Greenwich Construction Facility, we paid down \$8.0 million of the 77 Greenwich Construction Facility and funded certain reserves to the 77 Greenwich Lender, a portion of which was funded by a release of certain cash collateral and the balance of which was funded by a mezzanine loan in accordance with the Mezzanine Loan Agreement defined below. Under the terms of the amendment to the 77 Greenwich Construction Facility, to the extent that any payments are needed to satisfy the minimum multiple fee owed to the 77 Greenwich Lender upon the repayment of the 77 Greenwich Construction Facility that have not already been paid, such minimum multiple fee will be reduced by 60% if the 77 Greenwich Construction Facility is repaid in full prior to June 30, 2021, and by 40% if repaid between July 1, 2021 and September 30, 2021. The Company currently expects any such payments to be minimal (if anything).

Mezzanine Loan

On December 22, 2020, we entered into a mezzanine loan agreement with an affiliate of the CCF Lender (the “Mezzanine Loan Agreement”, and the loan thereunder, the “Mezzanine Loan”). The Mezzanine Loan is for an amount of \$7.5 million and has a term of three years with two one-year extension options, exercisable under certain circumstances. The collateral for the Mezzanine Loan is the borrower’s equity interest in its direct, wholly-owned subsidiary, which owns 100% of the equity interests in the borrower under the 77 Greenwich Construction Facility. The blended interest rate for the 77 Greenwich Construction Facility and the Mezzanine Loan, assuming the 77 Greenwich Construction Facility and the

Mezzanine Loan are fully drawn, is 9.44% on an annual basis, representing a variance from the prior rate of approximately 19 basis points. Interest on the Mezzanine Loan is not payable on a monthly basis but instead is automatically added to the unpaid principal amount on a monthly basis (and therefore accrues interest) and is payable in full on the maturity date of the Mezzanine Loan. Upon final repayment of the Mezzanine Loan, a MOIC will be due on substantially the same terms as provided for in the Corporate Credit Facility. The Mezzanine Loan may not be prepaid prior to prepayment in full of the 77 Greenwich Construction Facility, but if the 77 Greenwich Construction Facility is being prepaid in full, the Mezzanine Loan may be prepaid simultaneously therewith. Subject to the prior sentence the Mezzanine Loan may be prepaid in whole or in part, without penalty or premium (other than payment of the MOIC amount, if applicable, as provided above), upon prior written notice to the lender under the Mezzanine Loan. In connection with the Mezzanine Loan, the Company entered into a completion guaranty, carry guaranty, equity funding guaranty, recourse guaranty and environmental indemnification undertaking substantially consistent with the Company's existing guarantees made to the 77 Greenwich Lender in connection with the 77 Greenwich Construction Facility.

Secured Line of Credit

Our \$12.75 million secured line of credit with Sterling National Bank is secured by the Paramus, New Jersey property. In March 2021, we entered into an amendment to extend the maturity date to March 2022. The secured line of credit, which prior to the amendment, bore interest at 200 basis points over the 30-day LIBOR, now bears interest at the prime rate, currently 3.25%. The secured line of credit is pre-payable at any time without penalty. A portion of the secured line of credit is subject to an unused fee. As of December 31, 2020, the secured line of credit had an outstanding balance of \$7.75 million and an effective interest rate of 2.14%.

The Berkley Loan

We own a 50% interest in a joint venture formed to acquire and operate The Berkley. In December 2016, the joint venture closed on the acquisition of The Berkley through a wholly-owned special purpose entity for a purchase price of \$68.885 million, of which \$42.5 million was financed through a 10-year loan (the "Berkeley Loan") secured by The Berkley, and the balance was paid in cash, half of which was funded by us. On February 28, 2020, in connection with a refinancing, the Berkley Loan was repaid in full and it was replaced with a new 7-year, \$33.0 million loan (the "New Berkley Loan") which bears interest at a fixed rate of 2.717% and is interest only during the initial five years. It is pre-payable at any time and can be increased by up to \$6.0 million under certain circumstances. We and our joint venture partner are joint and several recourse carve-out guarantors under the New Berkley Loan.

250 North 10th Note

We own a 10% interest in a joint venture with TF Cornerstone (the "250 North 10th JV") formed to acquire and operate 250 North 10th, a newly built 234-unit apartment building in Williamsburg, Brooklyn, New York. On January 15, 2020, the 250 North 10th JV closed on the acquisition of the property through a wholly-owned special purpose entity for a purchase price of \$137.75 million, of which \$82.75 million was financed through a 15-year mortgage loan (the "250 North 10th Note") secured by 250 North 10th and the balance was paid in cash. Our share of the equity totaling approximately \$5.9 million was funded through a loan (the "Partner Loan") from our joint venture partner. The Partner Loan bears interest at 7.0% and is prepayable any time within its four year term. Our partner has the option of having the Partner Loan repaid in our common stock if the price of our common stock exceeds \$6.50 per share at the time of conversion. The non-recourse 250 North 10th Note bears interest at 3.39% for the duration of the loan term and has covenants, defaults, and a non-recourse carve out guaranty executed by us. We earned an acquisition fee at closing and are entitled to ongoing asset management fees and a promote upon the achievement of certain performance hurdles.

COVID-19 Pandemic, Liquidity and Going Concern

At this time, we believe our existing balances of cash and cash equivalents, together with proceeds that may be raised from debt issuances, equity issuances, dispositions of properties, sales of partial interests in properties and/or draws on our Corporate Credit Facility and secured line of credit will be sufficient to satisfy our working capital needs and projected capital and other expenditures associated with our operations over the next 12 months, including approximately \$300,000

of anticipated capital expenditures primarily at 237 11th. We believe we have good relationships with our lenders and we have historically negotiated extensions, amendments and waivers with our lenders, when warranted.

The COVID-19 pandemic has adversely affected our near-term, and may adversely affect our long-term, liquidity, cash flows and revenues and has required and may continue to require significant actions in response, including, but not limited to, reducing or discounting prices for our residential condominium units more than originally budgeted, seeking loan extensions and covenant modifications, modifying, eliminating or deferring rent payments in the short term for tenants in an effort to mitigate financial hardships and seeking access to federal, state and/or local financing and other programs. In addition, we continue to be subject to a New York State mandate disallowing tenant evictions for non-payment of rent due to COVID-19 related hardships. As has been reported in each of our Quarterly Reports on Form 10-Q since the beginning of the COVID-19 pandemic, given the impacts of COVID-19, it is possible that we may be unable to extend or refinance our maturing debt or meet future sales pace covenants under the amended 77 Greenwich Construction Facility, creating substantial doubt about our ability to operate as a going concern. Although the impact of the COVID-19 pandemic may affect our ability to extend or refinance the 237 11th Loan which matures in June 2021, based on discussions with mortgage brokers and lenders, we believe there will be a high level of interest in a refinancing as the credit markets begin to improve along with improving conditions in the New York City real estate market and COVID-19 situation generally, combined with an increase in leases executed at the property. There is also significant interest in a potential refinancing of the 77 Greenwich Construction Facility, which matures in January 2022 and represents a majority of our maturing debt, including our receipt of proposed terms for a refinancing of the 77 Greenwich Construction Facility. Additionally, although the impact of the pandemic has impeded the sale of residential condominium units at 77 Greenwich, the pace of signing contracts has increased in 2021. Although we believe that we will be able to enter into extensions, amendments and waivers with our lenders, raise additional capital, refinance indebtedness or enter into other financing arrangements or engage in asset sales sufficient to fund any cash needs that we are not able to satisfy with our cash, cash equivalents and draws on our Corporate Credit Facility or secured line of credit, given the current environment there can be no assurance that we will be able to do so on terms satisfactory to us, if at all. See Note 1 – Business - COVID-19 Pandemic to our consolidated financial statements and Part II. Item 1A. Risk Factors, of this Annual Report on Form 10-K for further information.

At-The-Market Equity Offering Program

In December 2016, we entered into an "at-the-market" equity offering program (the "ATM Program"), to sell up to an aggregate of \$12.0 million of our common stock. The sale agreement with our broker expired in accordance with its term on June 30, 2019 and was not extended. We did not sell any shares through this program in 2019.

Cash Flows

Cash Flows for the Year Ended December 31, 2020 Compared to the Year Ended December 31, 2019

Net cash used in operating activities increased by approximately \$6.8 million to \$10.4 million for the year ended December 31, 2020 from \$3.6 million for the year ended December 31, 2019. This increase was mainly due to an increase in operating losses of \$4.4 million in 2020, primarily driven by the remediation costs incurred at 237 11th, as well as a decrease in accounts payable and accrued expenses of \$2.4 million.

Net cash used in investing activities increased by approximately \$15.7 million to \$55.1 million for the year ended December 31, 2020 from \$39.4 million for the year ended December 31, 2019. The increase in investing activities was primarily due to the net proceeds of \$18.8 million received upon the sale of our West Palm Beach, Florida property in November 2019, as well as our investment in our joint venture for The Berkley in connection with the pay-down of debt (\$5.4 million) during the year ended December 31, 2020, partially offset by \$6.5 million more in net additions to real estate and deferred real estate deposits on the condominiums during the year ended December 31, 2020.

Net cash provided by financing activities increased by approximately \$15.3 million to \$62.9 million for the year ended December 31, 2020 from approximately \$47.7 million for the year ended December 31, 2019. The increase in financing activities primarily relates to the \$35.75 million, \$42.1 million, \$7.5 million, \$5.0 million, \$723,000 and \$243,000 in proceeds from the Corporate Credit Facility, 77 Greenwich Construction Facility, the Mezzanine Loan Agreement, the Line of Credit, the 237 11th Loan and the Paycheck Protection Program loan, respectively, during the year ended

December 31, 2020, as compared to \$53.3 million, \$7.2 million, \$1.5 million and \$670,000 in borrowings from the 77 Greenwich Construction Facility, the Line of Credit, the West Palm Beach Loan and the Partner Loan, respectively, during the year ended December 31, 2019. We also repaid the \$15.4 million 237 11th mezzanine loan, \$8.0 million on the 77 Greenwich Construction Facility and \$2.5 million on the Line of Credit during the year ended December 31, 2020 as compared with repayment of the WPB Loan of \$12.6 million during the year ended December 31, 2019

Material Cash Requirements

We estimate that for the year ending December 31, 2021, our material cash requirements will be approximately \$300,000 for capital expenditures and development or redevelopment expenditures (including tenant improvements and leasing commissions) on existing properties, other than for 77 Greenwich which will be funded under the 77 Greenwich Construction Facility and 237 11th remediation and restoration work which will be funded under the 237 Loan, including our portion of our two joint venture properties. We anticipate funding these capital expenditures through a combination of issuance of equity and cash on hand, additional property level mortgage financings and operating cash flow. We currently anticipate that the proceeds available under the 77 Greenwich Construction Facility, together with equity funded by us to date, will be sufficient to complete the construction and development of 77 Greenwich without us making any further equity contributions. Future property acquisitions may require substantial capital investments for refurbishment and leasing costs.

Net Operating Losses

We believe that our U.S. federal NOLs as of the emergence date of the Syms bankruptcy were approximately \$162.8 million and believe our U.S. federal NOLs as of December 31, 2020 were approximately \$232.0 million. In connection with the conveyance of the school condominium to the SCA, we applied approximately \$11.6 million of federal NOLs against taxable capital gains of approximately \$18.5 million. Since 2009 through December 31, 2020, we have utilized approximately \$23.9 million of the federal NOLs. Pursuant to the TCJA, corporate alternative minimum tax ("AMT") credit carryforwards are eligible for a 50% refund in tax years 2018 through 2020, and beginning in tax year 2021, any remaining AMT credit carryforwards are 100% refundable. As a result of these new rules, we had released our valuation allowance of \$3.1 million in 2017 which was formerly reserved against our AMT credit carryforwards. We had recorded a tax benefit and refund receivable of \$3.1 million in 2017 in connection with this valuation allowance release. We received approximately \$1.6 million of the refund receivable in October 2019, and the balance of approximately \$1.5 million in July 2020.

On March 27, 2020, the "Coronavirus Aid, Relief, and Economic Security (CARES) Act" was signed into law. The CARES Act accelerated the ability of corporations to recover AMT credits, permitting a full refund for tax years 2018 and 2019. The CARES Act also included provisions relating to refundable payroll tax credits, deferral of employer side social security payments, net operating loss carrybacks and carryforwards, modifications to the net interest deduction limitations, increased limitations on qualified charitable contributions, and technical corrections to tax depreciation methods for qualified improvement property. It also appropriated funds for the SBA Paycheck Protection Program loans that are forgivable in certain situations to promote continued employment, as well as Economic Injury Disaster Loans to provide liquidity to small businesses harmed by COVID-19. Management is monitoring the impact that the CARES Act may have on the Company. The CARES Act did not have a material impact on our financial position, results of operations, or cash flows for fiscal year 2020.

Based on management's assessment, it is more likely than not that the entire deferred tax assets will not be realized by future taxable income or tax planning strategies. Accordingly, a valuation allowance of \$60.9 million was recorded as of December 31, 2020.

We believe that certain of the transactions that occurred in connection with our emergence from bankruptcy in September 2012, including the rights offering and the redemption of the Syms shares owned by the former majority shareholder of Syms in accordance with the Plan, resulted in us undergoing an "ownership change," as that term is used in Section 382 of the Code. However, while the analysis is complex and subject to subjective determinations and uncertainties, we believe that we should qualify for treatment under Section 382(l)(5) of the Code. As a result, we believe that our NOLs are not subject to an annual limitation under Section 382. However, if we were to undergo a subsequent ownership change in the future, our ability to utilize our NOLs could be subject to limitation under Section 382. In addition, the TCJA limited the

deductibility of NOLs arising in tax years beginning after December 31, 2017 to 80 percent of taxable income (computed without regard to the net operating loss deduction) for the taxable year. However, the CARES Act suspended the 80% limitation on the use of NOLs for tax years beginning before January 1, 2021, and allowed losses arising in taxable years beginning after December 31, 2017 and before January 1, 2021 to be carried back up to five years.

Even if all of our regular U.S. federal income tax liability for a given year is reduced to zero by virtue of utilizing our NOLs, we may still be subject to state, local or other non-federal income taxes.

Our certificate of incorporation includes a provision intended to help preserve certain tax benefits primarily associated with our NOLs. This provision generally prohibits transfers of stock that would result in a person or group of persons becoming a 4.75% stockholder, or that would result in an increase or decrease in stock ownership by a person or group of persons that is an existing 4.75% stockholder.

Critical Accounting Policies and Estimates

Management's discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP"). The preparation of financial statements in conformity with GAAP requires the use of estimates and assumptions that could affect the reported amounts in our consolidated financial statements. Actual results could differ from these estimates. A summary of our significant accounting policies is presented in Note 2 – Summary of Significant Accounting Policies in our consolidated financial statements. Set forth below is a summary of the accounting policies that management believes are critical to the preparation of the consolidated financial statements included in this report. Certain of the accounting policies used in the preparation of these consolidated financial statements are particularly important for an understanding of the financial position and results of operations presented in the historical consolidated financial statements included in this report and require the application of significant judgment by management and, as a result, are subject to a degree of uncertainty.

Critical Accounting Policies

- a. *Real Estate* - Real estate assets are stated at historical cost, less accumulated depreciation and amortization. All costs related to the improvement or replacement of real estate properties are capitalized. Additions, renovations and improvements that enhance and/or extend the useful life of a property are also capitalized. Expenditures for ordinary maintenance, repairs and improvements that do not materially prolong the useful life of an asset are charged to operations as incurred. Depreciation and amortization are determined using the straight-line method over the estimated useful lives as described in the table below:

Category	Terms
Buildings and improvements	10 - 39 years
Tenant improvements	Shorter of remaining term of the lease or useful life
Furniture and fixtures	5 - 8 years

- b. *Real Estate Under Development* - We capitalize certain costs related to the development and redevelopment of real estate including initial project acquisition costs, pre-construction costs and construction costs for each specific property. Additionally, we capitalize operating costs, interest, real estate taxes, insurance and compensation and related costs of personnel directly involved with the specific project related to real estate under development. Capitalization of these costs begin when the activities and related expenditures commence, and ceases when the property is held available for occupancy upon substantial completion of tenant improvements, but no later than one year from the completion of major construction activity at which time the project is placed in service and depreciation commences. Revenue earned under short-term license agreements at properties under development is offset against these capitalized costs.
- c. *Valuation of Long-Lived Assets* - We periodically review long-lived assets for impairment whenever changes in circumstances indicate that the carrying amount of the assets may not be fully recoverable. We consider relevant cash flow, management's strategic plans and significant decreases, if any, in the market value of the asset and other available information in assessing whether the carrying value of the assets can be recovered. When such events occur,

we compare the carrying amount of the asset to the undiscounted expected future cash flows, excluding interest charges, from the use and eventual disposition of the asset. If this comparison indicates an impairment, the carrying amount would then be compared to the estimated fair value of the long-lived asset. An impairment loss would be measured as the amount by which the carrying value of the long-lived asset exceeds its estimated fair value. We considered various indicators of impairment, including COVID-19 related impacts, for the year ended December 31, 2020. No provision for impairment was recorded during either of the years ended December 31, 2020, 2019 or 2018.

- d. *Income Taxes* - We account for income taxes under the asset and liability method as required by the provisions of ASC 740, "Income Taxes." Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. We provide a valuation allowance for deferred tax assets for which we do not consider realization of such assets to be more likely than not.

ASC 740-10-65 addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under ASC 740-10-65, we may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position should be measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement. ASC 740-10-65 also provides guidance on de-recognition, classification, interest and penalties on income taxes, accounting in interim periods and increased other disclosures. As of both December 31, 2020 and 2019, we had determined that no liabilities are required in connection with unrecognized tax positions. As of December 31, 2020, our tax returns for the years ended December 31, 2015 through December 31, 2020 are subject to review by the Internal Revenue Service.

We are subject to certain federal, state and local income and franchise taxes.

- e. *Revenue Recognition* - Leases with tenants are accounted for as operating leases. Minimum rents are recognized on a straight-line basis over the term of the respective lease, beginning when the tenant takes possession of the space. The excess of rents recognized over amounts contractually due pursuant to the underlying leases are included in deferred rents receivable. In addition, retail leases typically provide for the reimbursement of real estate taxes, insurance and other property operating expenses. As lessor, we have elected to combine the lease and non-lease component in accordance with ASC Topic 842 when reporting revenue. Lease revenues and reimbursement of real estate taxes, insurance and other property operating expenses are presented in the consolidated statements of operations and comprehensive income (loss) as "rental revenues." Also, these reimbursements of expenses are recognized within revenue in the period the expenses are incurred. We assess the collectability of our accounts receivable related to tenant revenues. With the adoption of ASC Topic 842, we will apply the guidance under ASC 842 in assessing its lease payments: if collection of rents under specific operating leases is not probable, then we recognize the lesser of that lease's rental income on a straight-line basis or cash received, plus variable rents as earned. Once this assessment is completed, we apply a general reserve, as provided under ASC 450-20, if applicable.
- f. *Stock-Based Compensation* - We have granted stock-based compensation, which is described below in Note 11 - Stock-Based Compensation to our consolidated financial statements. We account for stock-based compensation in accordance with ASC 718, "Compensation-Stock Compensation," which establishes accounting for stock-based awards exchanged for employee services and ASU No. 2018-07, "Compensation - Stock Compensation (Topic 718), Improvements to Nonemployee Share-Based Payment Accounting," which provides additional guidance related to share-based payment transactions for acquiring goods or services from nonemployees. Under the provisions of ASC 718-10-35, stock-based compensation cost is measured at the grant date, based on the fair value of the award on that date, and is expensed at the grant date (for the portion that vests immediately) or ratably over the related vesting periods.

Accounting Standards Updates

See Note 2 - Summary of Significant Accounting Policies to our consolidated financial statements.

Cautionary Note Regarding Forward-Looking Statements

This Annual Report on Form 10-K, including information included or incorporated by reference in this Annual Report on or any supplement to this Annual Report, may include forward-looking statements within the meaning of Section 27A of the Securities Act and the Exchange Act, and information relating to us that are based on the beliefs of management as well as assumptions made by and information currently available to management. These forward-looking statements include, but are not limited to, statements about our plans, objectives, expectations and intentions that are not historical facts, and other statements identified by words such as “may,” “will,” “expects,” “believes,” “plans,” “estimates,” “potential,” or “continues,” or the negative thereof or other and similar expressions. In addition, in some cases, you can identify forward-looking statements by words or phrases such as “trend,” “potential,” “opportunity,” “believe,” “comfortable,” “expect,” “anticipate,” “current,” “intention,” “estimate,” “position,” “assume,” “outlook,” “continue,” “remain,” “maintain,” “sustain,” “seek,” “achieve,” and similar expressions. Such statements reflect our current views with respect to future events, the outcome of which is subject to certain risks, including among others:

- the impact of COVID-19;
- our limited cash resources, generation of minimal revenues from operations, and our reliance on external sources of financing to fund operations in the future;
- our ability to execute our business plan, including as it relates to the development of our largest asset, 77 Greenwich;
- risks associated with our debt, including the risk of default on our obligations and debt service requirements;
- risks associated with covenant restrictions in our loan documents that could limit our flexibility to execute our business plan;
- adverse trends in the New York City residential condominium market;
- general economic and business conditions, including with respect to real estate, and their effect on the New York City real estate market in particular;
- our ability to obtain additional financing and refinance existing loans and on favorable terms;
- our investment in property development may be more costly than anticipated and investment returns from our properties planned to be developed may be less than anticipated;
- our ability to enter into new leases and renew existing leases with tenants at our commercial and residential properties;
- we may acquire properties subject to unknown or known liabilities, with limited or no recourse to the seller;
- risks associated with the effect that rent stabilization regulations may have on our ability to raise and collect rents;
- competition for new acquisitions and investments;
- risks associated with acquisitions and investments in owned and leased real estate;
- risks associated with joint ventures;
- our ability to maintain certain state tax benefits with respect to certain of our properties;
- our ability to obtain required permits, site plan approvals and/or other governmental approvals in connection with the development or redevelopment of our properties;

- costs associated with complying with environmental laws and environmental contamination, as well as the Americans with Disabilities Act or other safety regulations and requirements;
- loss of key personnel;
- the effects of new tax laws;
- our ability to utilize our NOLs to offset future taxable income and capital gains for U.S. Federal, state and local income tax purposes;
- risks associated with current political and economic uncertainty, and developments related to the outbreak of contagious diseases;
- risks associated with breaches of information technology systems;
- stock price volatility and other risks associated with a lightly traded stock;
- stockholders may be diluted by the issuance of additional shares of common stock or securities convertible into common stock in the future;
- a declining stock price may make it more difficult to raise capital in the future;
- the influence of certain significant stockholders;
- limitations in our charter on transactions in our common stock by substantial stockholders, designed to protect our ability to utilize our NOLs and certain other tax attributes, may not succeed and/or may limit the liquidity of our common stock;
- certain provisions in our charter documents and Delaware law may have the effect of making more difficult or otherwise discouraging, delaying or deterring a takeover or other change of control of us;
- certain provisions in our charter documents may have the effect of limiting our stockholders' ability to obtain a favorable judicial forum for certain disputes; and
- unanticipated difficulties which may arise and other factors which may be outside our control or that are not currently known to us or which we believe are not material.

In evaluating such statements, you should specifically consider the risks identified under the section entitled "Risk Factors" in this Annual Report on Form 10-K, any of which could cause actual results to differ materially from the anticipated results. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results or outcomes may vary materially from those contemplated by any forward looking statements. Subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements in this paragraph and elsewhere described in this Annual Report on Form 10-K and other reports filed with the SEC. All forward-looking statements speak only as of the date of this Annual Report on Form 10-K or, in the case of any documents incorporated by reference in this Annual Report on Form 10-K, the date of such document, in each case based on information available to us as of such date, and we assume no obligation to update any forward-looking statements, except as required by law.

Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

As a smaller reporting company, we are not required to provide the disclosure required by this Item.

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

See Index to Financial Statements and Supplemental Data on page 37.

Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

Item 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer (the "CEO") and Chief Financial Officer (the "CFO"), as appropriate, to allow timely decisions regarding required disclosure based closely on the definition of "disclosure controls and procedures" in Rule 13a-15(e) of the Exchange Act. Notwithstanding the foregoing, a control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that it will detect or uncover failures within the Company to disclose material information otherwise required to be set forth in our periodic reports.

Our management, with the participation of our CEO and CFO, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Exchange Act) as of the end of the period covered by this Annual Report on Form 10-K. Based on this evaluation, the CEO and CFO concluded that as of the end of the period covered by this Annual Report on Form 10-K, our disclosure controls and procedures were effective to give reasonable assurance to the timely collection, evaluation and disclosure of information relating to the Company what would potentially be subject to disclosure under the Exchange Act and the rules and regulations promulgated thereunder.

Management's Report on Internal Control Over Financial Reporting

Management of Trinity Place Holdings Inc. is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in the Exchange Act Rule 13(a)-15(f). Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an assessment of the effectiveness of our internal control over financial reporting as of December 31, 2020 as required by Exchange Act Rule 13(a)-15(c). In making this assessment, we used the criteria set forth in the framework in Internal Control-Integrated Framework (2013 Framework) issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO criteria"). Based on our evaluation under the COSO criteria, our management concluded that our internal control over financial reporting was effective as of December 31, 2020 to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with U.S. generally accepted accounting principles.

Changes in Internal Controls Over Financial Reporting

There have been no changes in our internal control over financial reporting during the period from October 1, 2020 to December 31, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. OTHER INFORMATION

None.

PART III

Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

We maintain a code of ethics applicable to our Principal Executive Officer and senior financial and professional personnel (including our Principal Financial Officer, Principal Accounting Officer or controller and persons performing similar functions). Our code of ethics is posted on our website at www.tphs.com under “Financials”. In the event we have any amendments to or waivers from any provision of our code of ethics applicable to our Principal Executive Officer, Principal Financial Officer, Principal Accounting Officer or controller, or persons performing similar functions, we intend to satisfy the disclosure requirement under Item 5.05 of Form 8-K by posting such information on our website.

The other information required by this Item will be set forth in our definitive proxy statement relating to our 2021 Annual Meeting of Stockholders, which will be filed with the SEC pursuant to Regulation 14A under the Exchange Act (the “2021 Proxy Statement”), and is incorporated herein by reference. If such proxy statement is not filed on or before April 30, 2021, the information called for by this Item will be filed as part of an amendment to this Annual Report on Form 10-K on or before such date.

Item 11. EXECUTIVE COMPENSATION

The information required by this Item will be set forth in the 2021 Proxy Statement and is incorporated herein by reference. If such proxy statement is not filed on or before April 30, 2021, the information called for by this Item will be filed as part of an amendment to this Annual Report on Form 10-K on or before such date.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this Item will be set forth in the 2021 Proxy Statement and is incorporated herein by reference. If such proxy statement is not filed on or before April 30, 2021, the information called for by this Item will be filed as part of an amendment to this Annual Report on Form 10-K on or before such date.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item will be set forth in the 2021 Proxy Statement and is incorporated herein by reference. If such proxy statement is not filed on or before April 30, 2021, the information called for by this Item will be filed as part of an amendment to this Annual Report on Form 10-K on or before such date.

Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this Item will be set forth in the 2021 Proxy Statement and is incorporated herein by reference. If such proxy statement is not filed on or before April 30, 2021, the information called for by this Item will be filed as part of an amendment to this Annual Report on Form 10-K on or before such date.

PART IV

Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

- (a)(1) Financial Statements filed as part of this Annual Report on Form 10-K:

Report of Independent Registered Public Accounting Firm	F-1
Consolidated Balance Sheets as of December 31, 2020 and December 31, 2019	F-3
Consolidated Statements of Operations and Comprehensive Income (Loss) for the years ended December 31, 2020, December 31, 2019 and December 31, 2018	F-4
Consolidated Statements of Stockholders' Equity for the years ended December 31, 2020, December 31, 2019 and December 31, 2018	F-5
Consolidated Statements of Cash Flows for the years ended December 31, 2020, December 31, 2019 and December 31, 2018	F-6
Notes to Consolidated Financial Statements	F-77

- (a)(2) List of Financial Statement Schedules filed as part of this Annual Report on Form 10-K:

Schedule III – Consolidated Real Estate and Accumulated Depreciation	F-33
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Schedules other than those listed are omitted as they are not applicable or the required information has been included in the financial statements or notes thereto.

- (a)(3) Exhibits

2.1	Modified Second Amended Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries (incorporated by reference to Exhibit 99.1 of the Form 8-K filed by us on September 6, 2012)
2.2	Agreement and Plan of Merger by and between Syms Corp. and Trinity Place Holdings Inc. dated September 14, 2012 (incorporated by reference to Exhibit 2.1 of the Form 8-K12G3 filed by us on September 19, 2012)
3.1	Amended and Restated Certificate of Incorporation of Trinity Place Holdings Inc. (incorporated by reference to Exhibit 3.1 of the Form 8-K filed by us on February 13, 2015)
3.2	Bylaws of Trinity Place Holdings Inc. (incorporated by reference to Exhibit 3.2 of the Form 8-K filed by us on September 19, 2012)
4.1	Form of Trinity Place Holdings Inc. Common Stock Certificate (incorporated by reference to Exhibit 4.3 of the Registration Statement on Form S-3 filed by us on September 15, 2015)
4.2	Description of Trinity Place Holdings Inc. Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934 (incorporated by reference to Exhibit 4.2 of the Form 10-K filed by us on March 13, 2020)
10.1	Stock Purchase Agreement, dated as of October 1, 2013, between Trinity Place Holdings Inc. and Third Avenue Trust, on behalf of Third Avenue Real Estate Value Fund (incorporated by reference to Exhibit 10.1 of the Form 8-K filed by us on October 2, 2013)

- 10.2 [Motion for an Order \(i\) Authorizing the Reorganized Debtors to Enter into Secured Debt Financing and Effectuate the Transactions Contemplated Therein; \(ii\) Authorizing the Reorganized Debtors to Sell Syms Owned Real Estate; and \(iii\) Granting Related Relief \(incorporated by reference to Exhibit 10.1 of the Form 8-K filed by us on December 31, 2014\)](#)
- 10.3 [Investment Agreement, by and among MFP Partners, L.P. and the Company, dated as of September 11, 2015 \(including the form of Registration Rights Agreement\) \(incorporated by reference to Exhibit 10.1 of the Form 8-K filed by us on September 15, 2015\)](#)
- 10.4 [Investment Agreement, by and among Third Avenue Trust, on behalf of Third Avenue Real Estate Value Fund and the Company, dated as of September 11, 2015 \(including the form of Registration Rights Agreement\) \(incorporated by reference to Exhibit 10.2 of the Form 8-K filed by us on September 15, 2015\)](#)
- 10.5 [Employment Agreement, dated as of October 1, 2013, between Trinity Place Holdings Inc. and Matthew Messinger \(incorporated by reference to Exhibit 10.2 of the Form 8-K filed by us on October 2, 2013\)*](#)
- 10.6 [Amendment to Employment Agreement, dated as of September 11, 2015, by and between Trinity Place Holdings Inc. and Matthew Messinger \(incorporated by reference to Exhibit 10.3 of the Form 8-K filed by us on September 15, 2015\)*](#)
- 10.7 [Trinity Place Holdings Inc. Restricted Stock Unit Agreement, entered into as of January 28, 2016, by and between Matthew Messinger and Trinity Place Holdings Inc. \(incorporated by reference to Exhibit 10.1 of the Form 8-K filed by us on February 1, 2016\)*](#)
- 10.8 [Letter Agreement, between Trinity Place Holdings Inc. and Steven Kahn, dated September 16, 2015 \(incorporated by reference to Exhibit 10.1 of the Form 8-K filed by us on September 22, 2015\)*](#)
- 10.9 [Letter Agreement, between Trinity Place Holdings Inc. \(formerly Syms Corp.\) and Richard Pyontek, dated June 24, 2011 \(incorporated by reference to Exhibit 10.2 of the Form 10-Q filed by us on May 10, 2016\)*](#)
- 10.10 [Amended and Restated Trinity Place Holdings Inc. 2015 Stock Incentive Plan \(incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K filed by us on June 14, 2019\)*](#)
- 10.11 [Form of Restricted Stock Unit Agreement for employees \(incorporated by reference to Exhibit 10.6 of the Form 10-K filed by us on May 30, 2014\)*](#)
- 10.12 [Limited Liability Company Agreement of Pacolet Trinity 223 Partners, LLC, dated as of October 13, 2016 \(incorporated by reference to Exhibit 10.1 of the Form 10-Q filed by us on November 7, 2016\)](#)
- 10.13 [Private Placement Agreement, by and among the Company and the investors identified on Schedule A therein, dated as of February 14, 2017 \(including the form of Registration Rights Agreement\) \(incorporated by reference to Exhibit 10.1 of the Form 8-K filed by us on February 21, 2017\)](#)
- 10.14 [Master Loan Agreement, between TPHGreenwich Owner LLC, as borrower and Massachusetts Mutual Life Insurance Company, as lender and administrative agent, dated as of December 22, 2017 \(incorporated by reference to Exhibit 10.15 of the Form 10-K filed by us on March 15, 2018\)](#)
- 10.15 [Guaranty of Payment and Completion, dated as of December 22, 2017, by Trinity Place Holdings Inc. to and for the benefit of Massachusetts Mutual Life Insurance \(incorporated by reference to Exhibit 10.16 of the Form 10-K filed by us on March 15, 2018\)](#)
- 10.16 [Completion Guaranty, dated as of December 22, 2017, by Trinity Place Holdings Inc. to and for the benefit of New York City School Construction Authority \(incorporated by reference to Exhibit 10.17 of the Form 10-K filed by us on March 15, 2018\)](#)

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10.17	<u>School Design, Construction, Funding and Purchase Agreement, between TPHGreenwich Owner LLC, as developer, and New York City School Construction Authority, dated as of December 22, 2017 (incorporated by reference to Exhibit 10.18 of the Form 10-K filed by us on March 15, 2018)</u>
10.18	<u>First Amendment to Master Loan Agreement between TPHGreenwich Owner LLC and Massachusetts Mutual Life Insurance Company, dated as of December 22, 2020**</u>
10.19	<u>Credit Agreement, dated as of December 19, 2019, among Trinity Place Holdings Inc., as Borrower, certain subsidiaries of Trinity Place Holdings Inc., from time to time party thereto, as Guarantors, the initial lenders named therein, as Initial Lenders, and Trimont Real Estate Advisors, LLC, as administrative agent (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K filed by us on December 20, 2019)</u>
10.20	<u>Warrant Agreement, dated as of December 19, 2019, among Trinity Place Holdings Inc. and TPHS Lender LLC, (incorporated by reference to Exhibit 10.2 of the Current Report on Form 8-K filed by us on December 20, 2019)</u>
10.21	<u>Amendment to Warrant Agreement, dated as of December 22, 2020, between Trinity Place Holdings Inc. and TPHS Lender LLC**</u>
10.22	<u>Registration Rights Agreement, dated as of December 19, 2019, by and between Trinity Place Holdings Inc. and the investors set forth on Schedule A thereof (incorporated by reference to Exhibit 10.3 of the Current Report on Form 8-K filed by us on December 20, 2019)</u>
10.23	<u>Letter Agreement, dated as of December 19, 2019, between Trinity Place Holdings Inc. and TPHS Lender LLC (incorporated by reference to Exhibit 10.4 of the Current Report on Form 8-K filed by us on December 20, 2019)</u>
10.24	<u>Mezzanine Loan Agreement, among TPHGreenwich Subordinate Mezz LLC, as borrower, and TPHS Lender II LLC and each other lender from time to time party thereto, as lender, and TPHS Lender II LLC, as administrative agent, dated as of December 22, 2020**</u>
21.1	<u>List of Subsidiaries**</u>
23.1	<u>Consent of BDO USA, LLP**</u>
31.1	<u>Certification of Chief Executive Officer pursuant to Rule 13a-14(a) under the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**</u>
31.2	<u>Certification of Chief Financial Officer pursuant to Rule 13a-14(a) under the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**</u>
32.1	<u>Certification of Chief Executive Officer pursuant to Rule 13a-14(b) under the Securities and Exchange Act of 1934 and 18.U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002***</u>
32.2	<u>Certification of Chief Financial Officer pursuant to Rule 13a-14(b) under the Securities and Exchange Act of 1934 and 18.U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002***</u>
101.10	The following financial statements from the Trinity Place Holdings Inc. Annual Report on Form 10-K for the year ended December 31, 2020, as formatted in XBRL:**
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document

101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)**

* Management contract, compensatory plan or arrangement.

** Filed herewith

*** Furnished herewith

Item 16. FORM 10-K SUMMARY

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Trinity Place Holdings Inc.

By: /s/ Matthew Messinger
Matthew Messinger
President and Chief Executive Officer

Date: March 31, 2021

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this Annual Report on Form 10-K has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Matthew Messinger</u> Matthew Messinger	President, Chief Executive Officer and Director (Principal Executive Officer)	March 31, 2021
<u>/s/ Steven Kahn</u> Steven Kahn	Chief Financial Officer (Principal Financial Officer)	March 31, 2021
<u>/s/ Richard G. Pyontek</u> Richard Pyontek	Chief Accounting Officer (Principal Accounting Officer)	March 31, 2021
<u>/s/ Alexander Matina</u> Alexander Matina	Director (Chairman of the Board)	March 31, 2021
<u>/s/ Jeffrey Citrin</u> Jeffrey Citrin	Director	March 31, 2021
<u>/s/ Alan Cohen</u> Alan Cohen	Director	March 31, 2021
<u>/s/ Joanne Minieri</u> Joanne Minieri	Director	March 31, 2021
<u>/s/ Keith Pattiz</u> Keith Pattiz	Director	March 31, 2021

Report of Independent Registered Public Accounting Firm

Stockholders and Board of Directors
Trinity Place Holdings Inc.
New York, New York

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Trinity Place Holdings Inc. (the “Company”) as of December 31, 2020 and 2019, the related consolidated statements of operations and comprehensive income (loss), stockholders’ equity, and cash flows for each of the three years in the period ended December 31, 2020, and the related notes and schedule (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

Going Concern Uncertainty

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has loans with varying debt maturities through January of 2022 for which there can be no guarantee of refinance or extended maturity of the loans. This condition raises substantial doubt about the Company’s ability to continue as a going concern. Management’s plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of these uncertainties.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

77 Greenwich Impairment Assessment

As described in Note 2 to the consolidated financial statements, the Company reviews its long-lived assets for potential impairment whenever events or changes in circumstances indicate that the carrying amounts may not be fully recoverable.

77 Greenwich is a condominium development project currently in the development stage and forecasting the expected future cash flows requires management to make significant assumptions and estimates in relation to the remaining costs to complete the project, potential delays or disruptions in construction due to COVID-19 restrictions, and potential disposition proceeds to be received upon sale in light of market disruptions due to the COVID-19 pandemic.

We identified management's assumptions and estimates used in assessing the 77 Greenwich development project for impairment indicators as a critical audit matter. Significant judgments are required by management in the development of an accurate budget, including forecasted costs, and the consideration of potential indicators of impairment is a key area of judgment. Auditing management's judgments regarding the development's budget includes projected costs to complete, forecasts of future sale proceeds, estimated costs to sell, projected hold periods and other market-based assumptions. Auditing these elements involved especially challenging auditor judgment due to the nature and extent of audit effort required in performing procedures, and evaluating audit evidence obtained, related to management's assumptions, including the use of professionals with specialized skill and knowledge to assist in performing these procedures.

The primary procedures we performed to address this critical audit matter included:

- Evaluating the accuracy and completeness of management's budget versus actual project tracking model including estimated costs to complete;
- Evaluating the reasonableness of management's expected sales proceeds by benchmarking against third-party market data, comparable sales and whether such assumptions were consistent with evidence obtained in other areas of the audit; and
- Utilizing personnel with specialized skill and knowledge in valuation to assist in evaluating the Company's expected sales proceeds, including reviewing comparable sales and other third-party market data relevant to the development project.

237 11th Street Impairment Assessment

The Company reviews its long-lived assets for potential impairment whenever events or changes in circumstances indicate that the carrying amounts may not be fully recoverable. The Company identified the existence of an impairment triggering event in relation to its 237 11th Street property as a result of property damage caused by certain construction defects in prior years. This event resulted in significant cash outflows for repairs and remediation costs and a decrease in occupancy. Significant judgment is involved in determining if the asset is recoverable once it is determined that a triggering event exists.

We identified the recoverability assessment for 237 11th Street as a critical audit matter. Significant judgments and estimates are required by management in determining the asset's estimated future cash flows, including future revenue and operating expense growth rates, holding period, estimated terminal value, estimated costs to sell, and other market-based assumptions. Auditing these elements involved especially challenging auditor judgment due to the nature and extent of audit effort required in performing procedures, and evaluating audit evidence obtained, related to management's assumptions, including the use of professionals with specialized skill and knowledge to assist in performing these procedures.

The primary procedures we performed to address this critical audit matter included:

- Evaluating whether the assumptions used were reasonable by benchmarking against third-party market data, and whether such assumptions were consistent with evidence obtained in other areas of the audit.
- Assessing management's ability to forecast by comparing historical projections of net operating income to historical actuals and determining the impact on current estimates.
- Utilizing personnel with specialized skill and knowledge in valuation to assist in evaluating the Company's estimated terminal value assigned to 237 11th Street.

/s/ BDO USA, LLP

We have served as the Company's auditor since 2003.

New York, New York

March 31, 2021

TRINITY PLACE HOLDINGS INC.
CONSOLIDATED BALANCE SHEETS
(In thousands, except par value and share amounts)

	December 31, 2020 (unaudited)	December 31, 2019 (audited)
ASSETS		
Real estate, net	\$ 279,204	\$ 293,226
Cash and cash equivalents	6,515	9,196
Restricted cash	9,554	9,474
Prepaid expenses and other assets, net	2,703	9,097
Investments in unconsolidated joint ventures	19,379	10,673
Receivables	966	1,836
Deferred rents receivable	90	6
Right-of-use asset	1,565	1,904
Intangible assets, net	9,172	9,912
Total assets	<u>\$ 329,148</u>	<u>\$ 345,324</u>
LIABILITIES		
Loans payable, net	\$ 197,330	\$ 169,735
Corporate credit facility, net	31,858	—
Secured line of credit, net	7,747	5,236
Note payable	5,863	670
Deferred real estate deposits	—	82,856
Accounts payable and accrued expenses	15,896	22,243
Pension liabilities	—	1,033
Lease liability	1,716	2,065
Warrant liability	830	1,795
Total liabilities	<u>261,240</u>	<u>285,633</u>
Commitments and Contingencies		
STOCKHOLDERS' EQUITY		
Preferred stock, \$0.01 par value; 40,000,000 shares authorized; no shares issued and outstanding	—	—
Preferred stock, \$0.01 par value; 2 shares authorized; no shares issued and outstanding at December 31, 2020 and December 31, 2019	—	—
Special stock, \$0.01 par value; 1 share authorized, issued and outstanding at December 31, 2020 and December 31, 2019	—	—
Common stock, \$0.01 par value; 79,999,997 shares authorized; 38,345,540 and 37,612,465 shares issued at December 31, 2020 and December 31, 2019, respectively; 32,172,107 and 31,881,961 shares outstanding at December 31, 2020 and December 31, 2019, respectively	383	376
Additional paid-in capital	135,978	134,217
Treasury stock (6,173,433 and 5,730,504 shares at December 31, 2020 and December 31, 2019, respectively)	(56,791)	(55,731)
Accumulated other comprehensive loss	(2,159)	(3,174)
Accumulated deficit	(9,503)	(15,997)
Total stockholders' equity	<u>67,908</u>	<u>59,691</u>
Total liabilities and stockholders' equity	<u>\$ 329,148</u>	<u>\$ 345,324</u>

See Notes to Consolidated Financial Statements

TRINITY PLACE HOLDINGS INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
AND COMPREHENSIVE INCOME (LOSS)
(In thousands, except per share amounts)

	For the Year Ended December 31, 2020	For the Year Ended December 31, 2019	For the Year Ended December 31, 2018
Revenues			
Rental revenues	\$ 993	\$ 4,062	\$ 3,715
Other income	263	—	—
Total revenues	1,256	4,062	3,715
Operating Expenses			
Property operating expenses	8,166	5,328	1,904
Real estate taxes	79	328	321
General and administrative	4,955	5,349	5,492
Pension related costs	345	733	236
Transaction related costs	133	167	382
Depreciation and amortization	2,768	2,977	2,463
Total operating expenses	16,446	14,882	10,798
Gain on sale of school condominium	24,196	—	—
Gain on sale of real estate	—	9,521	—
Operating income (loss)	9,006	(1,299)	(7,083)
Equity in net loss from unconsolidated joint ventures	(1,571)	(819)	(728)
Unrealized gain on warrants	965	—	—
Interest (expense) income, net	(1,398)	67	212
Interest expense - amortization of deferred finance costs	(202)	—	—
Income (loss) before taxes	6,800	(2,051)	(7,599)
Tax expense	(306)	(128)	(290)
Net income (loss) attributable to common stockholders	\$ 6,494	\$ (2,179)	\$ (7,889)
Other comprehensive income (loss):			
Unrealized gain (loss) on pension liability	1,015	344	(786)
Comprehensive income (loss) attributable to common stockholders	\$ 7,509	\$ (1,835)	\$ (8,675)
Income (loss) per share - basic	\$ 0.20	\$ (0.07)	\$ (0.25)
Income (loss) per share - diluted	\$ 0.20	\$ (0.07)	\$ (0.25)
Weighted average number of common shares - basic	32,305	31,915	31,607
Weighted average number of common shares - diluted	32,860	31,915	31,607

See Notes to Consolidated Financial Statements

TRINITY PLACE HOLDINGS INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands)

	<u>Common Stock</u>		<u>Additional</u>	<u>Treasury Stock</u>		<u>Accumulated</u>	<u>Accumulated</u>	
	<u>Shares</u>	<u>Amount</u>	<u>Paid-In</u>	<u>Shares</u>	<u>Amount</u>	<u>Deficit</u>	<u>Other</u>	<u>Total</u>
			<u>Capital</u>				<u>Comprehensive</u>	
							<u>Loss</u>	
Balance as of December 31, 2017	36,803	\$ 368	\$ 130,897	(5,351)	\$ (53,666)	\$ (7,577)	\$ (2,732)	\$ 67,290
Net loss available to common stockholders	—	—	—	—	—	(7,889)	—	(7,889)
Settlement of stock awards	358	4	—	(163)	(1,092)	—	—	(1,088)
Unrealized loss on pension liability	—	—	—	—	—	—	(786)	(786)
Stock-based compensation expense	—	—	1,934	—	—	—	—	1,934
Balance as of December 31, 2018	37,161	\$ 372	\$ 132,831	(5,514)	\$ (54,758)	\$ (15,466)	\$ (3,518)	\$ 59,461
Net loss available to common stockholders	—	—	—	—	—	(2,179)	—	(2,179)
Settlement of stock awards	451	4	—	(187)	(776)	—	—	(772)
Unrealized gain on pension liability	—	—	—	—	—	1,648	344	1,992
Stock-based compensation expense	—	—	1,386	—	—	—	—	1,386
Stock buy-back	—	—	—	(30)	(197)	—	—	(197)
Balance as of December 31, 2019	37,612	\$ 376	\$ 134,217	(5,731)	\$ (55,731)	\$ (15,997)	\$ (3,174)	\$ 59,691
Net income available to common stockholders	—	—	—	—	—	6,494	—	6,494
Settlement of stock awards	543	5	—	(222)	(701)	—	—	(696)
Unrealized gain on pension liability	—	—	—	—	—	—	1,015	1,015
Stock-based compensation expense	—	—	1,163	—	—	—	—	1,163
Stock-based consulting fees	190	2	598	—	—	—	—	600
Stock buy-back	—	—	—	(220)	(359)	—	—	(359)
Balance as of December 31, 2020	38,345	\$ 383	\$ 135,978	(6,173)	\$ (56,791)	\$ (9,503)	\$ (2,159)	\$ 67,908

See Notes to Consolidated Financial Statements

TRINITY PLACE HOLDINGS INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31, 2020	Year Ended December 31, 2019	Year Ended December 31, 2018
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income (loss) attributable to common stockholders	\$ 6,494	\$ (2,179)	\$ (7,889)
Adjustments to reconcile net income (loss) attributable to common stockholders to net cash used in operating activities:			
Depreciation and amortization and amortization of deferred finance costs	2,970	2,977	2,995
Stock-based compensation expense	806	905	1,269
Gain on sale of school condominium	(24,196)	—	—
Gain on sale of real estate	—	(9,521)	—
Deferred rents receivable	(84)	578	(36)
Other non-cash adjustments - pension expense	1,015	1,992	—
Unrealized gain on warrants	(965)	—	—
Equity in net loss from unconsolidated joint ventures	1,571	819	728
Distribution from unconsolidated joint ventures	1,110	33	280
Decrease in operating assets:			
Receivables	2,392	1,577	4
Prepaid expenses and other assets, net	190	278	286
(Decrease) increase in operating liabilities:			
Accounts payable and accrued expenses	(686)	1,649	975
Pension liabilities	(1,033)	(2,705)	(1,283)
Net cash used in operating activities	(10,416)	(3,597)	(2,671)
CASH FLOWS FROM INVESTING ACTIVITIES:			
Additions to real estate	(51,715)	(91,847)	(58,909)
Acquisition of real estate	—	—	(81,960)
Net proceeds from the sale of real estate	—	18,812	—
Deferred real estate deposits of condominiums	1,971	33,609	49,247
Investments in unconsolidated joint ventures	(5,383)	—	—
Net cash used in investing activities	(55,127)	(39,426)	(91,622)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from loans and corporate credit facility	86,361	55,475	87,037
Proceeds from secured line of credit	5,000	7,250	—
Payment of finance costs	(1,497)	(1,531)	(1,820)
Repayment of loans	(23,368)	(10,557)	—
Repayment of secured line of credit	(2,500)	(2,000)	—
Settlement of stock awards	(695)	(772)	(1,088)
Stock buy-back	(359)	(197)	—
Net cash provided by financing activities	62,942	47,668	84,129
NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS AND RESTRICTED CASH	(2,601)	4,645	(10,164)
CASH AND CASH EQUIVALENTS AND RESTRICTED CASH, BEGINNING OF PERIOD	18,670	14,025	24,189
CASH AND CASH EQUIVALENTS AND RESTRICTED CASH, END OF PERIOD	\$ 16,069	\$ 18,670	\$ 14,025
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	\$ 9,196	\$ 11,496	\$ 15,273
RESTRICTED CASH, BEGINNING OF PERIOD	9,474	2,529	8,916
CASH AND CASH EQUIVALENTS AND RESTRICTED CASH, BEGINNING OF PERIOD	\$ 18,670	\$ 14,025	\$ 24,189
CASH AND CASH EQUIVALENTS, END OF PERIOD	\$ 6,515	\$ 9,196	\$ 11,496
RESTRICTED CASH, END OF PERIOD	9,554	9,474	2,529
CASH AND CASH EQUIVALENTS AND RESTRICTED CASH, END OF PERIOD	\$ 16,069	\$ 18,670	\$ 14,025
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:			
Cash paid during the period for: Interest	\$ 15,495	\$ 12,631	\$ 6,969
Cash paid during the period for: Taxes	\$ 251	\$ 352	\$ 268
SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES:			
Accrued development costs included in accounts payable and accrued expenses	\$ 10,319	\$ 12,698	\$ 16,574
Capitalized amortization of deferred financing costs and warrants	\$ 2,727	\$ 2,737	\$ 1,986
Capitalized stock-based compensation expense	\$ 356	\$ 480	\$ 665
Investment in unconsolidated joint venture	\$ 5,193	\$ —	\$ —
Right-of-use asset	\$ —	\$ 1,904	\$ —
Lease liabilities	\$ —	\$ (2,065)	\$ —
Warrant liability	\$ —	\$ (1,795)	\$ —

See Notes to Consolidated Financial Statements

Trinity Place Holdings Inc.
Notes to Consolidated Financial Statements
December 31, 2020

NOTE 1 – BASIS OF PRESENTATION

General Business Plan

Trinity Place Holdings Inc., which we refer to in this report as “Trinity,” “we,” “our,” or “us” is a real estate holding, investment, development and asset management company. Our largest asset is currently a property located at 77 Greenwich Street in Lower Manhattan (“77 Greenwich”). 77 Greenwich was previously a vacant building that we demolished. It is under development as a mixed-use project consisting of a 90-unit residential condominium tower, retail space and a New York City elementary school. We also own a newly built 105-unit, 12-story multi-family property located at 237 11th Street in Brooklyn, New York (“237 11th”), acquired in May 2018, and, through joint ventures, a 50% interest in a newly built 95-unit multi-family property known as The Berkley, located at 223 North 8th Street, Brooklyn (“The Berkley”) and a 10% interest in a newly built 234-unit multi-family property located one block from The Berkley at 250 North 10th Street (“250 North 10th”) acquired in January 2020, also in Brooklyn, New York. In addition, we own a property occupied by retail tenants in Paramus, New Jersey.

We also control a variety of intellectual property assets focused on the consumer sector, a legacy of our predecessor, Syms Corp. (“Syms”), including FilenesBasement.com, our rights to the Stanley Blacker® brand, as well as the intellectual property associated with the Running of the Brides® event and An Educated Consumer is Our Best Customer® slogan. In addition, we had approximately \$232.0 million of federal net operating loss carryforwards (“NOLs”) at December 31, 2020, which can be used to reduce our future taxable income and capital gains.

Trinity is the successor to Syms, which also owned Filene’s Basement. Syms and its subsidiaries filed for relief under the United States Bankruptcy Code in 2011. In December 2012, the Syms Plan of Reorganization (the “Plan”) became effective and Syms and its subsidiaries consummated their reorganization under Chapter 11 through a series of transactions contemplated by the Plan and emerged from bankruptcy. As part of those transactions, reorganized Syms merged with and into Trinity, with Trinity as the surviving corporation. We completed our final payment and reserve obligations under the Plan in March 2016.

On January 18, 2018, Syms and certain of its subsidiaries (the “Reorganized Debtors”) filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) a motion for entry of a final decree (the “Final Decree”) (i) closing the chapter 11 cases of the Reorganized Debtors; and (ii) retaining the Bankruptcy Court’s jurisdiction as provided for in the Plan, including to enforce or interpret its own orders pertaining to the chapter 11 cases including, but not limited to, the Plan and Final Decree, among other matters. On February 6, 2018, the Bankruptcy Court entered the Final Decree closing the chapter 11 cases of the Reorganized Debtors.

Square footage, leased occupancy percentage and residential unit disclosures in the notes to consolidated financial statements are unaudited.

COVID-19 Pandemic, Liquidity and Going Concern

As a result of the COVID-19 pandemic, numerous federal, state, local and foreign governmental authorities issued a range of “stay-at-home orders”, proclamations and directives aimed at minimizing the spread of COVID-19, among other restrictions on businesses and individuals. Additional proclamations and directives have been issued in response to further outbreaks, and may be issued in the future. The outbreak and restrictions have adversely affected our business operations including, among other things, a temporary suspension of construction work at our most significant asset, 77 Greenwich, which resumed in mid-April, initially on a modified basis as certain work was deemed “essential” construction, and the temporary closing of the sales center for the 77 Greenwich residential condominium units as well as the temporary suspension of the remediation work being performed on 237 11th, which resumed in early June.

The economic downturn and volatility in financial markets appear to have been primarily driven by uncertainties associated with the pandemic. As it relates to our business, these uncertainties include, but are not limited to, the adverse effect of the pandemic on the New York City and broader economy, residential and potential residential sentiment in New York City,

particularly Manhattan, lending institutions, construction and material supply partners, travel and transportation services, our employees, residents and tenants, and traffic to and within geographic areas containing our real estate assets. The pandemic has adversely affected our near-term, and may adversely affect our long-term, liquidity, cash flows and revenues and has required and may continue to require significant actions in response, including, but not limited to, reducing or discounting prices for our residential condominium units more than originally budgeted, seeking loan extensions and covenant modifications, modifying, eliminating or deferring rent payments in the short term for tenants in an effort to mitigate financial hardships and seeking access to federal, state and/or local financing and other programs. In addition, we continue to be subject to a New York State mandate disallowing tenant evictions for non-payment of rent due to COVID-19 related hardships.

The ultimate impact of the COVID-19 pandemic on our operations is unknown and will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including the duration and severity of the outbreak, recurring outbreaks, new information which may emerge concerning the pandemic and any additional preventative and protective actions that governments, lending institutions and other businesses, including us, may direct or institute. These and other developments have resulted in and are expected to result in an extended period of continued business disruption and reduced operations for us as well as for lending and other businesses and governmental entities with which we do business. The ultimate financial impacts cannot be reasonably estimated at this time but the outbreak, restrictions and future developments are anticipated to continue to have an adverse impact on our business, financial condition and results of operations, which has been and may continue to be material, although in recent months we have seen indications of a recovery in the New York City real estate market and improvements in the financing markets.

The measures taken to date, together with any additional measures and developments including those noted above, impacted and will continue to impact the Company's business in 2021 and beyond, although the extent of the significance of the impact of the COVID-19 outbreak on our business and the duration for which it may have an impact cannot be determined at this time.

Our financial statements are prepared using accounting principles generally accepted in the United States of America applicable to a going concern, which contemplate the realization of assets and liquidation of liabilities in the normal course of business. Given the impacts of COVID-19, it is possible that we may be unable to extend or refinance maturing debt, including the 237 11th Loan (as defined in Note 10 - Loans Payable and Secured Line of Credit) which matures in June 2021, or meet future sales pace covenants under the amended 77 Greenwich Construction Facility (as defined in Note 10 - Loans Payable and Secured Line of Credit) which matures in January 2022, creating substantial doubt about our ability to continue as a going concern. Management's plans to address the upcoming maturities consist of refinancings, including potentially an inventory loan at 77 Greenwich, and/or seeking an amendment or extension of either or both of such facilities. Although there is no assurance we will be able to refinance the facilities on terms acceptable to us, based on discussions with mortgage brokers and lenders, there is significant increased interest to date in 2021, as compared with 2020. Additionally, although the impact of the pandemic has impeded the sale of residential condominium units at 77 Greenwich, the pace of signing contracts has increased in 2021. The financial statements do not include any adjustments that might result from the outcome of any uncertainty as to our ability to continue as a going concern.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

- a. *Principles of Consolidation* - The consolidated financial statements include our accounts and those of our subsidiaries which are wholly-owned or controlled by us. Entities which we do not control through our voting interest and entities which are variable interest entities, but where we are not the primary beneficiary, are accounted for under the equity method. Accordingly, our share of the earnings or losses of our unconsolidated joint ventures, The Berkley and 250 North 10th, are included in our consolidated statements of operations and comprehensive income (loss) (see Note 13 – Investments in Unconsolidated Joint Ventures for further information). All significant intercompany balances and transactions have been eliminated.

We consolidate a variable interest entity (the "VIE") in which we are considered the primary beneficiary. The primary beneficiary is the entity that has (i) the power to direct the activities that most significantly impact the entity's economic performance and (ii) the obligation to absorb losses of the VIE or the right to receive benefits

from the VIE that could be significant to the VIE. As of December 31, 2020, 250 North 10th was determined to be a VIE. Due to our lack of control and no equity at risk, we determined that we are not the primary beneficiary and we account for this investment under the equity method.

We assess the accounting treatment for joint venture investments, which includes a review of the joint venture or limited liability company agreement to determine which party has what rights and whether those rights are protective or participating. For potential VIEs, we review such agreements in order to determine which party has the power to direct the activities that most significantly impact the entity's economic performance. In situations where we and our partner equally share authority, we do not consolidate the joint venture as we consider these to be substantive participation rights that result in shared power of the activities that most significantly impact the performance of the joint venture. Our joint venture agreements may contain certain protective rights such as requiring partner approval to sell, finance or refinance the property and the payment of capital expenditures and operating expenditures outside of the approved budget or operating plan.

- b. *Investments in Unconsolidated Joint Ventures* - We account for our investments in unconsolidated joint ventures, namely, The Berkley and 250 North 10th, under the equity method of accounting (see Note 13 - Investments in Unconsolidated Joint Ventures for further information). We also assess our investments in our unconsolidated joint ventures for recoverability, and if it is determined that a loss in value of an investment is other than temporary, we write down the investment to its fair value. We evaluate each equity investment for impairment based on each joint ventures' projected cash flows. We do not believe that the value of our equity investments was impaired at either December 31, 2020 or 2019.
- c. *Use of Estimates* - The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Accordingly, actual results could differ from those estimates.
- d. *Reportable Segments* - We operate in one reportable segment, commercial real estate.
- e. *Concentrations of Credit Risk* - Our financial instruments that are exposed to concentrations of credit risk consist primarily of cash and cash equivalents. We hold substantially all of our cash and cash equivalents in banks. Such cash balances at times exceed federally insured limits.
- f. *Real Estate* - Real estate assets are stated at historical cost, less accumulated depreciation and amortization. All costs related to the improvement or replacement of real estate properties are capitalized. Additions, renovations and improvements that enhance and/or extend the useful life of a property are also capitalized. Expenditures for ordinary maintenance, repairs and improvements that do not materially prolong the useful life of an asset are charged to operations as incurred. Depreciation and amortization are determined using the straight-line method over the estimated useful lives as described in the table below:

Category	Terms
Buildings and improvements	10 - 39 years
Tenant improvements	Shorter of remaining term of the lease or useful life
Furniture and fixtures	5 - 8 years

- g. *Real Estate Under Development* - We capitalize certain costs related to the development and redevelopment of real estate including initial project acquisition costs, pre-construction costs and construction costs for each specific property. Additionally, we capitalize operating costs, interest, real estate taxes, insurance and compensation and related costs of personnel directly involved with the specific project related to real estate under development. Capitalization of these costs begin when the activities and related expenditures commence, and ceases when the property is held available for occupancy upon substantial completion of tenant improvements, but no later than one year from the completion of major construction activity at which time the project is placed in service and depreciation commences. Revenue earned under short-term license agreements at properties under development is offset against these capitalized costs.

- h. *Valuation of Long-Lived Assets* - We periodically review long-lived assets for impairment whenever changes in circumstances indicate that the carrying amount of the assets may not be fully recoverable. We consider relevant cash flow, management's strategic plans and significant decreases, if any, in the market value of the asset and other available information in assessing whether the carrying value of the assets can be recovered. When such events occur, we compare the carrying amount of the asset to the undiscounted expected future cash flows, excluding interest charges, from the use and eventual disposition of the asset. If this comparison indicates an impairment, the carrying amount would then be compared to the estimated fair value of the long-lived asset. An impairment loss would be measured as the amount by which the carrying value of the long-lived asset exceeds its estimated fair value. 77 Greenwich is a residential condominium development project currently in the development stage and forecasting the expected future cash flows requires management to make significant assumptions and estimates in relation to the remaining costs to complete the project, potential delays or disruptions in construction due to COVID-19 restrictions, and potential disposition proceeds to be received upon sale of residential condominium units in light of market disruptions due to the COVID-19 pandemic. We also identified the existence of an impairment evaluation triggering event in relation to our 237 11th Street property as a result of property damage caused by certain construction defects in place prior to acquisition. Significant judgments and estimates are required by management in determining the asset's estimated future cash flows, including future revenue and operating expense growth rates, holding period, estimated terminal value, estimated costs to sell, and other market-based assumptions. We considered all the aforementioned indicators of impairment for the year ended December 31, 2020. No provision for impairment was recorded during the years ended December 31, 2020, 2019 or 2018.
- i. *Fair Value Measurements* - We determine fair value in accordance with Accounting Standards Codification ("ASC") 820, "Fair Value Measurement," for financial assets and liabilities. This standard defines fair value, provides guidance for measuring fair value and requires certain disclosures.

Fair value is defined as the price that would be received to sell an asset or transfer a liability in an orderly transaction between market participants at the measurement date. Where available, fair value is based on observable market prices or parameters or derived from such prices or parameters. Where observable prices or inputs are not available, valuation models are applied. These valuation techniques involve some level of management estimation and judgment, the degree of which is dependent on the price transparency for the instruments or market and the instruments' complexity. Assets and liabilities disclosed at fair value are categorized based upon the level of judgment associated with the inputs used to measure their fair value. Hierarchical levels, which are defined by ASC 820-10-35, are directly related to the amount of subjectivity associated with the inputs to the fair valuation of these assets and liabilities. Determining which category an asset or liability falls within the hierarchy requires significant judgment and we evaluate our hierarchy disclosures each quarter.

Level 1 - Valuations based on quoted prices for identical assets and liabilities in active markets.

Level 2 - Valuations based on observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data.

Level 3 - Valuations based on unobservable inputs reflecting management's own assumptions, consistent with reasonably available assumptions made by other market participants. These valuations require significant judgment.

- j. *Cash and Cash Equivalents* - Cash and cash equivalents include securities with original maturities of three months or less when purchased.
- k. *Restricted Cash* - Restricted cash represents amounts required to be restricted under our loan agreements, letters of credit (see Note 10 - Loans Payable and Secured Line of Credit for further information), deposits on condominium sales at 77 Greenwich and tenant related security deposits.

- l. *Revenue Recognition* - Leases with tenants are accounted for as operating leases. Minimum rents are recognized on a straight-line basis over the term of the respective lease, beginning when the tenant takes possession of the space. The excess of rents recognized over amounts contractually due pursuant to the underlying leases are included in deferred rents receivable. In addition, retail leases typically provide for the reimbursement of real estate taxes, insurance and other property operating expenses. As lessor, we have elected to combine the lease and non-lease component in accordance with ASC Topic 842 when reporting revenue. Lease revenues and reimbursement of real estate taxes, insurance and other property operating expenses are presented in the consolidated statements of operations and comprehensive income (loss) as “rental revenues.” Also, these reimbursements of expenses are recognized within revenue in the period the expenses are incurred. We assess the collectability of our accounts receivable related to tenant revenues. With the adoption of ASC Topic 842, we will apply the guidance under ASC 842 in assessing its lease payments: if collection of rents under specific operating leases is not probable, then we recognize the lesser of that lease’s rental income on a straight-line basis or cash received, plus variable rents as earned. Once this assessment is completed, we apply a general reserve, as provided under ASC 450-20, if applicable.
- m. *Stock-Based Compensation* – We have granted stock-based compensation, which is described below in Note 11 – Stock-Based Compensation. We account for stock-based compensation in accordance with ASC 718, “Compensation-Stock Compensation,” which establishes accounting for stock-based awards exchanged for employee services and ASU No. 2018-07, “Compensation - Stock Compensation (Topic 718), Improvements to Nonemployee Share-Based Payment Accounting,” which provides additional guidance related to share-based payment transactions for acquiring goods or services from nonemployees. Under the provisions of ASC 718-10-35, stock-based compensation cost is measured at the grant date, based on the fair value of the award on that date, and is expensed at the grant date (for the portion that vests immediately) or ratably over the related vesting periods.
- n. *Income Taxes* - We account for income taxes under the asset and liability method as required by the provisions of ASC 740, “Income Taxes.” Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. We provide a valuation allowance for deferred tax assets for which we do not consider realization of such assets to be more likely than not.

ASC 740-10-65 addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under ASC 740-10-65, we may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position should be measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement. ASC 740-10-65 also provides guidance on de-recognition, classification, interest and penalties on income taxes, accounting in interim periods and increased other disclosures. As of both December 31, 2020 and December 31, 2019, we had determined that no liabilities are required in connection with unrecognized tax positions. As of December 31, 2020, our tax returns for the years ended December 31, 2017 through December 31, 2020 are subject to review by the Internal Revenue Service. Our state returns are open to examination for the years December 31, 2016 or 2017 through December 31, 2020, depending on the jurisdiction.

We are subject to certain federal, state and local income and franchise taxes.

- o. *Earnings (loss) Per Share* - We present both basic and diluted earnings (loss) per share. Basic earnings (loss) per share is computed by dividing net income (loss) attributable to common stockholders by the weighted average number of shares of common stock outstanding for the period. Diluted earnings (loss) per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock, where such exercise or conversion would result in a lower per share amount. Shares issuable comprising 554,500 restricted stock units that have vested but not yet settled and 7,179,000 warrants exercisable at \$4.50 per share were excluded from the computation of diluted earnings (loss) per share because the awards would have been antidilutive for the year ended December 31, 2020 and 2019.

- p. *Deferred Finance Costs* – Capitalized and deferred finance costs represent commitment fees, legal, title and other third party costs associated with obtaining commitments for mortgage financings which result in a closing of such financing. These costs are being offset against loans payable and secured line of credit in the consolidated balance sheets for mortgage financings and had a balance of \$2.6 million and \$3.0 million at December 31, 2020 and 2019, respectively. Costs for our corporate credit facility are being offset against corporate credit facility, net in the consolidated balance sheet and had a balance of \$3.9 million at December 31, 2020, while the balance at December 31, 2019 of \$5.0 million was included in prepaid expenses and other assets, net in the consolidated balance sheet. Deferred finance costs are amortized over the terms of the related financing arrangements. Unamortized deferred finance costs are expensed when the associated debt is refinanced or repaid before maturity. Costs incurred in seeking financing transactions which do not close are expensed in the period in which it is determined that the financing will not close.
- q. *Deferred Lease Costs* – Deferred lease costs consist of fees and direct costs incurred to initiate and renew retail operating leases and are amortized to depreciation and amortization on a straight-line basis over the related non-cancelable lease term. Lease costs incurred under our residential leases are expensed as incurred.
- r. *Underwriting Commissions and Costs* – Underwriting commissions and costs incurred in connection with our stock offerings are reflected as a reduction of additional paid-in-capital in stockholders' equity.

Accounting Standards Updates

In August 2018, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2018-13, "Fair Value Measurement (Topic 820), Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement." This amendment removed, modified and added the disclosure requirements under Topic 820. The adoption of this guidance, effective January 1, 2020, did not have a material impact on our financial position, results of operations or cash flows.

In February 2016, the FASB issued ASU No. 2016-02, "Leases." ASU 2016-02 outlines a new model for accounting by lessees, whereby their rights and obligations under substantially all leases, existing and new, would be capitalized and recorded on the balance sheet. For lessors, however, the accounting remains largely unchanged from the current model, but updated to align with certain changes to the lessee model and the new revenue recognition standard discussed above. We have no sales-type leases. As lessee, we are party to an office lease with a present value of future payment obligations of \$2.4 million as of January 1, 2019 (see Note 9 - Commitments), and as such we recorded right-of-use assets and corresponding lease liabilities in this amount upon the adoption of ASU 2016-02 on January 1, 2019. In July 2018, the FASB issued ASU 2018-11, "Leases (Topic 842) – Targeted Improvements," which provides an optional transition method of applying the new leases standard at the adoption date by recognizing a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. We have elected this optional transition method, although it resulted in no cumulative-effect adjustment. As lessor, for reporting revenue, we have elected to combine the lease and non-lease components of our operating lease agreements and account for the components as a single lease component in accordance with ASC 842. Also, we have elected the 'package or practical expedients' approach which allows us not to reassess our previous conclusions about lease identification, lease classification and initial direct costs.

NOTE 3 – REAL ESTATE, NET

As of December 31, 2020 and 2019, real estate, net consisted of the following (dollars in thousands):

	December 31, 2020	December 31, 2019
Real estate under development	\$ 213,178	\$ 225,673
Building and building improvements	41,358	41,358
Tenant improvements	189	125
Furniture and fixtures	731	708
Land and land improvements	27,939	27,939
	283,395	295,803
Less: accumulated depreciation	4,191	2,577
	<u>\$ 279,204</u>	<u>\$ 293,226</u>

Real estate under development as of December 31, 2020 and 2019 included 77 Greenwich and the Paramus, New Jersey property. The decrease in real estate under development mainly relates to the sale of the school condominium to the New York City School Construction Authority (the “SCA”) in April 2020 (see 77 Greenwich and the New York City School Construction Authority below). Building and building improvements, tenant improvements, furniture and fixtures, and land and land improvements included the 237 11th property as of December 31, 2020 and 2019.

Depreciation expense amounted to approximately \$1.6 million, \$1.6 million and \$1.2 million for the years ended December 31, 2020, 2019 and 2018, respectively.

Acquisitions

In May 2018, we closed on the acquisition of 237 11th, a newly built 105-unit, 12-story multi-family apartment building located at 237 11th Street, Brooklyn, New York for a purchase price of \$81.2 million, excluding transaction costs of approximately \$0.7 million. The acquisition was funded through acquisition financing and cash on hand. Due to certain construction defects at 237 11th that resulted in water penetration into the building and damage to certain apartment units and other property, which defects we believe were concealed and which would have required significant invasive work of a type not usually required or permitted, especially on a newly-built asset, to be detected, we submitted proofs of loss to our insurance carrier for property damage and business interruption (lost revenue) in March 2019. The insurance carrier subsequently disclaimed coverage for the losses and we filed a complaint against the carrier and its administrator, alleging that they breached the insurance policy by denying coverage and requesting a declaration that they are obligated to cover the claimed damage. We also filed legal claims against the seller, its parent company, and the general contractor to recover damages arising from the defective construction. In addition, the general contractor impleaded into that litigation several subcontractors who performed work on the property. Management expects to recover some portion of the cost incurred to repair the property through the litigations, and/or settlement negotiations with the seller, its parent company, the general contractor, the subcontractors, and the insurance carrier, although the amount of damages that may be recoverable in litigation and/or potential settlement negotiations are uncertain at this time, as is the receipt of any such payments, which has been impacted by the COVID-19 pandemic, including the resulting backlog in the court system and slowdown in judicial proceedings. We have been in discussions with the seller, its parent company, the general contractor, and the third-party defendants impleaded by the general contractor about engaging in mediation to potentially settle the case involving those parties. A mediation process commenced at the end of February 2021. We incurred significant cash outflows for costs associated with these repairs and remediation, which commenced in September 2019. The decrease in occupancy to 20% at December 31, 2020 was due to the clearing of certain floors to prepare for and carry out the remediation work. Remediation and restoration work was delayed for two months in 2020 due to the temporary shutdown of non-essential construction projects in New York from April to June, which resulted in a delay in commencement of our leasing up of the property. Future delays would have a similar impact. .

We allocated the purchase price of the real estate to land and land improvements, building and building improvements (inclusive of tenant improvements) and intangibles, such as the value of above-market and below-market leases, real estate tax abatements and origination costs associated with the in-place leases.

As of December 31, 2020, intangible assets, net consisted of the real estate tax abatement at its original valuation of \$11.1 million offset by its related accumulated amortization of approximately \$1.9 million. Amortization expense amounted to \$740,000, \$740,000 and \$448,000 for the year ended December 31, 2020, December 31, 2019 and for period from May 24, 2018, the date of acquisition for 237 11th, through December 31, 2018, respectively.

As of December 31, 2020, the estimated annual amortization of intangible assets for each of the five succeeding years and thereafter is as follows (dollars in thousands):

Year	Real Estate Tax Abatement Amortization
2021	\$ 740
2022	740
2023	740
2024	740
2025	740
Thereafter	5,472

77 Greenwich and the New York City School Construction Authority

We entered into an agreement with the SCA, whereby we agreed to construct a school to be sold to the SCA as part of our condominium development at 77 Greenwich. Pursuant to the agreement, the SCA agreed to pay us \$41.5 million for the purchase of their condominium unit and reimburse us for the costs associated with constructing the school, including a construction supervision fee of approximately \$5.0 million. Payments for construction are being made by the SCA to the general contractor in installments as construction on their condominium unit progresses. Payments to us for the land and construction supervision fee commenced in January 2018 and continued through October 2019 for the land and will continue through the second quarter of 2021 for the construction supervision fee, with an aggregate of \$46.0 million having been paid to us as of December 31, 2020 from the SCA, with \$500,000 remaining to be paid. We have also received an aggregate of \$48.2 million in reimbursable construction costs from the SCA through December 31, 2020. The payments and reimbursements from the SCA received prior to April 2020 were recorded as deferred real estate deposits on the consolidated balance sheets until sales criteria were satisfied in April 2020. In April 2020, the SCA closed on the purchase of the school condominium unit with us, at which point title transferred to the SCA, and the SCA is now proceeding to complete the buildout of the interior space, which is planned to become an approximately 476 seat public elementary school. Upon conveyance, we recognized a gain on the sale of approximately \$20.0 million and an additional gain of \$4.2 million related to the recognition of our deferred construction supervision fee, and our liquidity requirement on the 77 Greenwich Construction Facility decreased from \$15.0 million to \$10.0 million. We have also guaranteed certain obligations with respect to the construction of the school.

Disposition

We disposed of the West Palm Beach, Florida property on November 23, 2019 for a gross sales price of \$19.6 million. The balance of the West Palm Beach loan of \$10.6 million was repaid simultaneously when we sold this property. We recorded a gain on sale of approximately \$9.5 million.

NOTE 4 – PREPAID EXPENSES AND OTHER ASSETS, NET

As of December 31, 2020 and 2019, prepaid expenses and other assets, net consisted of the following (dollars in thousands):

	December 31, 2020	December 31, 2019
Trademarks and customer lists	\$ —	\$ 2,090
Prepaid expenses	454	797
Lease commissions	—	1,565
Deferred finance costs	1,795	6,798
Other	954	2,641
	3,203	13,891
Less: accumulated amortization	500	4,794
	<u>\$ 2,703</u>	<u>\$ 9,097</u>

NOTE 5 – INCOME TAXES

The provision for taxes is as follows (dollars in thousands):

	Year Ended December 31, 2020	Year Ended December 31, 2019	Year Ended December 31, 2018
Current:			
Federal	\$ —	\$ —	\$ —
State	306	128	290
	\$ 306	\$ 128	\$ 290
Deferred:			
Federal	\$ —	\$ —	\$ —
State	—	—	—
	\$ —	\$ —	\$ —
Tax expense	<u>\$ 306</u>	<u>\$ 128</u>	<u>\$ 290</u>

The following is a reconciliation of income taxes computed at the U.S. Federal statutory rate to the provision for income taxes:

	Year Ended December 31, 2020	Year Ended December 31, 2019	Year Ended December 31, 2018
Statutory federal income tax rate	21.0 %	21.0 %	21.0 %
State taxes	6.3 %	49.7 %	17.1 %
Permanent non-deductible expenses	5.0 %	(5.6)%	(1.7)%
Change of valuation allowance	(27.8)%	(71.3)%	(40.2)%
Effective income tax rate	<u>4.5 %</u>	<u>(6.2)%</u>	<u>(3.8)%</u>

The composition of our deferred tax assets and liabilities is as follows (dollars in thousands):

	December 31, 2020	December 31, 2019
Deferred tax assets:		
Pension costs	\$ —	\$ 165
Charitable contributions	15	21
Net operating loss carry forwards	58,635	61,124
Depreciation (including air rights)	4,677	5,035
Lease liability	571	650
Other	160	93
Investment in joint ventures	678	382
Accrued expenses	132	80
Total deferred tax assets	\$ 64,868	\$ 67,550
Valuation allowance	(60,930)	(63,709)
Deferred tax asset after valuation allowance	\$ 3,938	\$ 3,841
Deferred tax liabilities:		
Intangibles	\$ (3,273)	\$ (3,242)
Pension costs	(114)	—
Right-of-use asset	(551)	(599)
Total deferred tax liabilities	\$ (3,938)	\$ (3,841)
Net deferred tax assets	\$ —	\$ —
Current deferred tax assets	\$ —	\$ —
Long-term deferred tax assets	—	—
Total deferred tax assets	\$ —	\$ —

Effects of the Tax Cuts and Jobs Act

Pursuant to the tax legislation known as the Tax Cuts and Jobs Act (the "TCJA") of 2017, corporate alternative minimum tax ("AMT") credit carryforwards are eligible for a 50% refund in tax years 2018 through 2020, and beginning in tax year 2021, any remaining AMT credit carryforwards are 100% refundable. As a result of these new rules, as of December 31, 2017 we had released the valuation allowance of \$3.1 million formerly reserved against our AMT credit carryforwards and we had recorded a tax benefit and refund receivable of \$3.1 million in connection with this valuation allowance release. We received approximately \$1.6 million of the refund receivable in October 2019 and the balance of approximately \$1.5 million became fully refundable in 2020 as a result of the Coronavirus Aid, Relief, and Economic Security Act, discussed in more detail below, and was received in July 2020.

Other

As of December 31, 2020, we had federal NOLs of approximately \$232.0 million. NOLs generated prior to tax-year 2018 will expire in years through fiscal 2037 while NOLs generated in 2018 and forward carry-over indefinitely. The gain resulting from the conveyance of the school condominium to the SCA was fully offset by our available NOL carryforward.

We used approximately \$7.2 million of our NOL carryforward for the year ending December 31, 2020. Since 2009 through December 31, 2020, we have utilized approximately \$23.9 million of the federal NOLs. As of December 31, 2020, we also had state NOLs of approximately \$120.0 million. These state NOLs have various expiration dates through 2039, if applicable. We also had New York State and New York City prior NOL conversion ("PNOLC") subtraction pools of approximately \$23.6 million and \$18.0 million, respectively. The conversion to the PNOLC under the New York State and New York City corporate tax reforms does not have any material tax impact.

Based on management's assessment, we believe it is more likely than not that the entire deferred tax assets will not be realized by future taxable income or tax planning strategy. In recognition of this risk, we have provided a valuation allowance of \$60.9 million and \$63.7 million as of December 31, 2020 and 2019, respectively. If our assumptions change

and we determine we will be able to realize these NOLs, the tax benefits relating to any reversal of the valuation allowance on deferred tax assets would be recognized as a reduction of income tax expense and an increase in stockholders equity.

On March 27, 2020, the "Coronavirus Aid, Relief, and Economic Security (CARES) Act" was signed into law. The CARES Act, suspended the limitations under the TCJA on the use of NOLs for tax years beginning before January 1, 2021, and allowed losses arising in taxable years beginning after December 31, 2017 and before January 1, 2021 to be carried back up to five years. The CARES Act also accelerated the ability of corporations to recover AMT credits, permitting a full refund for tax years 2018 and 2019. Additionally, the CARES Act included provisions relating to refundable payroll tax credits, deferral of employer side social security payments, modifications to the net interest deduction limitations, increased limitations on qualified charitable contributions, and technical corrections to tax depreciation methods for qualified improvement property. It also appropriated funds for the SBA Paycheck Protection Program loans that are forgivable in certain situations to promote continued employment, as well as Economic Injury Disaster Loans to provide liquidity to small businesses harmed by COVID-19. The CARES Act did not have a material impact on our financial position, results of operations or cash flows for fiscal year 2020.

NOTE 6 – RENTAL REVENUE

Our retail property located in Paramus, New Jersey is 100% leased to two tenants as of December 31, 2020 with leases expiring through 2022.

Our multi-family property at 237 11th is occupied by tenants who have leases ranging from one to two years and two retail tenants with leases expiring in 2027 and 2036, respectively.

Future minimum rent due under non-cancellable tenant operating leases (excluding license agreements) as of December 31, 2020 is as follows (dollars in thousands):

Year	Future Minimum Rent
2021	\$ 925
2022	378
2023	223
2024	226
2025	228
Thereafter	1,253
	<u>\$ 3,233</u>

NOTE 7 – FAIR VALUE MEASUREMENTS

The fair value of our financial instruments are determined based upon applicable accounting guidance. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The guidance requires disclosure of the level within the fair value hierarchy in which the fair value measurements fall, including measurements using quoted prices in active markets for identical assets or liabilities (Level 1), quoted prices for similar instruments in active markets or quoted prices for identical or similar instruments in markets that are not active (Level 2), and significant valuation assumptions that are not readily observable in the market (Level 3).

The fair values of cash and cash equivalents, receivables, accounts payable and accrued expenses, and other liabilities approximated their carrying value because of their short-term nature. The fair value of the consolidated loans payable, Corporate Credit Facility, the secured line of credit, note payable and the warrant liability approximated their carrying values as they are variable-rate instruments.

On an annual recurring basis, we are required to use fair value measures when measuring plan assets of our pension plans. As we elected to adopt the measurement date provisions of ASC 715, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans," as of March 4, 2007, we are required to determine the fair value of our pension plan

assets as of December 31, 2020. The fair value of pension plan assets was \$14.6 million at December 31, 2020. These assets are valued in active liquid markets.

NOTE 8 – PENSION PLANS

Defined Benefit Pension Plan

Syms sponsored a defined benefit pension plan for certain eligible employees not covered under a collective bargaining agreement. The pension plan was frozen effective December 31, 2006. At December 31, 2020, we had recorded an overfunded pension balance of \$343,000 which is included in prepaid expenses and other assets, net on the accompanying consolidated balance sheet, and at December 31, 2019, we had a recorded liability of \$924,000 which is included in pension liabilities on the accompanying consolidated balance sheet. This liability represents the estimated cost to us of terminating the plan in a standard termination, which would require us to make additional contributions to the plan so that the assets of the plan are sufficient to satisfy all benefit liabilities.

We currently plan to continue to maintain the Syms pension plan and make all contributions required under applicable minimum funding rules; however, we may terminate it at any time. In the event we terminate the plan, we intend that any such termination would be a standard termination. Although we have accrued the liability associated with a standard termination, we have not taken any steps to commence such a termination and currently have no intention of terminating the pension plan. In accordance with minimum funding requirements and court ordered allowed claims distributions, we paid approximately \$5.3 million to the Syms sponsored plan from September 17, 2012 through December 31, 2020. Historically, we have funded this plan in the third quarter of the calendar year. We funded \$400,000, \$400,000 and \$470,000 to the Syms sponsored plan during the years ended December 31, 2020, 2019 and 2018, respectively.

Presented below is financial information relating to this plan for the periods indicated (dollars in thousands):

	Year Ended December 31, 2020	Year Ended December 31, 2019
CHANGE IN BENEFIT OBLIGATION:		
Net benefit obligation - beginning of period	\$ 13,933	\$ 13,668
Interest cost	658	644
Actuarial loss	408	410
Gross benefits paid	(775)	(789)
Net benefit obligation - end of period	<u>\$ 14,224</u>	<u>\$ 13,933</u>
CHANGE IN PLAN ASSETS:		
Fair value of plan assets - beginning of period	\$ 13,009	\$ 10,852
Employer contributions	400	400
Gross benefits paid	(775)	(789)
Return on plan assets	1,934	2,546
Fair value of plan assets - end of period	<u>\$ 14,568</u>	<u>\$ 13,009</u>
Over (under) funded status at end of period	<u>\$ 344</u>	<u>\$ (924)</u>

The pension expense includes the following components (dollars in thousands):

	Year Ended December 31, 2020	Year Ended December 31, 2019	Year Ended December 31, 2017
COMPONENTS OF NET PERIODIC COST:			
Interest cost	\$ 658	\$ 644	\$ 666
(Gain) loss on assets	(758)	(628)	750
Amortization of loss (gain)	247	484	(990)
Net periodic cost	<u>\$ 147</u>	<u>\$ 500</u>	<u>\$ 426</u>
WEIGHTED-AVERAGE ASSUMPTION USED:			
Discount rate	5.0 %	5.0 %	5.0 %
Rate of compensation increase	0.0 %	0.0 %	0.0 %

The expected long-term rate of return on plan assets was 6% for the years ended December 31, 2020, 2019 and 2018.

As of December 31, 2020 the benefits expected to be paid in the next five years and then in the aggregate for the five fiscal years thereafter are as follows (dollars in thousands):

Year	Amount
2021	\$ 896
2022	917
2023	931
2024	944
2025	991
2026-2031	3,937

The fair values and asset allocation of our plan assets as of December 31, 2020 and 2019 and the target allocation for fiscal 2020, by asset category, are presented in the following table. All fair values are based on quoted prices in active markets for identical assets (Level 1 in the fair value hierarchy) (dollars in thousands):

Asset Category	Asset Allocation	December 31, 2020		December 31, 2019	
		Fair Value	% of Plan Assets	Fair Value (1)	% of Plan Assets
Cash and equivalents	0% to 10 %	\$ 877	6 %	\$ 835	6 %
Equity securities	40% to 57 %	9,755	67 %	8,019	62 %
Fixed income securities	35% to 50 %	3,936	27 %	4,155	32 %
Total		<u>\$ 14,568</u>	<u>100 %</u>	<u>\$ 13,009</u>	<u>100 %</u>

Under the provisions of ASC 715, we are required to recognize in our consolidated balance sheets the unfunded status of the benefit plan. This is measured as the difference between plan assets at fair value and the projected benefit obligation. For the pension plan, this is equal to the accumulated benefit obligation.

Multiemployer Pension Plans

Certain Syms employees were covered by collective bargaining agreements and participated in various multiemployer pension plans. Syms ceased to have an obligation to contribute to these plans in 2012, thereby triggering a complete withdrawal from these plans within the meaning of section 4203 of the Employee Retirement Income Security Act of 1974. As a result of the complete withdrawal, we were obligated to pay a withdrawal liability to one of these pension plans through the first quarter of 2020. We were required to make quarterly payments in the amount of approximately \$203,000 until this liability was completely paid, which occurred with the final payment in the first quarter of 2020. We had no liability and a liability of \$109,000 as of December 31, 2020 and 2019, respectively, related to this plan which is included in pension liabilities on the accompanying consolidated balance sheets. In accordance with minimum funding requirements

and court ordered allowed claims distributions, we paid a total of approximately \$6.9 million to the various multiemployer plans from September 17, 2012 through December 31, 2020, of which approximately \$109,000 and \$813,000 was funded to the remaining multiemployer plan during each of the years ended December 31, 2020 and 2019.

See Note 9 - Commitments - Legal Proceedings - for further information regarding a claim related to the multiemployer pension plan.

401(k) Plan – We have established a 401(k) plan for all of our employees. Eligible employees are able to contribute a percentage of their salary to the plan subject to statutory limits. We paid approximately \$71,000, \$67,000 and \$65,000 in matching contributions to this plan during the years ended December 31, 2020, 2019 and 2018, respectively.

NOTE 9 – COMMITMENTS

- a. **Leases** – The lease for our corporate office located at 340 Madison Avenue, New York, New York expires on March 31, 2025. Rent expense paid for this operating lease was approximately \$439,000, \$439,000 and \$348,000 for the years ended December 31, 2020, 2019 and 2018, respectively. The lease for our sales center for 77 Greenwich located at 17 State Street, New York, New York expires on May 31, 2021. Rent expense paid for this operating lease was approximately \$303,000, \$366,000 and \$108,000 for the years ended December 31, 2020, 2019 and 2018, respectively.

The remaining lease obligation, excluding any extension options, for our corporate office and the sales center are as follows (dollars in thousands):

Year Ended	Future Minimum Rentals
2021	\$ 555
2022	470
2023	470
2024	470
2025	116
Total undiscounted lease payments	\$ 2,081
Discount	\$ (365)
Lease Liability	\$ 1,716

- b. **Legal Proceedings** - The trustees for the multiemployer pension plan (the "Trustees") to which the January 2020 payment was made claimed in February 2020 that the multiemployer pension plan was due additional sums in excess of the amount set forth in the Plan. On May 1, 2020, the Trustees filed a complaint in the United States District Court for the Southern District of New York seeking a judgment against the Company in the amount of approximately \$2.6 million, plus unliquidated amounts on account of the multiemployer pension plan. Following the filing of the complaint, the Company moved to have the Bankruptcy Court reopen the bankruptcy case to enforce the permanent injunction, Plan, and confirmation order against the Trustees. On June 10, 2020, the Bankruptcy Court granted the Company's motion to reopen the bankruptcy case. On July 22, 2020, the Bankruptcy Court heard arguments on whether to enforce the permanent injunction, Plan, and confirmation order against the Trustees. On October 26, 2020, the Bankruptcy Court entered a memorandum order granting the Company's motion to enforce the confirmation order and Plan, finding that under the unambiguous terms of the Plan, the Company has paid the full amount owed to the Trustees under the Plan and that no further payments are due. The Bankruptcy Court's memorandum order became a final non-appealable order as the Trustees did not file a notice of appeal. The bankruptcy case was re-closed on December 5, 2020.

In addition to this matter, in the normal course of business, we are also party to routine legal proceedings. Based on advice of counsel and available information, including current status or stage of proceeding, and taking into account accruals where they have been established, management currently believes that any liabilities ultimately

resulting from litigation we are currently involved in will not, individually or in the aggregate, have a material adverse effect on our consolidated financial position, results of operations or liquidity.

NOTE 10 – LOANS PAYABLE AND SECURED LINE OF CREDIT

Corporate Credit Facility

In December 2019, we entered into a multiple draw credit agreement aggregating \$70.0 million (the “Corporate Credit Facility”), which may be increased by \$25.0 million, subject to satisfaction of certain conditions and the consent of the lender (the “CCF Lender”). Draws under the Corporate Credit Facility may be made during the 32-month period following the closing date of the Corporate Credit Facility (the “Closing Date”). The Corporate Credit Facility matures on December 19, 2024, subject to extensions until December 19, 2025 and June 19, 2026, respectively, under certain circumstances. The proceeds of the Corporate Credit Facility may be used for investments in certain multi-family apartment buildings in the greater New York City area and certain non-residential real estate investments approved by the CCF Lender in its reasonable discretion, as well as in connection with certain property recapitalizations and in specified amounts for general corporate purposes and working capital. The Corporate Credit Facility was undrawn at December 31, 2019 and had an outstanding balance of \$35.75 million at December 31, 2020. Accrued interest totaled approximately \$1.5 million at December 31, 2020. As of December 31, 2020, we were in compliance with all covenants of the Corporate Credit Facility.

The Corporate Credit Facility bears interest at a rate per annum equal to the sum of (i) 5.25% and (ii) a scheduled interest rate of 4% (the “Cash Pay Interest Rate”) which increases by 0.125% every six-month period from the Closing Date, subject to increase during the extension periods. The effective interest rate at December 31, 2020 was 9.5%. A \$2.45 million commitment fee was payable 50% on the initial draw and 50% as amounts under the Corporate Credit Facility are drawn, with any remaining balance due on the last date of the draw period, and a 1.0% exit fee is payable in respect of Corporate Credit Facility repayments. As of December 31, 2020, we had paid \$1.85 million of the commitment fee. The Corporate Credit Facility may be prepaid at any time subject to a prepayment premium on the portion of the Corporate Credit Facility being repaid. The Corporate Credit Facility is subject to certain mandatory prepayment provisions, including that, subject to the terms of the mortgage loan documents applicable to the Company’s 77 Greenwich property, 90% or 100% of the net cash proceeds of residential condominium sales, depending on the circumstances, and 70% of the net cash proceeds of retail condominium sales at the Company’s 77 Greenwich property shall be used to repay the Corporate Credit Facility. Upon final repayment of the Corporate Credit Facility, a multiple on invested capital, or MOIC, amount equal to 130% of the initial Corporate Credit Facility amount plus drawn incremental amounts less the sum of all interest payments, commitment fee and exit fee payments and prepayment premiums, if any, shall be due, if such amounts together with the aggregate amount of principal repaid are less than the MOIC amount. The collateral for the Corporate Credit Facility consists of (i) 100% of the equity interests in our direct subsidiaries, to the extent such a pledge is permitted by the organizational documents of such subsidiary and any financing agreements to which such subsidiary is a party, (ii) our cash and cash equivalents, excluding restricted cash and cash applied toward certain liquidity requirements under existing financing arrangements, and (iii) other non-real estate assets of ours, including intellectual property.

The Corporate Credit Facility provides that we and our subsidiaries must comply with various affirmative and negative covenants including restrictions on debt, liens, business activities, equity repurchases, distributions and dividends, disposition of assets and transactions with affiliates, as well as financial covenants regarding corporate loan to value, net worth and liquidity. Under the Corporate Credit Facility, we are permitted to repurchase up to \$2.0 million of our common stock pursuant to board approved programs with Corporate Credit Facility proceeds, \$1.5 million with other sources of cash and otherwise subject to the consent of the required lenders. The Corporate Credit Facility also provides for certain events of default, including cross-defaults to our other loans, and for a guaranty of the Corporate Credit Facility obligations by our loan party subsidiaries.

Pursuant to the terms of the Corporate Credit Facility, so long as the Corporate Credit Facility is outstanding and the CCF Lender is owed or holds greater than 50% of the sum of (x) the aggregate principal amount of the balance outstanding and (y) the aggregate unused commitments, the CCF Lender will have the right to appoint one member to our and each of our subsidiary’s board of directors or equivalent governing body (the “Designee”). At the election of the CCF Lender, a board observer may be selected in lieu of a board member. The Designee may also sit on up to three committees of the board of directors or equivalent governing body of ours and each subsidiary of the Designee’s choosing from time to time. The Designee will be entitled to receive customary reimbursement of expenses incurred in connection with his or her service

as a member of the board and/or any committee thereof but will not, except in the case of an independent director, receive compensation for such service.

In connection with the December 2020 transaction noted below, the Company entered into an amendment to the Corporate Credit Facility (the “Corporate Facility Amendment”), pursuant to which, among other things, (i) we were permitted to enter into the Mezzanine Loan Agreement (as defined below), the amendment to the 77 Greenwich Construction Facility (as defined below) and related documents, (ii) the commitment made by the CCF Lender under the Corporate Credit Facility was reduced by the amount of the Mezzanine Loan (as defined below) from \$70.0 million to \$62.5 million, subject to increase by \$25.0 million upon satisfaction of certain conditions and the consent of the CCF Lender, and (iii) the MOIC amount that would be due and payable by the Company upon the final repayment of the loan pursuant to the Corporate Credit Facility if no event of default exists and is continuing under the Corporate Credit Facility at any time prior to December 22, 2022, was amended to combine the Corporate Credit Facility and the Mezzanine Loan for purposes of calculating the MOIC, to the extent not previously paid, if any. In addition, the exercise price of the warrants issued in connection with the Corporate Credit Facility was amended from \$6.50 per share to \$4.50 per share (the “Warrant Agreement Amendment”) (see Note 11 – Stockholders Equity – Warrants to our consolidated financial statements for further discussion regarding the warrants).

Loans Payable

237 11th Loans

In May 2018, in connection with the acquisition of 237 11th, we entered into two-year interest-only financings with an aggregate principal amount of \$67.8 million, comprised of a \$52.4 million mortgage loan (the “237 11th Loan”) and a \$15.4 million mezzanine loan bearing interest at a blended average rate of 3.72% over the 30-day LIBOR, each with a one year extension option upon satisfaction of certain conditions. The mezzanine loan was repaid in full in February 2020.

In June 2020, the maturity of the 237 11th Loan was extended to June 2021 and the 237 11th Loan was amended to include a delayed draw facility of \$4.25 million, which is being drawn now that most of the \$3.6 million of remediation reserves we funded in connection with the amendment have been used. As of December 31, 2020, \$723,000 of the delayed draw funds had been drawn. We also funded an interest reserve account of \$0.8 million which we are required to replenish over time. In conjunction with the amendment, a LIBOR floor of 50 basis points was put in place, the spread was increased by 25 basis points to 2.25% and the exit fee was increased by 50 basis points to 1.0%. At December 31, 2020, the 237 11th Loan had a balance of \$53.2 million and an effective interest rate of 2.75%. The blended effective interest rate at December 31, 2019 for both the 237 11th Loan and the mezzanine loan was approximately 5.48%. The 237 11th Loan is non-recourse to us except for environmental indemnity agreements, certain non-recourse carve-out and carry guaranties covering among other things interest and operating expenses, and in the case of the mortgage loan, a guaranty of 25% of the principal amount, decreasing to 10% of the principal balance upon the debt yield ratio becoming equal to or greater than 7.0%. The 237 11th Loan is prepayable at any time in whole, and under certain circumstances in part, upon payment of a 0.50% deferred commitment fee (unless the loan is refinanced with the mortgage lender in which case no such fee is payable).

The 237 11th Loan requires us to comply with various customary affirmative and negative covenants and provides for certain events of default, the occurrence of which would permit the lender to declare the 237 11th Loan due and payable, among other remedies. Effective December 31, 2020, the recourse guaranty for the 237 11th Loan was amended to decrease certain liquidity requirements. As of December 31, 2020, we were in compliance with all covenants of the 237 11th Loan.

77 Greenwich Construction Facility

In December 2017, we closed on a \$189.5 million construction facility for 77 Greenwich (the “77 Greenwich Construction Facility”). We draw down proceeds as costs related to the construction of the new mixed-use building are incurred. The plans call for the development of 90 luxury residential condominium apartments, 7,500 square feet of retail space, almost all of which is street level, a 476-seat elementary school serving New York City District 2, including the adaptive reuse of the landmarked Robert and Anne Dickey House, and construction of a new handicapped accessible subway entrance on Trinity Place. There was an outstanding balance of approximately \$139.0 million and \$104.9 million on the 77 Greenwich Construction Facility at December 31, 2020 and 2019, respectively.

The 77 Greenwich Construction Facility has a four-year term ending January 2022 with an extension option for an additional year under certain circumstances. The collateral for the 77 Greenwich Construction Facility is the borrower's fee interest in 77 Greenwich, which is the subject of a mortgage in favor of the 77 Greenwich Lender, as well as related collateral and pledge of equity in the borrower. The 77 Greenwich Construction Facility bears interest on amounts drawn at a rate per annum equal to the greater of (i) LIBOR plus 8.25% and (ii) 9.25%. The effective interest rate at December 31, 2020 and 2019 was 9.25% and 10.01%, respectively. The 77 Greenwich Construction Facility provides for certain loan proceeds to be advanced as an interest holdback and to the extent that the cash flow from 77 Greenwich is insufficient to pay the interest payments then due and payable, funds in the interest holdback will be applied by the lender as a disbursement to the borrower to make the monthly interest payments on the 77 Greenwich Construction Facility, subject to certain conditions. The 77 Greenwich Construction Facility may be prepaid in part in certain circumstances such as in the event of the sale of residential and retail condominium units. Pursuant to the 77 Greenwich Construction Facility, we are required to achieve completion of the construction work and the improvements for the project on or before June 19, 2021, subject to certain exceptions.

In connection with the 77 Greenwich Construction Facility, we executed certain guaranties and environmental indemnities, including a recourse guaranty under which we are required to satisfy certain net worth and liquidity requirements including the Company maintaining liquidity of at least \$15.0 million, consisting of unrestricted cash and, for up to 50% of the requirement, qualified lines of credit, and additional customary affirmative and negative covenants for loans of this type and our agreements with the SCA. The liquidity requirement decreased to \$10.0 million upon conveyance of the school condominium to the SCA in April 2020. We also entered into certain completion and other guarantees with the lender and the SCA in connection with the 77 Greenwich Construction Facility. As of December 31, 2020, we were in compliance with all covenants of the 77 Greenwich Construction Facility. In early April 2020, New York State required all non-essential construction projects be shut down due to the impact of the COVID-19 pandemic. As a result, the construction of 77 Greenwich was temporarily suspended. Construction recommenced mid-April, initially on a modified basis, as certain work was deemed "essential" construction. Since June 2020, a full crew has been on site and operating in accordance with applicable guidelines in response to the COVID-19 outbreak. Future delays in construction may result in a delay in our ability to complete the construction project on its original timeline and our ability to sell condominium units. Despite the construction delays, we currently expect that the construction project will be completed within budget. We currently anticipate receiving our temporary certificates of occupancy ("TCO") in stages through the first half of 2021.

In December 2020, we entered into an amendment to the 77 Greenwich Construction Facility, pursuant to which, among other things, the sales pace covenants were amended and extended to provide for a reduction in the gross value of condominium sales at the 77 Greenwich and to afford more favorable cure rights than previously existed if a required sales threshold is not satisfied. The sales pace covenants will be tested on April 1, 2021, July 1, 2021 and October 2, 2021. Additionally, the outside date by which we are required to have substantially completed construction of all improvements to 77 Greenwich was extended to November 30, 2021 and the liquidity requirements will be reduced based on construction progress. We received our first TCO on March 8, 2021. Upon the granting of the TCO and our condominium offering plan being declared effective, unit purchasers may occupy their units. In connection with this amendment, we paid down \$8.0 million of the 77 Greenwich Construction Facility and funded certain reserves to the lender, a portion of which was funded by a release of certain cash collateral and the balance of which was funded by a mezzanine loan (see below). Under the terms of this amendment, to the extent that any payments are needed to satisfy the minimum multiple fee owed to the mortgage lender upon the repayment of the 77 Greenwich Construction Facility that have not already been paid, such minimum multiple fee will be reduced by 60% if the 77 Greenwich Construction Facility is repaid in full prior to June 30, 2021, and by 40% if repaid between July 1, 2021 and September 30, 2021. The Company currently expects any such payments to be minimal (if anything).

Mezzanine Loan

In December 2020, we entered into a mezzanine loan agreement with the CCF Lender (the "Mezzanine Loan Agreement", and the loan thereunder, the "Mezzanine Loan"). The Mezzanine Loan is for an amount of \$7.5 million and has a term of three years with two one-year extension options, exercisable under certain circumstances. The collateral for the Mezzanine Loan is the borrower's equity interest in its direct, wholly-owned subsidiary, which owns 100% of the equity interests in the borrower under the 77 Greenwich Construction Facility. The blended interest rate for the 77 Greenwich Construction Facility and the Mezzanine Loan, assuming the 77 Greenwich Construction Facility and the Mezzanine Loan are fully drawn, is 9.44% on an annual basis, representing a variance from the current rate of approximately 19 basis points. Interest

on the Mezzanine Loan is not payable on a monthly basis but instead is automatically added to the unpaid principal amount on a monthly basis (and therefore accrues interest) and is payable in full on the maturity date of the Mezzanine Loan. Upon final repayment of the Mezzanine Loan, a MOIC shall be due on substantially the same terms as provided for in the Corporate Credit Facility. The Mezzanine Loan may not be prepaid prior to prepayment in full of the 77 Greenwich Construction Facility, but if the 77 Greenwich Construction Facility is being prepaid in full, the Mezzanine Loan may be prepaid simultaneously therewith. Subject to the prior sentence the Mezzanine Loan may be prepaid in whole or in part, without penalty or premium (other than payment of the MOIC amount, if applicable, as provided above), upon prior written notice to mezz lender. In connection with the Mezzanine Loan, the Company entered into a completion guaranty, carry guaranty, equity funding guaranty, recourse guaranty and environmental indemnification undertaking substantially consistent with the Company's existing guarantees made to the 77 Greenwich Lender in connection with the 77 Greenwich Construction Facility.

In December 2017, we entered into an interest rate cap agreement as required under the 77 Greenwich Construction Facility. The interest rate cap agreement provided the right to receive cash if the reference interest rate rose above a contractual rate. We paid a premium of approximately \$393,000 for the 2.5% interest rate cap on the 30-day LIBOR rate on a notional amount of \$189.5 million. The interest rate cap matured in December 2020. The fair value of the interest rate cap at December 31, 2019 was zero. We did not designate this interest rate cap as a hedge and are recognizing the change in estimated fair value in interest expense.

Secured Line of Credit

Our \$12.75 million secured line of credit is secured by the Paramus, New Jersey property. In March 2021, we entered into an amendment to extend the maturity date to March 2022. The secured line of credit, which prior to the amendment, bore interest at a rate of 200 basis points over the 30-day LIBOR, now bears interest at the prime rate, currently 3.25%. The secured line of credit is pre-payable at any time without penalty. A portion of the secured line of credit is subject to an unused fee. This secured line of credit had an outstanding balance of \$7.75 million and \$5.25 million at December 31, 2020 and 2019, respectively, and an effective interest rate of 2.14% and 3.76% as of December 31, 2020 and 2019, respectively.

250 North 10th Note

We own a 10% interest in a joint venture with TF Cornerstone (the "250 North 10th JV") formed to acquire and operate 250 North 10th, a newly built 234-unit apartment building in Williamsburg, Brooklyn, New York. On January 15, 2020, the 250 North 10th JV closed on the acquisition of the property through a wholly-owned special purpose entity. Our share of the equity totaling approximately \$5.9 million was funded through a loan (the "Partner Loan") from our joint venture partner. The Partner Loan had a balance of \$5.9 million and \$670,000 at December 31, 2020 and 2019, respectively, bears interest at 7.0% and is prepayable any time within its four year term. Our partner has the option of having the Partner Loan repaid in our common stock if the price of our common stock exceeds \$6.50 per share at the time of conversion.

Principal Maturities

Combined aggregate principal maturities of our loans, secured line of credit and note payable as of December 31, 2020, excluding extension options, were as follows (dollars in thousands):

Year of Maturity	Principal
2021	\$ 61,153
2022	139,025
2023	5,863
2024	43,250
2025	—
	<u>249,291</u>
Less: deferred finance costs, net	(6,493)
Total loans, secured line of credit, and note payable, net	<u>\$ 242,798</u>

Interest

Consolidated interest expense (income), net includes the following (dollars in thousands):

	Year Ended December 31, 2020	Year Ended December 31, 2019	Year Ended December 31, 2018
Interest expense	\$ 17,174	\$ 13,513	\$ 6,848
Interest capitalized	(15,719)	(13,513)	(6,848)
Interest income	(57)	(67)	(212)
Interest expense (income), net	<u>\$ 1,398</u>	<u>\$ (67)</u>	<u>\$ (212)</u>

NOTE 11 – STOCKHOLDERS’ EQUITY***Capital Stock***

Our authorized capital stock consists of 120,000,000 shares consisting of 79,999,997 shares of common stock, \$0.01 par value per share, two (2) shares of preferred stock, \$0.01 par value per share (which have been redeemed in accordance with their terms and may not be reissued), one (1) share of special stock, \$0.01 par value per share, and 40,000,000 shares of a new class of blank-check preferred stock, \$0.01 par value per share. As of December 31, 2020 and 2019, there were 38,345,540 shares and 37,612,465 shares of common stock issued, respectively, and 32,172,107 shares and 31,881,961 shares of common stock outstanding, respectively, with the difference being held in treasury stock.

Warrants

In December 2019, we entered into a Warrant Agreement (the “Warrant Agreement”) with the lender under our Corporate Credit Facility (see Note 10 – Loans Payable and Secured Line of Credit – Corporate Credit Facility) (the “Warrant Holder”) pursuant to which we issued ten-year warrants (the “Warrants”) to the Warrant Holder to purchase up to 7,179,000 shares of our common stock. The Warrants are exercisable immediately and had an exercise price of \$6.50 per share (the “Exercise Price”), payable in cash or pursuant to a cashless exercise. The Warrant Agreement provides that we will not issue shares of common stock upon exercise of the Warrants if either (1) the Warrant Holder, together with its affiliates, would beneficially hold 5% or more of the shares of common stock outstanding immediately after giving effect to such exercise, or (2) such exercise would result in the issuance of more than 19.9% of the shares of issued and outstanding common stock as of the date of the Warrant Agreement, prior to giving effect to the issuance of the Warrants, and such issuance would require shareholder approval under the NYSE American LLC listing requirements. On December 22, 2020, the Company entered into the Warrant Agreement Amendment, whereby the exercise price of the warrants issued in connection with the Corporate Credit Agreement was amended to be \$4.50 per share.

The Warrant Agreement provides for certain adjustments to the Exercise Price and/or the number of shares of common stock issuable upon exercise pursuant to customary anti-dilution provisions. Upon a change of control of the Company, the Warrants will be automatically converted into the right to receive the difference between the consideration the Warrant Holder would have received if it exercised the Warrants immediately prior to the change of control and the aggregate Exercise Price, payable at the election of the Warrant Holder in the consideration payable in the change of control or, if such consideration is other than cash, in cash. The Warrants, which were initially valued at approximately \$1.8 million at December 31, 2019, are accounted for under the liability method. These Warrants were valued at approximately \$830,000 at December 31, 2020. The \$965,000 change in fair value of the Warrants was recorded as an unrealized gain in the consolidated statement of operations and comprehensive income (loss) during the year ended December 31, 2020.

In connection with the issuance of the Warrants, we also entered into a registration rights agreement with the Warrant Holder, pursuant to which we agreed to register for resale the shares of common stock issuable upon exercise of the Warrants (the “Registration Rights Agreement”), and a letter agreement with the Warrant Holder (the “Letter Agreement”) pursuant to which we agreed to provide (i) certain information rights, (ii) the right to appoint one member of the board of directors of the Company, or in lieu thereof a board observer, and (iii) certain preemptive rights for a period of five years following the exercise of any of the Warrants so long as the Warrant Holder continues to hold shares of common stock. With respect to the board appointment right, the Letter Agreement includes a similar right as the Corporate Credit

Agreement described in Note 10 – Loans Payable and Secured Line of Credit, so long as the Warrant Holder together with its affiliates beneficially holds at least 5% of the outstanding common stock of the Company, assuming the exercise of all outstanding Warrants; provided that the Warrant Holder does not have such appointment right at any time a Designee or observer may be appointed pursuant to the terms of the Corporate Credit Agreement.

At-The-Market Equity Offering Program

In December 2016, we entered into an “at-the-market” equity offering program (the “ATM Program”), to sell up to an aggregate of \$12.0 million of our common stock. The sale agreement with our broker expired in accordance with its term on June 30, 2019 and was not extended. We did not sell any shares through this program in 2018 or 2019.

Share Repurchase Program

In December 2019, our Board of Directors approved a stock repurchase program under which we can buy up to \$5.0 million of shares of our common stock, which is now subject to the terms of our Corporate Credit Facility. Repurchases under the stock repurchase program may be made through open market or privately negotiated transactions at times and on such terms and in such amounts as management deems appropriate, subject to market conditions, regulatory requirements and other factors. The program does not obligate the Company to repurchase any particular amount of common stock, and may be suspended or discontinued at any time without notice.

During the year ended December 31, 2019, we purchased 49,394 shares of our common stock at an average price of \$3.01 per share. During the year ended December 31, 2020, we purchased 200,803 shares of our common stock at an average price of \$1.67 per share, for a total of 250,197 shares of our common stock purchased at an average price of \$1.93 per share since the inception of the share repurchase program. As of December 31, 2020, approximately \$4.5 million remained available for share purchase under the share repurchase program, subject to the terms of our Corporate Credit Facility.

Preferred Stock

We are authorized to issue two shares of preferred stock (one share each of Series A and Series B preferred stock, each of which was automatically redeemed in 2016 and may not be reissued), one share of special stock and 40,000,000 shares of blank-check preferred stock. The share of special stock was issued and sold to Third Avenue Trust, on behalf of Third Avenue Real Estate Value Fund (“Third Avenue”), and enables Third Avenue or its affiliated designee to elect one member of the Board of Directors.

NOTE 12 – STOCK-BASED COMPENSATION

Stock Incentive Plan

We adopted the Trinity Place Holdings Inc. 2015 Stock Incentive Plan (the “SIP”), effective September 9, 2015. Prior to the adoption of the SIP, we granted restricted stock units (“RSUs”) to our executive officers and employees pursuant to individual agreements. The SIP, which has a ten-year term, authorizes (i) stock options that do not qualify as incentive stock options under Section 422 of the Code, or NQSOs, (ii) stock appreciation rights, (iii) shares of restricted and unrestricted common stock, and (iv) RSUs. The exercise price of stock options will be determined by the compensation committee, but may not be less than 100% of the fair market value of the shares of common stock on the date of grant. To date, no stock options have been granted under the SIP. The SIP initially authorized the issuance of up to 800,000 shares of common stock. In June 2019, our stockholders approved an amendment and restatement of the SIP, including an increase

to the number of shares of common stock available for awards under the SIP by 1,000,000 shares. Our SIP activity as of December 31, 2020 and 2019 was as follows:

	Year Ended December 31, 2020		Year Ended December 31, 2019	
	Number of Shares	Weighted Average Fair Value at Grant Date	Number of Shares	Weighted Average Fair Value at Grant Date
Balance available, beginning of period	1,017,535	—	340,760	—
Additional shares approved by stockholders	—	—	1,000,000	—
Granted to employees	(295,500)	\$ 3.01	(267,000)	\$ 4.15
Granted to non-employee directors	(59,660)	\$ 1.65	(13,050)	\$ 3.98
Deferred under non-employee director's deferral program	(114,005)	\$ 1.76	(43,175)	\$ 3.98
Balance available, end of period	<u>548,370</u>	<u>—</u>	<u>1,017,535</u>	<u>—</u>

Restricted Stock Units

We grant RSUs to certain executive officers and employees as part of compensation. These grants generally have vesting dates ranging from immediate vest at grant date to three years, with a distribution of shares at various dates ranging from the time of vesting up to seven years after vesting.

During the year ended December 31, 2020, we granted 295,500 RSUs to certain employees. These RSUs vest and settle at various times over a two or three year period, subject to each employee's continued employment. Approximately \$583,000 in compensation expense related to these shares was amortized during the year ended December 31, 2020, of which approximately \$203,000 was capitalized into real estate under development.

Total stock-based compensation expense recognized in the consolidated statements of operations and comprehensive income (loss) during the years ended December 31, 2020, 2019 and 2018 totaled \$708,000, \$859,000, and \$1.2 million, respectively, which is net of \$362,000, \$480,000 and \$665,000 capitalized as part of real estate under development, respectively.

	Year ended December 31, 2020		Year ended December 31, 2019		Year ended December 31, 2018	
	Number of Shares	Weighted Average Fair Value at Grant Date	Number of Shares	Weighted Average Fair Value at Grant Date	Number of Shares	Weighted Average Fair Value at Grant Date
Non-vested at beginning of period	453,334	\$ 5.00	381,167	\$ 6.39	677,734	\$ 6.44
Granted RSUs	295,500	\$ 3.01	267,000	\$ 4.15	176,000	\$ 6.49
Vested	(279,834)	\$ 5.46	(194,833)	\$ 5.98	(472,567)	\$ 6.20
Non-vested at end of period	<u>469,000</u>	<u>\$ 3.43</u>	<u>453,334</u>	<u>\$ 5.00</u>	<u>381,167</u>	<u>\$ 6.39</u>

As of December 31, 2020, there was approximately \$425,000 of total unrecognized compensation expense related to unvested RSUs, which is expected to be recognized through December 2022.

During the year ended December 31, 2020, we issued 482,939 shares of common stock to employees and executive officers to settle vested RSUs from previous RSU grants. In connection with those transactions, we repurchased 222,575 shares to provide for the employees' withholding tax liabilities.

Director Deferral Plan

Our Non-Employee Director's Deferral Program (the "Deferral Program"), as amended in December 2018, allows our non-employee directors to elect to receive the cash portion of their annual compensation in shares of the Company's common stock, as well as to defer receipt of the portion of their annual board compensation that is paid in equity. Any deferred amounts are paid under the SIP (as is non-employee directors' annual equity compensation that is not deferred). Compensation deferred under the Deferral Program is reflected by the grant of stock units equal to the number of shares

that would have been received absent a deferral election. The stock units, which are fully vested at grant, generally will be settled under the SIP for an equal number of shares of common stock within 10 days after the participant ceases to be a director. In the event that we distribute dividends, each participant shall receive a number of additional stock units (including fractional stock units) equal to the quotient of (i) the aggregate amount of the dividend that the participant would have received had all outstanding stock units been shares of common stock divided by (ii) the closing price of a share of common stock on the date the dividend was issued.

As of December 31, 2020 and 2019 a total of 177,159 and 63,154 stock units, respectively, have been deferred under the Deferral Program.

NOTE 13 – INVESTMENTS IN UNCONSOLIDATED JOINT VENTURES

We own a 50% interest in a joint venture (the “Berkley JV”) formed to acquire and operate The Berkley, a newly built 95-unit multi-family property. In December 2016, the Berkley JV closed on the acquisition of The Berkley for a purchase price of \$68.885 million, of which \$42.5 million was financed through a 10-year loan (the “Berkley Loan”) secured by The Berkley, and the balance was paid in cash, half of which was funded by us. The non-recourse Berkley Loan bore interest at the 30-day LIBOR rate plus 216 basis points, was interest only for five years, was pre-payable after two years with a 1% prepayment premium, had covenants and defaults customary for a Freddie Mac financing and had an effective interest rate of 3.92% at December 31, 2019. On February 28, 2020, in connection with a refinancing, the Berkley JV repaid the Berkley Loan in full and replaced it with a new 7-year, \$33.0 million loan (the “New Berkley Loan”) which bears interest at a fixed rate of 2.717% and is interest only during the initial five years. It is pre-payable at any time and can be increased by up to \$6.0 million under certain circumstances. We and our joint venture partner are joint and several recourse carve-out guarantors under the New Berkley Loan.

We own a 10% interest in a joint venture with TF Cornerstone (the “250 North 10th JV”) formed to acquire and operate 250 North 10th, a newly built 234-unit apartment building in Williamsburg, Brooklyn, New York. On January 15, 2020, the 250 North 10th JV closed on the acquisition of the property for a purchase price of \$137.75 million, of which \$82.75 million was financed through a 15-year mortgage loan (the “250 North 10th Note”) secured by 250 North 10th and the balance was paid in cash. Our share of the equity totaling approximately \$5.9 million was funded through a loan (the “Partner Loan”) from our joint venture partner. The Partner Loan bears interest at 7.0% which is payable to the extent of available cash flow and is prepayable any time within its four year term. Our partner has the option of having the Partner Loan repaid in our common stock if the price of our common stock exceeds \$6.50 per share at the time of conversion. The non-recourse 250 North 10th Note bears interest at 3.39% for the duration of the loan term and has a non-recourse carve out guaranty executed by us. We earned an acquisition fee at closing and are entitled to ongoing asset management fees and a promote upon the achievement of certain performance hurdles.

As of December 31, 2020, we have one unconsolidated VIE, namely 250 North 10th. We do not consolidate this entity because we are not the primary beneficiary and the nature of our involvement in the activities of this entity does not give us power over decisions that significantly affect this entity’s economic performance. We account for our investment in this entity under the equity method (see Note 2 – Summary of Significant Accounting Policies – Basis of Presentation – Principles of Consolidation). As of December 31, 2020, the net carrying amount of our investment in this entity was \$5.7 million and our maximum exposure to loss in this entity is limited to the carrying amount of our investment.

As we do not control these joint ventures, we account for them under the equity method of accounting. The combined balance sheets for our unconsolidated joint ventures at December 31, 2020 and 2019 are as follows (in thousands):

	December 31, 2020	December 31, 2019
ASSETS		
Real estate, net	\$ 167,749	\$ 50,508
Cash and cash equivalents	1,344	344
Restricted cash	766	435
Tenant and other receivables, net	254	42
Prepaid expenses and other assets, net	204	66
Intangible assets, net	24,006	11,757
Total assets	\$ 194,323	\$ 63,152
LIABILITIES		
Mortgages payable, net	\$ 114,218	\$ 41,207
Accounts payable and accrued expenses	1,705	598
Total liabilities	115,923	41,805
MEMBERS' EQUITY		
Members' equity	92,070	27,169
Accumulated deficit	(11,943)	(5,822)
Accumulated other comprehensive loss	(1,727)	—
Total members' equity	78,400	21,347
Total liabilities and members' equity	\$ 194,323	\$ 63,152
Our investments in unconsolidated joint ventures	\$ 19,379	\$ 10,673

The statements of operations for the unconsolidated joint venture for the years ended December 31, 2020, 2019, and 2018 are as follows (dollars in thousands):

	For the Year Ended December 31, 2020	For the Year Ended December 31, 2019	For the Year Ended December 31, 2018
Revenues			
Rental revenues	\$ 12,747	\$ 3,314	\$ 3,447
Total revenues	12,747	3,314	3,447
Operating Expenses			
Property operating expenses	3,595	956	1,033
Real estate taxes	94	45	45
General and administrative	10	10	7
Amortization	5,676	536	536
Depreciation	3,833	1,328	1,318
Total operating expenses	13,208	2,875	2,939
Operating (loss) income	(461)	439	508
Interest expense, net	(3,780)	(1,905)	(1,791)
Interest expense -amortization of deferred finance costs	(1,881)	(172)	(172)
Net loss	\$ (6,122)	\$ (1,638)	\$ (1,455)
Our equity in net loss from unconsolidated joint ventures	\$ (1,571)	\$ (819)	\$ (728)

NOTE 14 – QUARTERLY FINANCIAL DATA (unaudited)

The following table reflects quarterly condensed consolidated statements of operations for the periods indicated (dollars in thousands, except per share amounts):

	For the Year Ended December 31, 2020			
	January 1, 2020 to March 31, 2020	April 1, 2020 to June 30, 2020	July 1, 2020 to September 30, 2020	October 1, 2020 to December 31, 2020
Revenues				
Rental revenues	\$ 304	\$ 274	\$ 196	\$ 219
Other income	23	128	80	32
Total revenues	327	402	276	251
Operating Expenses				
Property operating expenses	1,593	1,162	2,709	2,702
Real estate taxes	20	20	19	20
General and administrative	1,334	1,431	1,188	1,002
Pension related costs	165	165	165	(150)
Transaction related costs	15	89	27	2
Depreciation and amortization	601	785	690	692
Total operating expenses	3,728	3,652	4,798	4,268
Gain on sale of school condominium	—	24,196	—	—
Operating (loss) income	(3,401)	20,946	(4,522)	(4,017)
Equity in net loss from unconsolidated joint ventures	(991)	(135)	(176)	(269)
Unrealized gain (loss) on warrants	1,200	188	(58)	(365)
Interest income (expense), net	4	(254)	(545)	(603)
Interest expense - amortization of deferred finance costs	—	(108)	(40)	(54)
(Loss) income before taxes	(3,188)	20,637	(5,341)	(5,308)
Tax expense	(65)	(102)	(51)	(88)
Net (loss) income attributable to common stockholders	<u>\$ (3,253)</u>	<u>\$ 20,535</u>	<u>\$ (5,392)</u>	<u>\$ (5,396)</u>
(Loss) income per share - basic	\$ (0.10)	\$ 0.64	\$ (0.17)	\$ (0.17)
(Loss) income per share - diluted	\$ (0.10)	\$ 0.64	\$ (0.17)	\$ (0.16)
Weighted average number of common shares - basic	32,268	32,303	32,297	32,305
Weighted average number of common shares - diluted	32,268	32,303	32,297	32,860

	For the Year Ended December 31, 2019			
	January 1, 2019 to March 31, 2019	April 1, 2019 to June 30, 2019	July 1, 2019 to September 30, 2019	October 1, 2019 to December 31, 2019
Revenues				
Rental revenues	\$ 1,293	\$ 1,281	\$ 946	\$ 542
Total revenues	1,293	1,281	946	542
Operating Expenses				
Property operating expenses	680	816	1,191	2,641
Real estate taxes	84	90	90	64
General and administrative	1,313	1,373	1,286	1,377
Pension related costs	183	183	183	184
Transaction related costs	25	112	29	1
Depreciation and amortization	940	837	600	600
Total operating expenses	3,225	3,411	3,379	4,867
Gain on sale of real estate	—	—	—	9,521
Operating (loss) income	(1,932)	(2,130)	(2,433)	5,196
Equity in net loss from unconsolidated joint venture	(221)	(186)	(218)	(194)
Interest income, net	21	18	14	14
(Loss) income before taxes	(2,132)	(2,298)	(2,637)	5,016
Tax (expense) income	(81)	(110)	(8)	71
Net (loss) income attributable to common stockholders	<u>\$ (2,213)</u>	<u>\$ (2,408)</u>	<u>\$ (2,645)</u>	<u>\$ 5,087</u>
(Loss) income per share - basic and diluted	\$ (0.07)	\$ (0.08)	\$ (0.08)	\$ 0.16
Weighted average number of common shares - basic and diluted	31,796	31,918	31,953	31,972

NOTE 15 – SUBSEQUENT EVENTS

On March 2, 2021, we entered into an amendment to extend the maturity date of our Secured Line of Credit to March 2022.

On March 8, 2021, we obtained our first TCO for 77 Greenwich. This TCO covers six residential floors, the lobby, mechanical rooms, and portions of the cellar.

Other than as disclosed above, there were no subsequent events requiring adjustment to, or disclosure in, the consolidated financial statements.

Schedule III - Consolidated Real Estate and Accumulated Depreciation
(dollars in thousands)

Property Description	Encumbrances (1)	Initial Cost			Cost Capitalized Subsequent to Acquisition	Building, Building and Tenant Improvements (2)	Amounts at which Carried at December 31, 2020					Date of Acquisition (A) / Construction (C)
		Land and Land Improvements	Real Estate Under Development	Building, Building and Tenant Improvements (2)			Land	Real Estate Under Development	Building, Building and Tenant Improvements (2)	Total	Accumulated Depreciation	
77 Greenwich, NY	\$ 144,219	\$ —	\$ 16,633	\$ —	\$ 189,000	\$ —	\$ —	\$ 205,633	\$ —	\$ 205,633	\$ —	1990 (A)
Brooklyn, New York	52,869	27,939	—	42,177	—	87	27,939	—	42,278	70,217	4,191	2018 (A) / 2017(C)
Paramus, NJ	—	—	1,548	—	5,997	—	—	7,545	—	7,545	—	1980 (A) / 1984(C)
	<u>\$ 197,088</u>	<u>\$ 27,939</u>	<u>\$ 18,181</u>	<u>\$ 42,177</u>	<u>\$ 194,997</u>	<u>\$ 87</u>	<u>\$ 27,939</u>	<u>\$ 213,178</u>	<u>\$ 42,278</u>	<u>\$ 283,395</u>	<u>\$ 4,191</u>	

- (1) Encumbrances are net of deferred finance costs of approximately \$2.6 million.
- (2) Depreciation on buildings and improvements reflected in the consolidated statements of operations and comprehensive income (loss) is calculated on the straight-line basis over estimated useful lives of 10 to 39 years.

(a) Reconciliation of Total Real Estate Properties:

The following table reconciles the activity for the real estate properties for the periods reported (dollars in thousands):

	Year Ended December 31, 2020	Year Ended December 31, 2019
Balance at beginning of period	\$ 295,803	\$ 216,672
Additions	51,715	89,885
Sold real estate	—	(10,754)
Sold condominium to the SCA	(64,123)	—
Balance at end of period	<u>\$ 283,395</u>	<u>\$ 295,803</u>

The aggregate cost of land, real estate under development, building and improvements, before depreciation, for federal income tax purposes at December 31, 2020 and 2019 was \$283.4 million (unaudited) and \$295.8 million (unaudited), respectively.

(b) Reconciliation of Accumulated Depreciation:

The following table reconciles the accumulated depreciation for the periods reported (dollars in thousands):

	Year Ended December 31, 2020	Year Ended December 31, 2019
Balance at beginning of period	\$ 2,577	\$ 3,608
Depreciation related to real estate	1,614	1,735
Write-off of depreciation related to sold real estate	—	(2,766)
Balance at end of period	<u>\$ 4,191</u>	<u>\$ 2,577</u>

FIRST AMENDMENT TO MASTER LOAN AGREEMENT

THIS FIRST AMENDMENT TO MASTER LOAN AGREEMENT (this “**Amendment**”) is entered into as of December 22, 2020 (the “**Amendment Date**”) by and between **TPHGREENWICH OWNER LLC**, a Delaware limited liability company (“**Borrower**”) and **MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY** a Massachusetts corporation (“**Lender**” and, to the extent applicable pursuant to Article 15, “**Administrative Agent**”).

RECITALS:

A. Borrower is the owner of certain real property more particularly described on Exhibit A attached hereto.

B. Borrower and Lender are parties to that certain Master Loan Agreement (as amended by (1) that certain letter agreement, dated as of March 20, 2019, and (2) that certain letter agreement, dated as of July 12, 2019, and as hereinafter amended, the “**Loan Agreement**”), that certain Building Loan Agreement (as amended by that certain First Amendment to Building Loan Agreement, dated as of September 30, 2019) and that certain Project Loan Agreement each dated as of December 22, 2017, pursuant to which Lender agreed to make (i) a Term Loan to Borrower in the original principal amount of \$32,302,285.00, (ii) a Building Loan to Borrower in the maximum principal amount of up to \$128,197,878.00 to reimburse Borrower for (or to pay directly) certain construction costs in connection with the construction of the Improvements on the Land in accordance with the Approved Plans, and (iii) a Project Loan to Borrower in the maximum principal amount of up to \$28,999,837.00 to reimburse Borrower for (or to pay directly) certain other costs incurred by Borrower in connection with the construction of the Improvements on the Land in accordance with the Approved Plans, and each such loan is secured, in part, by all of Borrower’s assets. The Loan is secured by, *inter alia*, the Mortgage and evidenced by the Note.

C. Lender and Borrower desire to amend the Loan Agreement as set forth this Amendment.

D. Unless otherwise defined herein, all initially capitalized terms used in this Amendment shall have the respective meanings ascribed to such terms in the Loan Agreement.

NOW, THEREFORE, in consideration of the terms and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to, the parties agree to be bound as follows:

1. Amendment to Loan Agreement. The Loan Agreement is hereby amended and modified as follows:

(a) The definition of “**Amendment Date**” is hereby added in Section 1.1 to read as follows:

“**Amendment Date**” shall have the meaning set forth in the definition of “Amendment to MLA.””

(b) The definition of “**Amendment to MLA**” is hereby added in Section 1.1 to read as follows:

“**Amendment to MLA**” means that certain First Amendment to Master Loan Agreement, dated as of December 22, 2020 (the “**Amendment Date**”), by and between Borrower and Lender.”

(c) The definition of “**Anticipated TCO Date Schedule**” is hereby added in Section 1.1 to read as follows:

“**Anticipated TCO Date Schedule**” shall have the meaning set forth in the Section 3 of this Amendment.”

(d) The definition of “**Completion**”, “**Complete**” or “**Completed**” in Section 1.1 is hereby deleted in its entirety and replaced with the following:

“**Completion**”, “**Complete**” or “**Completed**” means the substantial completion of the Project and Construction Work (excluding SCA Pre- and Post-Turnover Work and SCA Additional Construction Items) free and clear of mechanics’ liens and comparable liens (other than those that have been bonded, otherwise discharged or are being contested pursuant to Section 4.7 hereof) in accordance with the Approved Budget (taking into account Available Cost Savings and permitted reallocations from Contingency as set forth in Section 3.9), the Approved Plans, with all necessary Permits and certificates of occupancy for the Subdivided Residential Units (which may be temporary) and in compliance in all material respects with all applicable Legal Requirements and Permits, and subject only to the completion of Punch List Items. Completion shall specifically require that the Condominium Documents (other than the Offering Plan) have been submitted for recordation in Register’s Office, the School Unit has been conveyed to the SCA in accordance with the School Unit Purchase Agreement, the Master Lease and the Sublease have been terminated and terminations of the memoranda thereof have been recorded in the Register’s Office, and that the Borrower has satisfied all of its obligations under the School Unit Purchase Agreement (other than the SCA Pre- and Post-Turnover Work and the SCA Additional Construction Items and any obligation that the SCA has waived).

(e) The definition of “**Contingency Reserve**” is hereby added in Section 1.1 to read as follows:

““**Contingency Reserve**” means an interest bearing reserve account established with Lender or Administrative Agent at a financial institution selected by Lender (subject to Borrower’s approval, not to be unreasonably withheld, conditioned or delayed), which financial institution must meet the Rating Criteria, in which Lender holds a perfected security interest for the benefit of Lender, and into which the deposits contemplated in Section 2(c) of that certain First Amendment to Master Loan Agreement dated as of December 22, 2020, will be deposited.”

(f) The definition of “**Credit Agreement**” is hereby added in Section 1.1 to read as follows:

““**Credit Agreement**” means that certain Credit Agreement, dated as of December 19, 2019, by and among Trinity Place Holdings Inc., a Delaware corporation, as borrower, certain subsidiaries of Trinity Place Holdings Inc., a Delaware corporation, from time to time party thereto, as guarantors, the initial lenders named therein, as initial lenders, and Trimont Real Estate Advisors, as administrative agent (“**Credit Agreement Administrative Agent**”), as (i) amended by that certain Amendment No. 1 to Credit Agreement, dated as of January 30, 2020, (ii) amended by that certain Amendment No. 2 to Credit Agreement, dated as of the date hereof and (iii) the same may be further amended, supplemented or otherwise modified from time to time.”

follows: (g) The definition of “**Intercreditor Agreement**” is hereby added in Section 1.1 to read as

““**Intercreditor Agreement**” means that certain Intercreditor Agreement, dated as of the date hereof, by and between Lender and Mezzanine Lender.”

as follows: (h) The definition of “**Mezzanine Administrative Agent**” is hereby added in Section 1.1 to read

““**Mezzanine Administrative Agent**” means TPHS Lender II LLC, a Delaware limited liability company, as administrative agent, together with any successor administrative agent appointed pursuant to the Mezzanine Loan Agreement.”

(i) The definition of “**Mezzanine Borrower**” is hereby added in Section 1.1 to read as follows:

““**Mezzanine Borrower**” means TPHGreenwich Subordinate Mezz LLC, a Delaware limited liability company.”

(j) The definition of “**Mezzanine Lender**” is hereby added in Section 1.1 to read as follows:

““**Mezzanine Lender**” means TPHS Lender II LLC, a Delaware limited liability company, each other lender from time to time party to the Mezzanine Loan Agreement and their respective permitted successors and assigns.”

(k) The definition of “**Mezzanine Loan**” is hereby added in Section 1.1 to read as follows:

““**Mezzanine Loan**” has the meaning ascribed to the term “Loan” in the Mezzanine Loan Agreement.”

(l) The definition of “**Mezzanine Loan Agreement**” is hereby added in Section 1.1 to read as follows:

““**Mezzanine Loan Agreement**” means that certain Mezzanine Loan Agreement, dated as of the Amendment Date, by and between Mezzanine Administrative Agent, Mezzanine Lender and Mezzanine Borrower, as the foregoing may be amended, supplemented or otherwise modified from time to time, subject to the limitations and agreements contained in this Agreement.”

(m) The definition of “**Mezzanine Loan Documents**” is hereby added in Section 1.1 to read as follows:

““**Mezzanine Loan Documents**” means the documents and instruments set forth on Exhibit K attached hereto, as the foregoing may be amended, supplemented or otherwise modified from time to time, subject to the limitations and agreements contained in this Agreement.”

(n) The definition of “**Mezzanine Note**” is hereby added in Section 1.1 to read as follows:

““**Mezzanine Note**” means that certain Mezzanine Promissory Note dated as of the Amendment Date in the original principal amount of \$7,500,000.00 made by Mezzanine Borrower to Mezzanine Lender, as the foregoing may be amended, supplemented or otherwise modified from time to time, subject to the limitations and agreements contained in this Agreement.”

(o) The definition of “**Mezzanine Pledge Agreement**” is hereby added in Section 1.1 to read as follows:

“**Mezzanine Pledge Agreement**” means that certain Pledge and Security Agreement dated as of the Amendment Date, from Mezzanine Borrower for the benefit of Mezzanine Administrative Agent on behalf of Mezzanine Lender, as the foregoing may be amended, supplemented or otherwise modified from time to time, subject to the limitations and agreements contained in this Agreement.”

(p) The definition of “**Mezzanine Pledged Collateral**” is hereby added in Section 1.1 to read as follows:

“**Mezzanine Pledged Collateral**” shall have the meaning set forth in Section 10.1(b).”

(q) The definition of “**Pledge Agreement**” in Section 1.1 is hereby deleted in its entirety and replaced with the following:

“**Pledge Agreement**” means that certain Pledge Agreement dated as of the Amendment Date from Pledgor for the benefit of Lender.”

(r) The definition of “**MTA Second Amendment Deadline**” is hereby added in Section 1.1 to read as follows:

“**MTA Second Amendment Deadline**” shall have the meaning set forth in the Section 4 of this Amendment.”

(s) The definition of “**MTA Second Amendment**” is hereby added in Section 1.1 to read as follows:

“**MTA Second Amendment**” shall have the meaning set forth in the Section 4 of this Amendment.”

(t) The definition of “**Pledgor**” in Section 1.1 is hereby deleted in its entirety and replaced with the following:

“**Pledgor**” means TPHGreenwich Mezz LLC, a Delaware limited liability company.”

(u) The definition of “**Residential Unit Minimum Sales Price**” in Section 1.1 is hereby deleted in its entirety and replaced with the following:

“**Residential Unit Minimum Sales Price**” means an amount no less than the per unit sale price set forth in the Residential Unit Minimum Sales Price Schedule attached hereto as Exhibit C.”

(v) The definition of “**Residential Unit Net Sales Proceeds**” in Section 1.1 is hereby amended by deleting the phrase “eight percent (8%)” and replacing it with “ten percent (10%)”.

(w) The following definition is added to Section 1.1 of the Agreement:

““**SCA Additional Construction Items**” means the Additional Construction Items (as defined in that certain Third Amendment to School Design, Construction, Funding and Purchase Agreement dated as of April 6, 2020 between Borrower and SCA).”

(x) The definition of “**Transit Improvement Agreement**” is hereby deleted in its entirety and replaced with the following:

““**Transit Improvement Agreement**” means that certain Transit Improvement Agreement by and between Borrower and the New York City Transit Authority (the “**MTA**”) dated April 5, 2017 and recorded in the Office of the City Register on April 20, 2017 as CRFN 2017000151522, as amended by that certain First Amendment to Transit Improvement Agreement dated March 28, 2019 and recorded in the Office of the City Register on April 4, 2019 as CRFN 2019000107820 (the “**MTA First Amendment**”), as the foregoing may be further amended, supplemented or otherwise modified from time to time, subject to the limitations and agreements contained in this Agreement.”

(y) Section 2.4(b)(ix) is hereby amended by deleting the phrase “fifty percent (50%)” and replacing it with “fifty-five percent (55%)”.

(z) The first paragraph of Section 2.5(a) is hereby amended by deleting the date “September 22, 2021” and replacing it with “December 22, 2020”

(aa) Section 2.5(a)(i) is hereby amended by adding the following sentence immediately after the language appearing in such section:

“Notwithstanding anything to the contrary contained herein, the Minimum Multiple Fee payable in accordance with the terms and conditions of this Agreement shall be reduced by (a) sixty percent (60%), if Borrower repays the Loan in full (but not in part) prior to June 30, 2021 or (b) forty percent (40%), if Borrower repays the Loan in full (but not in part) between July 1, 2021 and September 30, 2021.”

(bb) A new clause (e) is hereby added to Section 2.7 immediately after clause (d) in such section:

“(e) If any amounts applied by Lender to the principal balance of the Loan pursuant to clause (c) (vi) or (d)(vi) shall result in the Loan being paid in full, the balance (if any) remaining after the Loan is paid in full actually

received by Lender or actually held by Lender shall be (i) if the Mezzanine Loan is then outstanding, paid to Mezzanine Administrative Agent for the benefit of Mezzanine Lender for application in accordance with the Mezzanine Loan Documents; provided, however, that the failure to remit such balance actually received by Lender or actually held by Lender to Mezzanine Administrative Agent for the benefit of Mezzanine Lender or any failure of Mezzanine Administrative Agent to apply such funds in accordance with the Mezzanine Loan Documents shall be without recourse or liability to Lender, Administrative Agent or any other Lender Party (other than as a result of their respective intentional willful misconduct) and Lender shall have no obligation to determine whether or not the Mezzanine Loan is outstanding, and (ii) if the Mezzanine Loan is no longer outstanding, returned to Borrower.”

(cc) Section 2.9 is hereby deleted in its entirety and replaced with the following:

“Section 2.9 **Interest Reserve**. Whenever the amount of unfunded Loan Advances available to Borrower under the Interest Holdback is less than Three Million and 00/100 Dollars (\$3,000,000.00), Borrower shall fund a reserve (the “**Interest Reserve**”) within five (5) Business Days following Lender’s request in an amount equal to the difference between Five Million and 00/100 Dollars (\$5,000,000.00) and the amount of unfunded Advances available to Borrower in the Interest Holdback. As of the Amendment Date, Borrower has deposited an amount equal to Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) pursuant to Section 2(b) of the Amendment to MLA, which sum shall be held by Lender in the Interest Reserve. The Interest Reserve funds shall be held by Lender in an interest bearing account established by and under the sole control of Lender at a financial institution selected by Lender (subject to Borrower’s approval, not to be unreasonably withheld, conditioned or delayed), which financial institution must meet the Rating Criteria (the “**Reserve Account**”). If at any time the sum of (x) the balance in the Interest Reserve plus (y) the amount of unfunded Advances available to Borrower in the Interest Holdback falls below Three Million and 00/100 Dollars (\$3,000,000.00), Borrower shall make an additional deposit sufficient to replenish the balance of the Interest Reserve to an amount such that the sum of the amounts held in the Interest Reserve and Interest Holdback equals at least Five Million and 00/100 Dollars (\$5,000,000.00) within five (5) Business Days following Lender’s request. The Interest Reserve and Borrower’s replenishment obligation hereunder will terminate and any funds remaining in the Interest Reserve shall, upon full repayment of the Indebtedness, (i) if the Mezzanine Loan is then outstanding, be paid to Mezzanine Administrative Agent for the benefit of Mezzanine Lender for application in accordance with the Mezzanine Loan Documents; provided, however, that the failure to remit any such funds remaining that are actually received by Lender or actually held by Lender

to Mezzanine Administrative Agent for the benefit of Mezzanine Lender or any failure of Mezzanine Administrative Agent to apply such funds in accordance with the Mezzanine Loan Documents shall be without recourse or liability to Lender, Administrative Agent or any other Lender Party (other than as a result of their respective intentional willful misconduct) and Lender shall have no obligation to determine whether or not the Mezzanine Loan is outstanding, and (ii) if the Mezzanine Loan is no longer outstanding, be returned to Borrower.”

(dd) A new Section 2.12 is hereby added immediately following Section 2.11 to read as follows:

“Section 2.12 Contingency Reserve. (a) Provided that all of the conditions to a Disbursement to Borrower set forth herein have been satisfied (or waived in writing by Lender), Borrower may from time to time request that funds in the Contingency Reserve be disbursed to Borrower to fund costs for which Borrower would be entitled to request a reallocation from the Contingency Line Item pursuant to Section 3.9. A request for a disbursement from the Contingency Reserve shall be set forth in the Draw Request and subject to Lender’s written approval, not to be unreasonably withheld, conditioned or delayed and which approval shall be granted provided that, in Lender’s reasonable judgment, there are sufficient amounts remaining in the Contingency Line Item and Contingency Reserve to protect against cost overruns, other unanticipated events or circumstances and to cover the costs of ownership, operating, leasing, maintenance and repair of the Mortgaged Property following Completion for the remainder of the Term.

(b) Funds in the Contingency Reserve shall be held by Lender in an interest bearing account established by and under the sole control of Lender at a financial institution selected by Lender (subject to Borrower’s approval, not to be unreasonably withheld, conditioned or delayed), which financial institution must meet the Rating Criteria. All interest earned on the Contingency Reserve shall be allocated to Borrower for income tax purposes, but it shall be added to and disbursed as a part of the Contingency Reserve. Borrower hereby assigns and grants Lender a security interest in funds held in the Contingency Reserve as security for payment and performance of Borrower’s obligations under the Loan Documents. All funds held in the Contingency Reserve shall be additional security for the Loan, and upon the occurrence of an Event of Default, Lender shall be authorized to apply such funds to Borrower’s obligations under the Loan Documents in such order and priority as Lender may elect in its sole discretion. Lender shall have a perfected first priority security interest in the Contingency Reserve. The balance (if any) remaining in the Contingency Reserve after the Loan is paid in full shall be (i) if the Mezzanine Loan is then outstanding, paid to Mezzanine Administrative Agent for the benefit of Mezzanine Lender for application in accordance

with the Mezzanine Loan Documents; provided, however, that the failure to remit such balance actually received by Lender or actually held by Lender to Mezzanine Administrative Agent for the benefit of Mezzanine Lender or any failure of Mezzanine Administrative Agent to apply such funds in accordance with the Mezzanine Loan Documents shall be without recourse or liability to Lender, Administrative Agent or any other Lender Party (other than as a result of their respective intentional willful misconduct) and Lender shall have no obligation to determine whether or not the Mezzanine Loan is outstanding, and (ii) if the Mezzanine Loan is no longer outstanding, returned to Borrower.”

(ee) Section 3.6 is hereby deleted in its entirety and replaced with the following:

“Section 3.6 **Disbursements for Payment of Interest from the Interest Holdback and Interest Reserve.** The Approved Budget contains a Line Item for interest payments payable under the Building Loan Note to be advanced under the Building Loan in the amount of up to **TWENTY-TWO MILLION FIVE HUNDRED NINETY FOUR THOUSAND SEVEN HUNDRED TEN AND 00/100 DOLLARS (\$22,594,710.00)** (the “**Building Loan Interest Holdback**”) and a Line Item for interest payments payable under the Project Loan Note and the Term Loan Note to be advanced under the Project Loan in the amount of up to **TWELVE MILLION FOUR HUNDRED FIVE THOUSAND TWO HUNDRED NINETY AND 00/100 DOLLARS (\$12,405,290.00)** (the “**Project Loan and Term Loan Interest Holdback**”; collectively with the Building Loan Interest Holdback, the “**Interest Holdback**”). To the extent there is cash flow from the Property, Borrower shall use said cash flow to pay all Actual Debt Service under the Notes. To the extent that the cash flow from the Property is insufficient to pay the Actual Debt Service, Funds in the Interest Holdback (or if Borrower has funded the Interest Reserve under Section 2.9, Funds in the Reserve Account, until such Funds are exhausted) shall be applied by Lender as a Disbursement to Borrower to make the monthly interest payments on the Loan that become due and payable prior to the date on which all Disbursements to Borrower from the Interest Holdback have been made provided that the following conditions remain satisfied: (i) no Event of Default exists, (ii) the Loan is not Out of Balance, and (iii) Borrower continues to satisfy the provisions of Section 2.9. Each Disbursement to Borrower from the Interest Holdback shall increase the outstanding principal balance of the applicable Loan. Nothing herein is intended or shall be construed to alter or limit Borrower’s obligation to make the monthly interest payments on the Loan if the Interest Holdback and the Interest Reserve are inadequate or the conditions under Section 3.3 are not satisfied. Notwithstanding anything to the contrary herein, Funds deposited into the Reserve Account as an Interest Reserve pursuant to Section 2(b) of the Amendment to MLA shall be applied by Lender as a Disbursement to Borrower to make the monthly interest payments on the Loan that become due and payable until such Funds have been exhausted prior to the disbursement of Funds held in the Interest Holdback.”

(ff) The last sentence of Section 3.9 is hereby deleted in its entirety and replaced with the following:

“Notwithstanding anything to the contrary contained above in this Section 3.9, Borrower shall in no event or under any circumstances have the right (i) to reallocate any Available Cost Savings in a Line Item for any Hard Costs to a Line Item other than another Line Item for Hard Costs, without in each instance obtaining Lender’s prior written approval, (ii) to reallocate any Available Cost Savings in a Line Item for Soft Costs to a Line Item for Hard Costs without in each instance obtaining Lender’s prior written approval, (iii) to reallocate Funds in the Interest Holdback to other Line Items; provided, however, that notwithstanding the provisions of this subclause (iii) to the contrary but subject to the terms and conditions set forth in Section 3.6, at Borrower’s request made from time to time, which request shall be subject to Lender’s written approval, not to be unreasonably withheld, conditioned or delayed, portions of the Project Loan and Term Loan Interest Holdback shall be advanced as a Disbursement to Borrower to pay monthly interest under the Building Loan in the event that in Lender’s reasonable judgment, sufficient amounts remain in the Project Loan and Term Loan Interest Holdback to pay interest on the Project Loan and Term Loan for the remainder of the Term, or (iv) in any event, to cause a reallocation to occur that in the reasonable opinion of Lender, its counsel of the Title Company, will be in contravention of the Lien Law, or that in the reasonable opinion of Lender, its counsel or the Title Company will adversely affect or impair the lien or the priority of lien of the Mortgage.”

(gg) Subclause (ii) in the last sentence of Section 4.1(a) is hereby deleted in its entirety and replaced with the following:

“(ii) the Completion Date shall in no event be extended beyond November 30, 2021 (the “**Outside Completion Date**”), **TIME BEING OF THE ESSENCE**, and”

(hh) Section 4.1(b) is hereby amended such that the rows referring to Milestone Construction Hurdles 7 through 9 in the table contained therein are deleted in their entirety and replaced with the following:

<u>ID</u> (from Construction Timeline)	<u>Milestone Construction</u> <u>Hurdle</u> (from Construction Timeline)	<u>Schedule</u> <u>Date</u> (from Construction Timeline)	<u>Milestone</u> <u>Deadline</u>	<u>Outside</u> <u>Milestone</u> <u>Date</u>
7	Resi TCO 1 (lobby located in the Residential Unit & floors 11-16, except for hoist run units)	N/A	N/A	3/31/2021
8	Resi TCO 2 (floors 17-36, except for hoist run units)	N/A	N/A	7/1/2021
9	Project Completion	12/29/2020	Completion Date	Outside Completion Date

(ii) Section 4.1(b) is hereby amended by adding the following two sentences immediately after the table containing the Milestone Construction Hurdles:

“Notwithstanding anything herein to the contrary, Lender hereby acknowledges and agrees that due to the existence of a Force Majeure event, the Milestone Deadlines for Construction Hurdles 7, 8 and 9 have been extended to their respective Outside Milestone Dates set forth above and except as set forth in the next sentence, Borrower shall not be permitted to further extend such Outside Milestone Dates for any reason, including without limitation, a Force Majeure event. Further, if Borrower is unable to complete Milestone Construction Hurdle 7 and/or 8 by the applicable Outside Milestone Date set forth above, Borrower may request Lender’s consent to a reasonable extension of such Outside Milestone Date if all subsequent Milestone Construction Hurdles can still be achieved prior to the applicable Outside Milestone Date set forth above, as same shall be determined by Lender in its sole and absolute discretion.”

(jj) Section 5.2(g) is hereby deleted in its entirety and replaced with the following:

“(g) Subject to Section 2.5(d), upon completion of the Work and payment in full therefor any unexpended Proceeds, at Lender’s option, shall either be (A) paid over to (i) if the Mezzanine Loan is then outstanding, Mezzanine Administrative Agent for the benefit of Mezzanine Lender for application in accordance with the Mezzanine Loan Documents; provided, however, that the failure to remit such unexpended Proceeds actually received by Lender or actually held by Lender to Mezzanine Administrative Agent for the benefit of Mezzanine Lender or any failure of Mezzanine Administrative Agent to apply such funds in accordance with the Mezzanine Loan Documents shall be without recourse or liability to Lender, Administrative Agent or any other Lender Party (other than as a result of their respective intentional willful misconduct) and Lender shall have no obligation to determine whether or not the Mezzanine Loan is outstanding, and (ii) if the Mezzanine Loan is no longer outstanding, Borrower, or (B) applied to the reduction of the Indebtedness without any Minimum Multiple Fee, Exit Fee or Closed Period Prepayment Fee, as applicable that would otherwise be applicable to a prepayment of the Loan at that time.”

(kk) A new Section 5.4 is hereby added immediately following Section 5.3 to read as follows:

“Subject to the Condominium Documents and provided that no Event of Default has occurred and is continuing, Lender shall attempt in good faith to notify Mezzanine Administrative Agent of a proposed settlement of Proceeds over which Lender has either a consent or approval right in this Agreement (without granting or agreeing to any Mezzanine Administrative Agent consent or approval right).”

(ll) Section 10.1(b) is hereby amended by adding the following sentence immediately after the language appearing in such section:

“Notwithstanding anything herein to the contrary, Lender hereby acknowledges and consents to (i) the execution, delivery and performance of the Mezzanine Loan Documents, including, without limitation, Mezzanine Lender making the Mezzanine Loan to Mezzanine Borrower pursuant to the terms and conditions of the Mezzanine Loan Agreement and Mezzanine Loan Documents, each in form and substance approved by Lender as of the Amendment Date (Lender’s execution of this Amendment being deemed to constitute evidence of such approval); provided, however, that, other than with respect to the partial prepayment set forth in Section 2.4(b)(xi) of the Mezzanine Loan Agreement (so long as Borrower has paid the partial prepayment set forth in Section 2.4(b)(ix) of this Agreement), Borrower agrees and acknowledges that no prepayment of the Mezzanine Loan shall be permitted unless and until the Loan has been repaid in full, (ii) the pledge by Mezzanine Borrower of one hundred percent (100%) of its membership interests (the “**Mezzanine Pledged Collateral**”), as sole member, in and to Pledgor pursuant to the Mezzanine Pledge Agreement, (iii) the acquisition of the Mezzanine Pledged Collateral by any Person in connection with the exercise by Mezzanine Administrative Agent’s or Mezzanine Lender’s remedies under the Mezzanine Loan Documents in accordance with the Intercreditor Agreement, and (iv) the transfers of ownership interests in Borrower contemplated by Exhibit N attached hereto. Borrower shall not alter, amend, or modify any of the Mezzanine Loan Documents without Lender’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed so long as no Event of Default exists.”

(mm) Section 11.1(c) is hereby amended by deleting the reference “11.1(ff)” in the first line thereof and replacing it with “11.1(gg)”.

(nn) Section 11.1(ee) is hereby amended by deleting the word “or”.

(oo) A new Section 11.1(gg) is hereby added immediately following Section 11.1(ff) to read as follows:

“Failure to obtain Lender’s prior written consent to any amendment or modification of the Mezzanine Loan Documents; or”

(pp) Sections 11.1(p), (q), (r), (s) and (t) are hereby amended by (i) deleting the phrase “Borrower or Indemnitor” in all instances and replacing it with “Borrower, Indemnitor or Pledgor” and (ii) deleting the phrase “Borrower or any Indemnitor” in all instances and replacing it with “Borrower or Pledgor”.

(qq) Section 13.1(vii) is hereby amended by adding the phrase “, Pledgor, Mezzanine Borrower,” in each instance after the word “Borrower” appears in such section.

(rr) Section 13.1 is hereby amended by adding subsection (d) immediately after subsection (c) appearing in such section:

“(d) Following the completion of a foreclosure of the Mezzanine Pledged Collateral or an assignment in lieu thereof and the execution and delivery to Lender of the Supplemental Guaranties (as defined in the Intercreditor Agreement), each in accordance, in all material respects, with the terms and conditions of the Intercreditor Agreement (such date being herein referred to as the “**Mezzanine Foreclosure or Assignment Date**”), Trinity Place Holdings Inc. shall be released from and forever discharged of all obligations and liabilities under the Carry Guaranty, the Equity Funding Guaranty, the Completion Guaranty, the Recourse Guaranty Agreement and the Environmental Indemnification Agreement to be performed on or after the Mezzanine Foreclosure or Assignment Date, or which arise out of events which occur on or after the Mezzanine Foreclosure or Assignment Date, but in each case, only upon a replacement guarantor delivering the Supplemental Guaranties to Lender in accordance, in all material respects, with the terms and conditions of the Intercreditor Agreement. Attached hereto as Exhibit L is a copy of the provisions of the Intercreditor Agreement setting forth the terms and conditions relating to the foreclosure of the Mezzanine Pledged Collateral or an assignment in lieu thereof including those relating to the delivery of the Supplemental Guaranties (collectively, the “**ICA Mezz Remedy Provisions**”). Lender will not amend the Intercreditor Agreement to modify, in any material respect, the ICA Mezz Remedy Provisions and will not waive Mezzanine Lender’s obligations to deliver the Supplemental Guaranties or otherwise comply with the ICA Mezz Remedy Provisions.

(ss) Section 14.1 is hereby amended by deleting Lender’s notice addresses in their entirety and replacing them with the following:

“If to Lender, at the following address:

Massachusetts Mutual Life Insurance Company
c/o Barings
One Financial Plaza
Hartford, CT 06103
Attention: Finance Group Loan Servicing
Loan No. 17602

With a copy to:

Massachusetts Mutual Life Insurance Company
c/o Barings
One Financial Plaza
Hartford, CT 06103
Attention: Legal Department
Loan No. 17602

With a copy to:

Barings Multifamily Capital LLC
5800 Tennyson Parkway, Suite 200
Plano, TX 75024
Attention: Loan Administration
Loan No. 17602”

following: (tt) The second to last sentence in Section 14.13 is deleted in its entirety and replaced with the

“Notwithstanding anything to the contrary, provided that no Event of Default exists and prior to Completion, Lender shall not resign as the Administrative Agent without Borrower's consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, further that (i) prior to the date that is six (6) months following the Amendment Date, Lender shall be permitted to resign as the Administrative Agent without Borrower’s consent so long as Lender Transfers one hundred percent (100%) of the Loan and such Transfer has been made in accordance with the last sentence of Section 14.13, and (ii) from and after the date that is six (6) months following the Amendment Date, Lender shall be permitted to resign as the Administrative Agent without Borrower’s consent so long as Lender Transfers one hundred percent (100%) of the Loan to a third party.”

(uu) The last sentence of Section 14.13 is deleted in its entirety following the date that is six (6) months following the Amendment Date.

(vv) Section 16.2(b)(iv) is hereby deleted in its entirety and replaced with the following:

“(iv) such Residential Unit Contract of Sale shall have no contingencies thereunder, unless otherwise approved by Lender in writing, except (w) Completion of the Construction Work, (x) those set forth in the Approved Form of Contract of Sale or Offering Plan, (y) a contingency for Borrower’s obligation to consummate the closing in accordance with the provisions of the Residential Unit Contract of Sale on or before the date set forth therein for such closing, which date shall not be prior to the date set forth in the Anticipated TCO Date Schedule (as hereinafter defined) for said Subdivided Residential Unit, and (z) a financing contingency on then current market terms and conditions, provided that any Residential Unit Contract of Sale that contains a financing contingency shall not be included in the calculation of Residential Net Sale Proceeds in connection Borrower’s compliance with the Sales Pace Covenant until such time as the financing contingency has been satisfied, expired by its terms or been waived in writing by the purchaser thereunder, or the closing under such Residential Unit Contract of Sale has occurred;”

(ww) Exhibit B is hereby deleted in its entirety and replaced with Exhibit B attached hereto.

(xx) Exhibit C is hereby deleted in its entirety and replaced with Exhibit C attached hereto.

(yy) Exhibit D is hereby deleted in its entirety and replaced with Exhibit D attached hereto.

(zz) Exhibit E is hereby deleted in its entirety and replaced with Exhibit E attached hereto.

(aaa) Exhibit M is hereby amended by deleting Item 5 in its entirety and replacing same with the defined term “Transit Improvement Agreement”, as set forth in this Amendment.

(bbb) Exhibit N is hereby deleted in its entirety and replaced with Exhibit N attached hereto.

2. Additional Payment Obligations. In addition to Borrower’s obligations set forth in the Loan Document, and notwithstanding any provision set forth therein to the contrary,

(a) On the Amendment Date, Borrower shall pay Lender an amount equal to Eight Million and 00/100 Dollars (\$8,000,000), which sum shall be applied on the Amendment Date to the outstanding principal balance of the Loan. No Breakage Fee, Exit Fee or Minimum Multiple Fee is payable by Borrower in connection with this prepayment; provided, however, that nothing herein is intended to affect or be construed as a limitation on Borrower’s obligation to pay the Minimum Multiple Fee, Exit Fee and/or Breakage Fee, in connection with any other prepayment, all in accordance with the terms of the Loan Agreement.

(b) On the Amendment Date, Borrower shall deposit Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00), which sum shall be held by Lender in the Interest

Reserve. On or prior to July 1, 2021, Borrower shall deposit an additional Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) in the Interest Reserve, which sum shall be held by Lender in the Interest Reserve. Borrower acknowledges that the foregoing deposits to the Interest Reserve shall in no way affect or limit Borrower's obligation to make Equity Deposits pursuant to the terms and conditions of Section 3.11 in order to prevent the Loan from being Out of Balance but such deposits shall be taken into account in determining if the Loan is Out of Balance.

(c) On the Amendment Date, Borrower shall deposit Two Million and 00/100 Dollars (\$2,000,000.00), which sum shall be held by Lender in the Contingency Reserve. On or prior to December 1, 2021, Borrower shall deposit into the Contingency Reserve an amount equal to the greater of (i) Three Million and 00/100 Dollars (\$3,000,000.00) or (ii) sufficient Contingency to complete the Project and pay all of the costs and expenses relating to the ownership, operation, leasing, maintenance and repair of the Mortgaged Property, including without limitation, Impositions, insurance premiums, utility charges, condominium assessments, expenses incurred under any property management agreement or brokerage, sales or leasing commission agreement for the Mortgaged Property through December 30, 2022, as such amount shall be reasonably determined by Lender.

3. Anticipated TCO Date Schedule. On or prior to January 15, 2021, Borrower shall deliver to Lender a schedule of the dates by which Borrower expects to receive a temporary certificate of occupancy for each such Subdivided Residential Unit, which schedule shall be subject to Lender's reasonable approval (the "**Anticipated TCO Date Schedule**").

4. Second Amendment to Transit Improvement Agreement. On or before April 1, 2021 (as the same may be extended pursuant to the terms and conditions set forth on Exhibit O, the "**MTA Second Amendment Deadline**"), Borrower shall deliver to Lender a fully executed Second Amendment to Transit Improvement by and between Borrower and the MTA in a form reasonably acceptable to Lender, which agreement shall contain and be subject to the terms and conditions set forth on Exhibit O attached hereto (subject to modification in Lender's reasonable discretion) (such Second Amendment to Transit Improvement Agreement that satisfies all of the terms, conditions and requirements set forth in this Section 4 shall be referred to herein as the "**MTA Second Amendment**").

5. Credit Agreement. Borrower represents and warrants that: (i) Borrower has delivered to Lender a true and correct copy of the Credit Agreement; (ii) neither Guarantor nor any other borrower party thereto is in default under the Credit Agreement; and (iii) the Credit Agreement is not secured by an assignment of the membership interests or any other ownership interest in TPHGreenwich Holdings, LLC, a Delaware limited liability company. Borrower shall provide Lender (or cause Guarantor to provide to Lender) true and correct copies of all default notices sent by Credit Agreement Administrative Agent to Guarantor, which copies of default notices shall be sent to Lender within two (2) business days following Guarantor's receipt of same. Borrower expressly acknowledges and consents to the modification and amendment of the Recourse Guaranty Agreement pursuant to the Amendment and Ratification of Recourse Guaranty Agreement of even date herewith.

6. Lender's Approval of Residential Unit Contracts of Sale. Lender hereby approves the Residential Unit Contracts of Sale executed prior to the date hereof as described on Exhibit P attached hereto.

7. No Waiver. This Amendment shall not be deemed a waiver of any right or remedy of Lender, Borrower or any Affiliate of either of them under the Loan Documents (as modified hereby and as modified by the other documents executed in connection herewith).

8. Outstanding Principal Balance. Borrower, Lender and Administrative Agent hereby acknowledge and agree that, as of the Amendment Date (after the application of the payment made by Borrower to Lender as of the Amendment Date) the outstanding principal balance of the Loan is \$139,024,528.09.

9. No Material Adverse Change. Borrower represents that: (i) there has not been a material adverse change in the financial condition of any of the parties with respect to which Financial Information is required to be provided to Lender under Article 9 since the last date upon which such parties furnished such Financial Information to Lender; (ii) that Borrower has not been the subject of any bankruptcy, reorganization, dissolution or insolvency proceeding; (iii) that there does not exist any subordinate, mezzanine or other indebtedness prohibited by any of the Loan Documents, except as previously disclosed to Lender in writing and approved by Lender in writing; (iv) that there has not occurred any transfer, sale, pledge or encumbrance prohibited any of the Loan Documents, except as previously disclosed to Lender in writing and approved by Lender in writing; and (v) that there has not been a default in any material respect by Borrower or Guarantor on any commercial indebtedness owing to any third party.

10. Lien Status. This Amendment shall not release Borrower from any liability under the Loan Documents. This Amendment does not constitute the creation of a new debt or the extinguishment of the debt evidenced by the Note, nor does it in any way affect or impair the lien of the Loan Documents. Borrower agrees that the lien of the Loan Documents continues to be in full force and effect, unaffected and unimpaired by this Amendment, and that said lien shall so continue in first priority until the debt secured by the Loan Documents is fully discharged.

11. Payment of Lender Fees. Borrower shall pay all of Lender's reasonable out-of-pocket costs and expenses actually incurred in connection with this Amendment and the subject matter related hereto including, without limitation reasonable attorneys' fees, valuation costs, inspection costs and other third party consultant expenses.

12. Specific Modifications Only; Reaffirmation. Except as specifically set forth herein, each of the terms and conditions of the Loan Agreement shall remain unmodified and in full force and effect and are hereby reaffirmed.

13. Intentionally Omitted.

14. Governing Law. In all respects, including matters of construction and performance of this Amendment and the obligations arising hereunder, this Amendment shall be

governed by and construed in accordance with the laws of the State and the State of New York in accordance with the provisions of Section 14.19 of the Loan Agreement.

15. Binding on Successors. This Amendment shall be binding upon Borrower's successors and assigns and shall inure to the benefit of Lender, the Lender Parties and their respective successors and assigns.

16. Counterparts. This Amendment may be signed in any number of counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute a single agreement. The words "execution," "signed," "signature," and words of like import in this Amendment or in any other certificate, agreement or document related to this Amendment shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") or an electronic signature executed through DocuSign. The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code. The parties hereby waive any defenses to the enforcement of the terms of this Amendment based on the form of the signature, and hereby agree that such electronically transmitted or signed signatures shall be conclusive proof, admissible in judicial proceedings, of the parties' execution of this Amendment.

17. Captions. The captions of the sections and Sections of this Amendment are for convenience only and are not intended to be a part of this Amendment and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

18. Severability. All rights, powers and remedies provided in this Amendment may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent (but only to the extent) necessary so that they will not render this Amendment invalid or unenforceable. If any term, covenant, condition, or provision of this Amendment or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remaining terms, covenants, conditions and provisions of this Amendment, or the application of such term, covenant, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Amendment shall be modified and/or limited to the extent necessary to render the same valid and enforceable to the fullest extent permitted by law.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, Lender and Borrower have executed and delivered this Amendment as of the date first written above.

LENDER AND ADMINISTRATIVE AGENT:

**MASSACHUSETTS MUTUAL LIFE INSURANCE
COMPANY,**

a Massachusetts corporation

By: Barings LLC, a Delaware limited liability company,
its Investment Adviser

By: /s/ Anthony Soldi

Name: Anthony Soldi

Its: Managing Director

[Signatures continue on the following page]

[Lender's Signature Page to First Amendment to Master Loan Agreement]

IN WITNESS WHEREOF, Lender and Borrower have executed and delivered this Amendment as of the date first written above.

BORROWER:

TPHGREENWICH OWNER LLC,
a Delaware limited liability company

By: /s/ Steven Kahn
Name: Steven Kahn
Its: Chief Financial Officer

[Borrower’s Signature Page to First Amendment to Master Loan Agreement]

AMENDMENT TO WARRANT AGREEMENT

December 22, 2020

This Amendment (the “Amendment”) to that certain Warrant Agreement, dated December 19, 2019 (the “Agreement”), between Trinity Place Holdings Inc., a Delaware corporation (together with its successors and assigns, the “Company”) and TPHS Lender LLC (together with its successors and assigns, the “Purchaser”) is made pursuant to Section 7.2 of the Agreement as of the date set forth above. Capitalized terms used herein but not otherwise defined shall have the meaning specified in the Agreement.

The parties hereby agree to amend, and hereby so amend, the definition of “Initial Exercise Price” in Section 5.1 of the Agreement by replacing it in its entirety with the following:

“Initial Exercise Price” means \$4.50.

The parties further to agree to amend, and hereby so amend, the reference to a purchase price of “\$6.50 per share of Common Stock” in the first paragraph of Annex I to the Agreement to refer to “\$4.50 per share of Common Stock” instead. Purchaser hereby agrees to promptly surrender to the Company for purposes of replacement Purchaser’s existing Warrant Certificate, dated December 19, 2019, and the Company hereby agrees to promptly deliver to Purchaser an amended and restated version of the Warrant Certificate reflecting the new Exercise Price (as defined in the Warrant Certificate).

This Amendment supersedes any contrary or inconsistent provisions of the Agreement or any Warrant Certificates. As amended, the Agreement shall remain in full force and effect. This Amendment may be executed in one or more counterparts and shall be effective when at least one counterpart shall have been executed by each party hereto, and each set of counterparts that, collectively, show execution by each party hereto shall constitute one duplicate original. Execution copies may be exchanged by facsimile or other electronic means.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date first above written.

COMPANY:

TRINITY PLACE HOLDINGS INC.

By: /s/ Steven Kahn

Name: Steven Kahn

Title: Chief Financial Officer

PURCHASER:

TPHS LENDER LLC

By: Midtown Acquisitions GP LLC, its Manager

By: /s/ Joshua D. Morris

Name: Joshua D. Morris

Title: Manager

[Signature Page to Amendment to Warrant Agreement]

THE SECURITIES REPRESENTED HEREBY, AND THE SECURITIES ISSUABLE HEREBY, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND NEITHER THE SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT OR SUCH LAWS OR AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT AND SUCH LAWS WHICH, IN THE OPINION OF COUNSEL FOR THE COMPANY, IS AVAILABLE. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS OF THAT CERTAIN WARRANT AGREEMENT, DATED AS OF DECEMBER 19, 2019, THE PROVISIONS OF WHICH ARE INCORPORATED HEREIN BY REFERENCE. A COPY OF SUCH AGREEMENT IS AVAILABLE FROM THE COMPANY UPON REQUEST.

**WARRANT CERTIFICATE
TRINITY PLACE HOLDINGS INC.**

Date: December 19, 2019
(as amended and restated as of December 22, 2020)

This Warrant Certificate certifies that TPHS Lender LLC, or its registered assigns, is the registered holder of Warrants entitling the owner thereof to purchase at any time on or after the date hereof and on or prior to the Expiration Time, 7,179,000 fully paid and nonassessable shares of Common Stock, par value \$0.01 per share (the “Common Stock”), of TRINITY PLACE HOLDINGS INC., a Delaware corporation (together with its successors and assigns, the “Company”), at a purchase price (subject to adjustment as provided in the Warrant Agreement (as defined below), the “Exercise Price”) of \$4.50 per share of Common Stock upon presentation and surrender of this Warrant Certificate to the Company with a duly executed election to purchase and payment of the Exercise Price (including by withholding of shares of Common Stock), all in the manner set forth in the Warrant Agreement (as defined below). The Denomination of each Warrant and the Exercise Price are the Denomination and the Exercise Price as of the date hereof, and are subject to adjustment as referred to below.

The Warrants are issued pursuant to a Warrant Agreement (as it may from time to time be amended or supplemented, the “Warrant Agreement”), dated as of December 19, 2019, among the Company and TPHS Lender LLC, and are subject to all of the terms, provisions and conditions thereof, which Warrant Agreement is hereby incorporated herein by reference and made a part hereof and to which Warrant Agreement reference is hereby made for a full description of the rights, obligations, duties and immunities of the Company and the holders of the Warrant Certificates. Capitalized terms used, but not defined, herein have the respective meanings ascribed to them in the Warrant Agreement. In the event of any conflict between this Warrant Certificate and the Warrant Agreement, the Warrant Agreement shall control and govern.

As provided in the Warrant Agreement, the Exercise Price and the Denomination evidenced by this Warrant Certificate are, upon the happening of certain events, subject to modification and adjustment. Except as otherwise set forth in, and subject to, the Warrant Agreement, the Expiration Time of this Warrant Certificate is as set forth in the Warrant Agreement.

Subject to the limitations set forth in the Warrant Agreement, this Warrant Certificate shall be exercisable, at the election of the holder, at any time on or after the date hereof and on or prior to the Expiration Time either as an entirety or in part from time to time. If this Warrant Certificate shall be exercised in part, the holder shall be entitled to receive, upon surrender hereof, another Warrant Certificate or Warrant Certificates for the Denomination not exercised. This Warrant Certificate, with or without other Warrant Certificates, upon surrender in the manner set forth in the Warrant Agreement and subject to the conditions set forth in the Warrant Agreement, may be transferred or exchanged for another Warrant Certificate or Warrant Certificates of like tenor evidencing Warrants entitling the holder to a like Denomination as the Warrants evidenced by the Warrant Certificate or Warrant Certificates surrendered shall have entitled such holder to purchase.

No holder of this Warrant Certificate shall be entitled to vote or receive distributions or be deemed for any purpose the holder of shares of Common Stock or of any other Securities of the Company that may at any time be issued upon the exercise hereof, nor shall anything contained in the Warrant Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a holder of a share of Common Stock in the Company or any right to vote upon any matter submitted to holders of shares of Common Stock at any meeting thereof, or to give or withhold consent to any corporate action of the Company (whether upon any recapitalization, issuance of stock, reclassification of Securities, change of par value, consolidation, merger, conveyance, or otherwise), or to receive dividends or subscription rights, or otherwise, until the Warrant or Warrants evidenced by this Warrant Certificate shall have been exercised as provided in the Warrant Agreement.

In the event of any inconsistency between this warrant Certificate and the Warrant agreement, the terms of the Warrant Agreement shall govern.

THIS WARRANT CERTIFICATE SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE COMPANY AND THE HOLDER HEREOF SHALL BE GOVERNED BY, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS RULES THEREOF TO THE EXTENT THAT ANY SUCH RULES WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION, EXCEPT TO THE EXTENT THAT THE DELAWARE GENERAL CORPORATION LAW SPECIFICALLY AND MANDATORILY APPLIES.

[Signature Page Follows]

WITNESS the signature of a proper officer of the Company as of the date first above written.

TRINITY PLACE HOLDINGS INC.

By: /s/ Steven Kahn

Name: Steven Kahn

Title: Chief Financial Officer

[Signature Page to Warrant Certificate]

MEZZANINE LOAN AGREEMENT

Among

TPHGREENWICH SUBORDINATE MEZZ LLC,
as Borrower

and

TPHS LENDER II LLC and
EACH OTHER LENDER FROM TIME TO TIME PARTY HERETO,
individually and/or collectively, as the context may require,
as Lender

and

TPHS LENDER II LLC,
as Administrative Agent

Dated as of December 22, 2020

Relating to Property Located at:

77 Greenwich Street
(also known as 67 Greenwich Street and 28-42 Trinity Place) (Block 19, Lots 11 and 13)
and Air Rights acquired from 81 Greenwich Street (Block 19, Lot 18)
New York, New York

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MEZZANINE LOAN AGREEMENT

This Mezzanine Loan Agreement (this “**Agreement**”) is entered into as of December 22, 2020 by and between **TPHGREENWICH SUBORDINATE MEZZ LLC**, a Delaware limited liability company (“**Borrower**”) and **TPHS LENDER II LLC**, a Delaware limited liability company and **EACH OTHER FINANCIAL INSTITUTION WHO MAY BECOME A LENDER FROM TIME TO TIME PURSUANT TO THE TERMS HEREOF** (individually and/or collectively, as the context may require, and together with their respective successors and/or assigns, “**Lender**”) and **TPHS LENDER II LLC**, as administrative agent (together with any successor administrative agent appointed pursuant to Article XV, the “**Administrative Agent**”) for the benefit of Lender.

RECITALS:

A. Borrower has requested that Lender make a loan to Borrower in the principal amount of \$7,500,000.00 (the “**Loan**”) to be funded upon the terms and subject to the conditions of this Agreement, for the purposes set forth herein;

B. the Loan is evidenced by the Note (as defined herein) and secured by, inter alia, the Pledge Agreement (as defined herein); and

C. Lender is agreeing to fund the Loan in installments in accordance with the terms and subject to conditions of this Agreement.

NOW, THEREFORE, in consideration of the terms and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to, the parties agree to be bound as follows:

ARTICLE 1

CERTAIN DEFINITIONS

Section 1.1 Certain Definitions. As used in this Agreement, the following terms shall mean:

“**100% School Base Building CD’s**” is defined in the School Unit Purchase Agreement.

“**Acceleration Event**” is defined in Section 2.5(b).

“**ACH**” is defined in Section 2.7(a).

“**Acknowledgement and Consent**” means that certain Mezzanine Acknowledgement and Consent re: Contractor Agreements, dated as of the date hereof, by and among Borrower, Mortgage Borrower and Administrative Agent (for the benefit of Lender), as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Act**” is defined in Section 8.12(d).

“Additional Equity” has the meaning ascribed to such term in the Master Loan Agreement.

“Administrative Agent” is defined in the introductory paragraph on page one of this Agreement, together with its permitted successors and assigns.

“Advances” means (other than (i) Loan proceeds, (ii) equity contributed by Borrower or Mortgage Borrower to the Project, (iii) School Cost Payments, and (iv) all other amounts funded by Borrower, Mortgage Borrower or any Affiliate thereof) all amounts of money advanced or paid and all costs and expenses incurred by Administrative Agent or Lender, as provided in this Agreement or in any other Loan Document, upon failure of Borrower to pay or perform (or to cause Mortgage Borrower to pay or perform) any obligation or covenant contained herein or in such other Loan Document.

“Affiliate” means any Person Controlled by, in Control of or under common Control with any other Person.

“Agreement” means this Mezzanine Loan Agreement, as amended from time to time.

“Anti-Money Laundering Laws” means the USA Patriot Act of 2001, as amended, the Bank Secrecy Act, as amended, Executive Order 13324 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended, and other federal laws and regulations and executive orders administered by OFAC which prohibit, among other things, the engagement in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals (such individuals include OFAC Prohibited Persons), specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanction and embargo programs, and such additional laws and programs administered by OFAC which prohibit dealing with individuals or entities in certain countries regardless of whether such individuals or entities appear on any of the OFAC lists.

“Anticipated TCO Date Schedule” is defined in Section 8.22.

“Approved Budget” has the meaning ascribed to such term in the Master Loan Agreement.

“Approved Form of Contract of Sale” means the form of Contract of Sale attached hereto as Exhibit E.

“Approved Plans” has the meaning ascribed to such term in the Master Loan Agreement.

“Architect” has the meaning ascribed to such term in the Master Loan Agreement.

“Architect’s Consent” means the consent executed and delivered by the Architect to Administrative Agent (for the benefit of Lender) in connection with the Loan, pursuant to which the Architect has, among other things, consented to the Acknowledgement and Consent.

“Architect’s Contract” has the meaning ascribed to such term in the Master Loan Agreement.

“Attorney General” means the New York State Office of the Attorney General, Department of Law, Real Estate Finance Bureau.

“Available Cost Savings” has the meaning ascribed to such term in the Master Loan Agreement.

“Bankruptcy Action” is defined in Section 8.12(d).

“Bankruptcy Proceeding” means any proceeding, action, petition or filing under the Federal Bankruptcy Code or any similar state or federal law now or hereafter in effect relating to bankruptcy, reorganization or insolvency, or the arrangement or adjustment of debts.

“Borrower” is defined in the introductory paragraph on page one of this Agreement, together with its permitted successors and assigns.

“Bulk Sale” means the sale of more than five Subdivided Residential Units to any one Residential Unit Purchaser.

“Business Day” means any day other than a Saturday, Sunday or other day on which national banks in the State are not open for business.

“Business Plan” has the meaning ascribed to such term in the Master Loan Agreement. The current Business Plan is attached hereto as **Exhibit G**

“Bylaws” means the by-laws of the Condominium, which by-laws are attached as an exhibit to the Declaration, as the same may be amended or modified from time to time in accordance with the terms and provisions of this Agreement.

“Capitalized PIK” is defined in Section 2.3(a).

“Carry Guaranty” means the Mezzanine Carry Guaranty of even date herewith from Indemnitor for the benefit of Administrative Agent (for the benefit of Lender), as amended from time to time.

“Cause” means, with respect to an Independent Director or Independent Manager, (i) acts or omissions by such Person that constitute willful disregard of, or gross negligence with respect to, such Person’s duties under the applicable agreements; (ii) that such Person has engaged in or has been charged with, or has been indicted or convicted of, fraud or other acts constituting a crime under any law applicable to such Person; (iii) such Person dies or is incapacitated or otherwise unable to perform its duties as an Independent Director or Independent Manager or such Person’s employment with the applicable service provider is terminated; (iv) any increase in the fees charged by such Person for service as an Independent Director or Independent Manager which Borrower in its reasonable discretion determines to be commercially

unreasonable; or (v) such Person has breached its duties as and to the extent such duties are in accordance with the terms of Borrower's organizational documents.

"Change Order" is defined in Section 4.2.

"Closing Date" means the date hereof.

"Collateral" has the meaning ascribed to such term in the Pledge Agreement.

"Collusive Insolvency" is defined in Section 13.1(c).

"Combined DK/Trinity Loan Amount" means the amount equal to the sum of (x) the Loan Amount plus (y) the amount equal to the sum of (i) the Term Loan Commitment (as defined in the Corporate Credit Agreement) plus (ii) the amount of any drawn Incremental Term Advances (as defined in the Corporate Credit Agreement) pursuant to the Corporate Credit Agreement.

"Completion", **"Complete"** or **"Completed"** has the meaning ascribed to such term in the Master Loan Agreement.

"Completion Date" means June 19, 2021, as the same may be extended to the Outside Completion Date solely due to Force Majeure.

"Completion Guaranty" means the Mezzanine Guaranty of Completion and Payment of even date herewith from Indemnitor for the benefit of Administrative Agent (for the benefit of Lender), as amended from time to time.

"Condominium" means the condominium established by Mortgage Borrower pursuant to the Declaration consisting of the Condominium Units and common elements and limited common elements described therein, in accordance with the terms and conditions of this Agreement and the Mortgage Loan Agreement.

"Condominium Act" means Article 9-B of the New York Real Property Law (339-d et seq.), together with the administrative rules promulgated thereunder, and all amendments and replacements thereof, and all regulations with respect thereto now or hereafter promulgated.

"Condominium Association" means the condominium association established pursuant to the Condominium Documents.

"Condominium Board of Managers" means the persons responsible for the administration and operation of the Condominium Association who are designated by the Unit Owners in accordance with the Bylaws of the Condominium attached to the Declaration.

"Condominium Documents" means, collectively, the Declaration, the Bylaws, the Condominium Plans, the Offering Plan, drawings and any other documents relating to the submission of the Improvements to the condominium form of ownership and the regulation and administration of the Improvements after submission, all of which have been accepted for filing by the Attorney General.

“Condominium Laws” means all applicable local and state laws, rules and regulations which affect the establishment and maintenance of condominiums in the State and the offering and sale of condominiums in the State, including, without limitation, the Condominium Act and the Martin Act, as same may be amended and in effect from time to time.

“Condominium Plans” means the floor plans of the Condominium Units filed in the Register’s Office as CRFN 202000099655.

“Condominium Unit” has the meaning ascribed to such term in the Master Loan Agreement.

“Constituent Equity Members” is defined in Section 8.12(e).

“Construction Contract” has the meaning ascribed to such term in the Master Loan Agreement.

“Construction Work” means the construction of the Project in accordance with the Approved Plans, which includes, without limitation, the construction of the Improvements.

“Contingency Line Item” has the meaning ascribed to such term in the Master Loan Agreement.

“Contractor” means Gilbane Residential Construction LLC.

“Contractor’s Consent” means the consent executed and delivered by the Contractor to Administrative Agent (for the benefit of Lender) in connection with the Loan, pursuant to which the Contractor has, among other things, consented to the Acknowledgement and Consent.

“Control” means the power to direct the decision-making, management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, by contract, relation to individuals or otherwise; and the terms “Controlling” or “Controlled” have meanings correlative to the foregoing.

“Conveyance” is defined in Section 10.1.

“Corporate Credit Agreement” means that certain Credit Agreement, dated as of December 19, 2019, by and among Indemnitator, as borrower (**“Corporate Facility Borrower”**), certain subsidiaries of Indemnitator from time to time party thereto, as guarantors, the initial lenders named therein, as initial lenders (**“Corporate Facility Lenders”**), and Trimont Real Estate Advisors, LLC, as administrative agent (**“Corporate Facility Administrative Agent”**), as amended by that certain Amendment No. 2 to Credit Agreement, dated as of the date hereof, and as the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time.

“Corporate Facility Administrative Agent” is defined in the definition of “Corporate Credit Agreement.”

“Corporate Facility Borrower” is defined in the definition of “Corporate Credit Agreement.”

“Corporate Facility Lenders” is defined in the definition of “Corporate Credit Agreement.”

“Cure Notice” is defined in Section 11.1(c).

“Declaration” means the declaration establishing a plan for condominium ownership of the Mortgaged Property, recorded as CRFN 2020000099654 in the Register’s Office with such modifications thereto as shall be approved by Administrative Agent in accordance with this Agreement and Mortgage Lender in accordance with the Mortgage Loan Agreement.

“Debtor Relief Law” means any applicable bankruptcy laws, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

“Default Rate” is defined in Section 2.2(c).

“Demolition Contract” has the meaning ascribed to such term in the Master Loan Agreement.

“Designer’s Contract” has the meaning ascribed to such term in the Master Loan Agreement.

“Developer Event of Default” means any event of default by Mortgage Borrower under the School Unit Purchase Agreement, following any required notice to Borrower and following the expiration of any applicable cure periods specified therein.

“Developer Fee” is defined in Section 4.13.

“Disbursement to Mortgage Borrower” has the meaning ascribed to the term “Disbursement to Borrower” in the Master Loan Agreement.

“Division” or **“Divide”** means, as to any Person, such Person dividing and/or otherwise engaging in and/or becoming subject to, in each case, any division (whether pursuant to a plan of division or otherwise) including, without limitation and to the extent applicable, pursuant to Section 18-217 of the Act.

“DK” means Davidson Kempner Capital Management LP, a Delaware limited partnership.

“Dollars” and **“\$”** means lawful money of the United States of America.

“Easement Agreements” is defined in Section 8.3.

“Easements” is defined in Section 8.3.

“Engineer” has the meaning ascribed to such term in the Master Loan Agreement.

“Engineer’s Consent” means the consent executed and delivered by each Engineer to Administrative Agent (for the benefit of Lender) in connection with the Loan, pursuant to which each Engineer has, among other things, consented to the Acknowledgement and Consent.

“Engineer’s Contract” has the meaning ascribed to such term in the Master Loan Agreement.

“Environmental Indemnification Agreement” means the Mezzanine Environmental Indemnification Agreement of even date executed by Borrower and Indemnitor in favor of Administrative Agent (for the benefit of Lender), as amended from time to time.

“Equipment” has the meaning ascribed to such term in the Master Loan Agreement.

“Equity Deposit” has the meaning ascribed to such term in the Master Loan Agreement.

“Equity Funding Guaranty” means the Mezzanine Equity Funding Guaranty of even date herewith from Indemnitor for the benefit of Administrative Agent (for the benefit of Lender), as amended from time to time.

“ERISA” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

“ERISA Affiliate” means any corporation or trade or business that is a member of any group of organizations (a) described in Section 414(b) or (c) of the IRS Code, of which Borrower, Mortgage Borrower or Mortgage Pledgor is a member, and (b) solely for purposes of potential liability or any lien arising under Section 302 of ERISA and Section 412 of the IRS Code, described in Section 414(m) or (o) of the IRS Code, of which Borrower is a member.

“Event of Default” means any one or more of the events described in Section 11.1.

“Extended Term” is defined in Section 2.4(b).

“Extension Conditions” is defined in Section 2.4(b).

“Extension Fee” means (i) with respect to the first Extended Term, an extension fee equal to one-quarter of one percent (0.25%) of the outstanding principal balance of the Loan on the Initial Maturity Date, as reasonably calculated by Administrative Agent and (ii) with respect to the second Extended Term, an extension fee equal to one-half of one percent (0.50%) of the outstanding principal balance of the Loan on the First Extended Maturity Date, as reasonably calculated by Administrative Agent.

“Extension Notice” is defined in Section 2.4(b).

“Extension Option” is defined in Section 2.4(b).

“Federal Bankruptcy Code” means Title 11 of the United States Code, as the same may be amended from time to time or any successor statute.

“Fee Letter” means that certain Fee Letter dated as of the date hereof, by and between Administrative Agent (for the benefit of Lender) and Borrower, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Financial Information” is defined in Section 9.1.

“Financial Information Fee” is defined in Section 9.1(c).

“First Extended Maturity Date” means December 22, 2024.

“Fiscal Year” means each calendar year during the term of this Agreement, or such other fiscal year of Borrower as Borrower may select from time to time with the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld, delayed or conditioned. During the first year of the term of this Agreement, Borrower’s Fiscal Year shall be deemed to have commenced on the date of this Agreement and shall end on the regular Fiscal Year ending date as indicated in the immediately preceding sentence.

“Foreign Taxes” is defined in Section 2.8(d).

“Force Majeure” has the meaning ascribed to such term in the Master Loan Agreement.

“Funds” has the meaning ascribed to such term in the Master Loan Agreement.

“Governmental Authority” is defined in Section 2.8(d).

“Impositions” means all taxes or payments in lieu of taxes of every kind and nature, sewer rents, charges for water, for setting or repairing meters and for all other utilities serving the Premises, and assessments, levies, inspection and license fees and all other charges imposed upon or assessed against the Mortgaged Property or any portion thereof (including the Property Income but specifically excluding income, franchise and doing business taxes) by a Governmental Authority, in each case relating to the Mortgaged Property, and any stamp, mortgage or other taxes which might be required to be paid, or with respect to any of the Loan Documents, any of which might, if unpaid, affect the enforceability of any of the remedies provided in this Agreement or any other Loan Documents or result in a lien on the Mortgaged Property or any portion thereof, regardless of to whom assessed.

“Improvements” has the meaning ascribed to such term in the Master Loan Agreement.

“Increased Costs” is defined in Section 2.8(b).

“Indebtedness” means the aggregate of all principal and interest payments that accrue or are due and payable in connection with the Loan, together with all other obligations and liabilities and all amounts of money advanced or paid or due and all costs and expenses incurred by Administrative Agent and Lender hereunder or under any other Loan Document.

“Indemnified Costs” is defined in Section 15.6.

“Indemnitor” means Trinity Place Holdings Inc.

“Indemnitor’s Financial Covenants” means the financial covenants to be satisfied by Indemnitor as same are set forth in Section 12 of the Recourse Guaranty Agreement.

“Independent Director” or **“Independent Manager”** means a natural person who (A) has prior experience as an independent director, independent manager or independent member with at least three (3) years of employment experience and who is provided by CT Corporation, Corporation Service Company, National Registered Agents, Inc. (or its affiliate NRAI Entity Services, LLC), Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional independent directors, independent managers or independent members, another nationally-recognized company reasonably approved by Administrative Agent, in each case, that is not an Affiliate of Borrower, Mortgage Borrower or Mortgage Pledgor and that provides professional independent directors, independent managers, independent members and other corporate services in the ordinary course of its business, and (B) is duly appointed as an independent director, independent manager or independent member of (1) the board of directors or board of managers of the applicable corporation or (2) the applicable limited liability company and for the five (5)-year period prior to his or her appointment as such independent director, independent manager or independent member has not been and during the continuation of his or her serving as such independent director, independent manager or independent member will not be, any of the following: (i) a member (other than a Special Member of Borrower), manager (other than an Independent Director or Independent Manager of Borrower), director, trustee, officer, employee, attorney, or counsel of any of Borrower, Mortgage Borrower, Mortgage Pledgor, Indemnitor or their respective Affiliates; (ii) a creditor, customer, supplier, service provider (including provider of professional services) or other Person who derives any of its purchases or revenues from its activities with Borrower, Mortgage Borrower, Mortgage Pledgor, Indemnitor or any of their respective Affiliates (other than a member, manager, director, trustee, officer, employee, attorney or counsel of a nationally-recognized company that routinely provides professional independent directors, independent managers and independent members and other corporate services to Borrower, Mortgage Borrower, Mortgage Pledgor, Indemnitor or any of their respective Affiliates in the ordinary course of business); (iii) a direct or indirect legal or beneficial owner in Borrower, Mortgage Borrower, Mortgage Pledgor, Indemnitor or any of their respective Affiliates; (iv) a member of the immediate family of any member, manager, employee, attorney, customer, supplier or other Person referred to above; and (v) a Person Controlling or under the common Control of anyone listed in clauses (i) through (iv) above. A natural person who otherwise satisfies the foregoing definition but does not satisfy the requirements of clause (i) by reason of being the independent director, independent manager or independent member of a “single purpose entity” affiliated with Borrower, Mortgage Borrower or Mortgage Pledgor, shall be qualified to serve as an Independent Director or Independent Manager hereunder, *provided* that the fees that such individual earns from serving as an independent director, independent manager or independent member of affiliates of Borrower, Mortgage Borrower or Mortgage Pledgor in any given year constitute in the aggregate less than five percent (5%) of such individual’s annual income for that year. For purposes of this paragraph, a “single purpose entity” is an entity, whose organizational documents contain restrictions on its activities and

impose requirements intended to preserve such entity's separateness that are substantially similar to the SPE Requirements. The Independent Director or Independent Manager for each of Borrower, on one hand, and Mortgage Borrower and Mortgage Pledgor (if any), on the other hand, shall at all times be separate persons.

"Initial Maturity Date" is defined in Section 2.4(a).

"Initial Required Equity" means an amount equal to or greater than \$61,754,677.00.

"Inspector" means the independent inspector retained by Administrative Agent (for the benefit of Lender) at Borrower's cost to perform the functions described in Section 4.5.

"Institutional Real Estate Investor" means (i) any bank, insurance company, pension fund or other similar non-individual investor, provided that said entity conducts business in the United States, or (ii) a United States based real estate fund that is comprised of investors that are Institutional Real Estate Investors.

"Interest Rate" shall mean a rate of one thousand four hundred basis points (i.e., 14.0%) per annum.

"Investor" is defined in Section 14.13.

"IRS Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute.

"Late Charge" is defined in Section 2.2(b).

"Leases" has the meaning ascribed to such term in the Master Loan Agreement.

"Legal Requirements" means all applicable existing and future federal, state and local laws, ordinances, rules and regulations and court orders affecting the Mortgaged Property, the Collateral, Borrower, Mortgage Borrower, Mortgage Pledgor or the Indemnitor including those pertaining to zoning, landmarks, historical sites, wetlands, subdivision, land use, environmental, traffic, fire, building, union collective bargaining agreements (which are binding upon trade contractors performing work at the Mortgaged Property), occupational safety and other applicable labor laws (including any applicable minimum or prevailing wage laws), health and Americans with Disabilities Act.

"Lender" is defined in the introductory paragraph on page one of this Agreement.

"Lender Parties" means Lender, DK, any present and future Administrative Agent, loan participants, co-lenders, loan servicers, custodians and trustees, and each of their respective directors, officers, employees, shareholders, agents, affiliates, heirs, legal representatives, successors and assigns.

"Lien" means any security interest or encumbrance of or in the Mortgaged Property or the Collateral securing an obligation owed to, or a claim by, any Person other than the owner of the Mortgaged Property or the Collateral, whether such interest is based on common law, statute

or contract, including the lien or security interest arising from a deed of trust, mortgage, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes, or under any ground leases and any other lease forming a part of the Mortgaged Property, or arising from any claims and demands of mechanics, materialmen, laborers and others.

“Liquidation Event” means the occurrence of any of the following (without implying that the any of the following are permitted hereunder other than as expressly provided here): (a) a transfer of the Mortgaged Property in violation of this Agreement or in connection with foreclosure thereon following a Mortgage Loan Event of Default; (b) a transfer of the Collateral or any portion thereof or interest therein in violation of this Agreement; (c) any encumbrance of the Mortgaged Property or the Collateral (other than Permitted Encumbrances), or a refinancing of the Mortgage Loan; (d) any casualty to all or any material portion of the Mortgaged Property; or (e) any condemnation of all or any material portion of the Mortgaged Property.

“Line Item” means a line item of cost and expense, as set forth in the Approved Budget.

“Loan” is defined in the introductory paragraph on page one of this Agreement.

“Loan Amount” means \$7,500,000.00.

“Loan Documents” means collectively, this Agreement, the Note, the Pledge Agreement, the Acknowledgement and Consent, the Architect’s Consent, the Contractor’s Consent, the Engineer’s Consent, the Environmental Indemnification Agreement, the Recourse Guaranty Agreement, the Completion Guaranty, the Subordination of Management Agreement (once entered into), the Carry Guaranty, the Equity Funding Guaranty, the Subordination of Exclusive Sales Agreement, the Uniform Commercial Code Financing Statements naming Borrower as debtor and Administrative Agent as secured party and all other documents now or hereafter executed by Borrower, Mortgage Borrower, Mortgage Pledgor, Indemnitor or any other Person to evidence or secure the payment of the Indebtedness or the performance of Borrower or otherwise now or hereafter executed in connection with the Loan and all amendments, modification, restatements, extensions, renewals and replacements of the foregoing.

“Loan Term” means the term of the Note from the date of the Note through and including the Maturity Date.

“Loan to Value Ratio” means, as reasonably determined by Administrative Agent, the ratio, expressed as a percentage, of (a) the then outstanding principal balance of the Loan plus the then outstanding principal balance of the Mortgage Loan, less any portion of the Mortgage Loan that is not available to be funded to Mortgage Borrower, to (b) the value of the Mortgaged Property based on an appraisal of the Mortgaged Property made within thirty (30) days of the applicable date of calculation that is reasonably acceptable to Administrative Agent, prepared by an independent appraiser holding the MAI designation, and engaged directly by Administrative Agent, at Borrower’s sole cost.

“Losses” means all actual claims, suits, liabilities, actions, proceedings, obligations, debts, losses, costs, fines, penalties, charges, fees, expenses, judgments, awards, and damage amounts paid in settlement and damages of every kind and nature (including, but not limited to,

reasonable out-of-pocket attorneys' fees and the costs and all expenses of collection and enforcement), but excluding punitive damages.

"Major Points of Business Plan" has the meaning ascribed to such term in the Master Loan Agreement.

"Management Agreement" means the property management agreement to be entered into by Mortgage Borrower and Property Manager in accordance with the terms and conditions of this Agreement.

"Martin Act" means Article 23-A of New York General Business Law (352-e et seq.) and the regulations promulgated pursuant thereto, all as amended from time to time, governing the offering and sale of cooperative and condominium interest in real property in the State.

"Master Lease" has the meaning ascribed to such term in the Master Loan Agreement.

"Master Loan Agreement" means the Master Loan Agreement, dated as of the Mortgage Loan Closing Date, by and between Mortgage Borrower and Mortgage Lender, as amended pursuant to that certain First Amendment to Master Loan Agreement, dated as of the date hereof, as further amended from time to time.

"Material Adverse Effect" means any set of circumstances or events which singly or in conjunction with any other circumstances or events (i) has caused a material adverse change regarding the validity or enforceability of any Loan Document, (ii) is material and adverse to the Project, (iii) would materially impair the ability of Borrower or Indemnitor to duly and punctually pay and/or perform its respective Obligations, (iv) would materially impair Administrative Agent's and/or Lender's ability to enforce its legal and/or contractual rights and remedies pursuant to any Loan Document, or (v) has caused a material adverse change in the financial condition of Borrower, Mortgage Borrower, Mortgage Pledgor or Indemnitor. For the avoidance of doubt, changes in general market conditions shall not be taken into account in determining whether a Material Adverse Effect has occurred.

"Material Contract" means any contract or agreement to which Borrower, Mortgage Borrower, or Mortgage Pledgor is (or is proposed to be) a party (other than the School Unit Purchase Agreement, any Leases, the Construction Contract, the Architect's Contract, the Demolition Contract, the Designer's Contract, the Engineer's Contract, the Services Contract, any Residential Unit Contract of Sale, any Retail Unit Contract of Sale, any Change Order, the Condominium Documents, the Management Agreement, the Sales Agreement, the Operating Agreements, the Easement Agreements, the Loan Documents or the Mortgage Loan Documents) that (a) (i) has a remaining balance that requires payment of \$250,000 or more per annum during the remaining term of such contract, or (ii) is not terminable on not more than (30) days' prior written notice without cause and without the payment of a penalty or premium in connection with such termination, or (b) is between such Person on the one hand, and any Affiliate thereof or of Indemnitor on the other

"Maturity Date" means the Initial Maturity Date, as may be extended in accordance with Section 2.4.

“Milestone Construction Hurdle” is defined in Section 4.1(b).

“Milestone Deadline” is defined in Section 4.1(b).

“MOIC Amount” means (a) if no Event of Default shall have occurred and be continuing, at any time prior to December 22, 2022, the amount equal to (1) the product of (x) the Combined DK/Trinity Loan Amount, *multiplied by* (y) thirty percent (30%), *less* (2) the amount equal to the sum of (i) all Capitalized PIK previously paid in cash or paid concurrently with such repayment (whether as interest or principal), (ii) the Commitment Fee (as defined in the Fee Letter), (iii) all interest payments at the Cash Pay Interest Rate (as defined in the Corporate Credit Agreement) or the PIK Interest Rate (as defined in the Corporate Credit Agreement) previously paid in cash, paid currently with such repayment (whether as interest or principal) by Corporate Facility Borrower to Corporate Facility Administrative Agent or Corporate Facility Lenders pursuant to the Corporate Credit Agreement or reasonably expected to be paid, (iv) the Commitment Fee (as defined in the Corporate Credit Agreement), (v) the Exit Fee (as defined in the Corporate Credit Agreement) previously paid, paid concurrently with such repayment by Corporate Facility Borrower to Corporate Facility Administrative Agent or Corporate Facility Lenders pursuant to the Corporate Credit Agreement or reasonably expected to be paid, and (vi) any Prepayment Premium previously paid or concurrently paid with such repayment by Corporate Facility Borrower to Corporate Facility Administrative Agent or Corporate Facility Lenders or reasonably expected to be paid, *multiplied by* (3) a fraction, (x) the numerator of which is the Loan Amount, and the denominator of which is the Combined DK/Trinity Loan Amount; provided, that notwithstanding anything to the contrary, in connection with payment of the payment of the MOIC Amount (as defined herein) or the MOIC Amount (as defined in the Corporate Credit Agreement), whichever occurs later, the parties to this Agreement and the to the Corporate Credit Agreement shall adjust such MOIC Amount (or if none is payable, the applicable party shall make a payment to the applicable payee) so that the MOIC Amount (as defined herein) and the MOIC Amount (as defined in the Corporate Credit Agreement) actually paid reflects all of the interest and fees actually paid pursuant hereto and pursuant to the Corporate Credit Agreement; or (b) if an Event of Default shall have occurred and be continuing, or from and after December 22, 2022, the Loan Amount multiplied by 30%, *less* (i) all Capitalized PIK previously paid in cash or paid concurrently with such repayment (whether as interest or principal) and (ii) the Commitment Fee (as defined in the Fee Letter).

“Mortgage” has the meaning ascribed to such term in the Master Loan Agreement.

“Mortgage Borrower” means TPHGreenwich Owner LLC, a Delaware limited liability company.

“Mortgage Lender” has the meaning ascribed to the term “Lender” in the Master Loan Agreement.

“Mortgage Loan” has the meaning ascribed to the term “Loan” in the Master Loan Agreement.

“Mortgage Loan Accounts” collectively has the meaning ascribed to the terms “Control Accounts” and “Reserve Account” in the Master Loan Agreement.

“Mortgage Loan Agreement” means, collectively, the Master Loan Agreement, the Building Loan Agreement (as defined in the Master Loan Agreement) and the Project Loan Agreement (as defined in the Master Loan Agreement).

“Mortgage Loan Closing Date” has the meaning ascribed to the term “Closing Date” in the Master Loan Agreement.

“Mortgage Loan Documents” has the meaning ascribed to the term “Loan Documents” in the Master Loan Agreement.

“Mortgage Loan Event of Default” has the meaning ascribed to the term “Event of Default” in the Master Loan Agreement.

“Mortgage Loan Restoration Provisions” is defined in Section 5.2(b).

“Mortgage Pledgor” means TPHGreenwich Mezz LLC, a Delaware limited liability company.

“Mortgaged Property” has the meaning ascribed to such term in the Master Loan Agreement.

“Net Effective Rent” has the meaning ascribed to such term in the Master Loan Agreement.

“Net Liquidation Proceeds” means, with respect to any Liquidation Event, all amounts paid to or received by or on behalf of Mortgage Borrower in connection with such Liquidation Event, including, without limitation, proceeds of any sale, refinancing or other disposition or liquidation, less (a) Administrative Agent’s, Lender’s and/or Mortgage Lender’s reasonable costs incurred in connection with the recovery thereof, (b) the costs incurred by Mortgage Borrower in connection with a restoration of all or any portion of the Mortgaged Property made in accordance with the Mortgage Loan Documents, (c) amounts required or permitted to be deducted therefrom, and amounts paid and/or payable, pursuant to the Mortgage Loan Documents, (d) in the case of a foreclosure sale, disposition or transfer of the Mortgaged Property in connection with a realization thereon following a Mortgage Loan Event of Default, such reasonable and customary costs and expenses of sale or other disposition (including reasonable attorneys’ fees and brokerage commissions), (e) in the case of a foreclosure sale, such costs and expenses incurred by Mortgage Lender under the Mortgage Loan Documents as such Persons shall be entitled to receive reimbursement for under the terms of the Mortgage Loan Documents, (f) in the case of a refinancing of the Mortgage Loan, such costs and expenses (including reasonable attorneys’ fees) of such refinancing as shall be reasonably approved by Mortgage Lender, and (g) the amount of any prepayments required pursuant to the Mortgage Loan Documents and/or the Loan Documents, in connection with any such Liquidation Event.

“Note” means that certain Mezzanine Promissory Note of even date herewith executed and delivered by Borrower to Lender in the original principal amount of \$7,500,000.00, as the same may be modified, amended, split, consolidated, replaced, substituted or extended from time to time in accordance with the terms hereof.

“**Obligations**” means all amounts now or hereafter payable by Borrower or Indemnitor under the Loan Documents and any and all obligations of Borrower or Indemnitor under or related to any Loan Documents.

“**OFAC**” means the United States Department of the Treasury, Office of Foreign Assets Control, or any successor or replacement agency.

“**OFAC Prohibited Person**” means, a country, territory or Person that is or that is owned, controlled by, acting on behalf of or affiliated with any Person (i) listed on, included within or associated with any of the countries, territories, individuals or entities referred to on The Office of Foreign Assets Control’s List of Specially Designated Nationals and Blocked Persons or any other prohibited person lists maintained by governmental authorities, or otherwise prohibited by OFAC or any other Anti-Money Laundering Laws, or (ii) which is obligated to pay, donate, transfer or otherwise assign any property, money, goods, services, or other benefits from any of the Mortgaged Property, directly or indirectly, to any countries, territories, individuals or entities on or associated with anyone on such list or prohibited by such laws.

“**Offering Plan**” means that certain Condominium Offering Plan for the sale of Units in the Condominium accepted for filing by the Attorney General, as the same may be further amended, restated or modified from time to time pursuant to Section 16.1 and Section 16.1 of the Mortgage Loan Agreement.

“**Operating Account**” has the meaning ascribed to such term in the Master Loan Agreement.

“**Operating Agreements**” means the management agreements, easement agreements, reciprocal easement agreements, leasing commission agreements, and other agreements concerning the Mortgaged Property set forth in **Exhibit B**.

“**Organizational Chart**” means the organizational chart attached hereto as **Exhibit D** that sets forth the direct and indirect ownership interests in Borrower, Mortgage Borrower, Mortgage Pledgor and the Upstream Owners.

“**Outside Completion Date**” is defined in Section 4.1.

“**Out of Balance**” has the meaning ascribed to such term in the Master Loan Agreement.

“**Participation**” is defined in Section 14.13.

“**Payment Date**” means January 1, 2021 and the first Business Day of each calendar month thereafter to and including the Maturity Date.

“**Permits**” has the meaning ascribed to such term in the Master Loan Agreement.

“**Permitted Encumbrances**” means, (a) with respect to Mortgage Borrower, the Mortgage Loan and/or the Premises, the “Permitted Encumbrances” as such term is defined in the Master Loan Agreement and (b) with respect to Borrower, the Loan and/or the Collateral, the lien and security interests created by this Agreement and the other Loan Documents.

“**Person**” means and includes any individual, corporation, partnership, joint venture, limited liability company, association, bank, joint-stock company, trust, unincorporated organization or government, or an agency or political subdivision thereof.

“**Plan Assets Regulation**” is defined in Section 8.10(a).

“**Pledge Agreement**” means that certain Pledge and Security Agreement of even date herewith from Borrower for the benefit of Administrative Agent (for the benefit of Lender), as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

“**Pledged Company Interests**” has the meaning ascribed to such term in the Pledge Agreement.

“**Potential Event of Default**” means any event or occurrence with respect which Administrative Agent has provided Borrower with written notice that Borrower’s failure to take all corrective action prior to the expiration of an applicable cure period would be or become an Event of Default under any Loan Document.

“**Premises**” has the meaning ascribed to such term in the Master Loan Agreement.

“**Price Change Amendment**” shall have the meaning set forth in Section 8.20(b)(i) hereof.

“**Principal**” means (a) Borrower, (b) Mortgage Borrower, (c) Mortgage Pledgor, (d) Indemnitor, and (e) in the event that Indemnitor is no longer a publicly traded company, each Person that directly or indirectly Controls Borrower, Mortgage Borrower, Mortgage Pledgor or Indemnitor.

“**Proceeds**” has the meaning ascribed to such term in the Master Loan Agreement.

“**Project**” has the meaning ascribed to such term in the Master Loan Agreement.

“**Property Income**” has the meaning ascribed to such term in the Master Loan Agreement.

“**Property Manager**” means a property manager designated by Mortgage Borrower in accordance with the terms and provisions of this Agreement and the Mortgage Loan Agreement and approved by Administrative Agent.

“**Punch List Items**” has the meaning ascribed to such term in the Master Loan Agreement.

“**Purchase Agreement Deposit**” means a deposit pursuant to a Residential Unit Contract of Sale or a Retail Unit Contract of Sale, as applicable.

“**Purchase Agreement Deposit Accounts**” means the escrow/trust account(s) established pursuant to the Residential Unit Contract of Sale or a Retail Unit Contract of Sale, as applicable.

“Purchase Agreement Deposit Escrow Agreement” has the meaning ascribed to such term in the Master Loan Agreement.

“Purchase Agreement Deposit Escrowee” means Kramer Levin Naftalis & Frankel LLP or such other Person as shall be compliant with Legal Requirements and reasonably acceptable to Administrative Agent to act as escrow agent under a Residential Unit Contract of Sale or Retail Unit Contract of Sale, as applicable, and hold the Purchase Agreement Deposits and the Residential Unit Net Sale Proceeds or Retail Unit Net Sale Proceeds, as applicable.

“Purchase Agreement Deposit Escrowee Bank” means any financial institution selected by Mortgage Borrower (and subject to reasonable approval of Mortgage Lender) where the Purchase Agreement Deposit under each Residential Unit Contract of Sale and/or Retail Unit Contract of Sale will be deposited by Purchase Agreement Deposit Escrowee.

“Qualified Real Estate Investor” means, with respect to any proposed transferee or its principal or Affiliate, as applicable, any reputable entity (as determined by Administrative Agent in the exercise of its reasonable discretion) which is domiciled in the U.S. and which is reasonably determined by Administrative Agent to have satisfied all of the following conditions: said entity or entities, as applicable (1) shall be an Institutional Real Estate Investor or another Person approved in writing by Administrative Agent, which approval shall not be unreasonably withheld, conditioned or delayed, with an allocation to United States commercial real estate and prior experience investing in commercial real estate in the United States; (2) have (a) total assets, excluding the Mortgaged Property, with a current market value of not less than \$200,000,000, (b) have a net worth, excluding the Mortgaged Property of not less than \$100,000,000, and (c) liquid assets of not less than \$35,000,000; and (3) is not and has not been (w) in default beyond any required notice and the expiration of any applicable cure period on any indebtedness or loan from Lender or any affiliate of Lender, (w) involved as a debtor or as the principal of a debtor in any bankruptcy, reorganization or insolvency proceeding, (x) the subject of any criminal charges or proceedings, (y) involved in litigation which is reasonably deemed to (i) cause Administrative Agent or Lender reputational risk in the commercial real estate market, (ii) prevent or materially impair Borrower’s ability to achieve the Milestone Construction Hurdles prior to the Milestone Deadlines, or (iii) if adversely determined would cause said entity to be unable to satisfy the financial thresholds set forth in clause (2) herein, or (z) listed on, included within or associated with any of the persons or entities referred to in Executive Order 13324 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended by the United States Department of the Treasury, Office of Foreign Assets Control through the date the determination of Qualified Real Estate Investor is made.

“Rating Agency” means any nationally-recognized statistical rating agency which has been approved by Administrative Agent.

“Recourse Guaranty Agreement” means that certain Mezzanine Recourse Guaranty Agreement of even date from Indemnitor for the benefit of Administrative Agent (for the benefit of Lender), as amended from time to time.

“Register” is defined in Section 14.15.

“Register’s Office” means the Office of the City Register of the City of New York.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, consultants, service providers and representatives of such Person and of such Person’s Affiliates.

“Removal Effective Date” is defined in Section 15.6.

“Residential Unit” has the meaning ascribed to such term in the Master Loan Agreement.

“Residential Unit Contract of Sale” means any executed contract for the sale of a Subdivided Residential Unit, to be in the form required pursuant to the Condominium Documents and Section 16.2 of this Agreement and Section 16.2 of the Mortgage Loan Agreement.

“Residential Unit Minimum Sales Price” has the meaning ascribed to such term in the Master Loan Agreement.

“Residential Unit Net Sale Proceeds” has the meaning ascribed to such term in the Master Loan Agreement.

“Residential Unit Purchaser” means any person or entity that purchases a Subdivided Residential Unit. Any partners, Affiliates, related entities, subsidiaries, entities under common ownership or control of the applicable Residential Unit Purchaser, as well as any relations or relatives of natural persons by blood or marriage of the applicable Residential Unit Purchaser shall constitute one and the same Residential Unit Purchaser for purposes of this Agreement.

“Resignation Effective Date” is defined in Section 15.6.

“Retail Unit” has the meaning ascribed to such term in the Master Loan Agreement.

“Retail Unit Contract of Sale” is defined in Section 16.2(c).

“Retail Unit Minimum Sales Price” means an amount no less than \$7,000,000.00.

“Retail Unit Net Sale Proceeds” has the meaning ascribed to such term in the Master Loan Agreement.

“Required Equity” means an amount equal to or greater than \$102,827,998.00.

“Sales Agent” means The Marketing Directors, Inc.

“Sales Agreement” means that certain Exclusive Sales Agreement dated as of July 1, 2015 by and between Sales Agent and Mortgage Borrower.

“Sales Pace Covenant” is defined in Section 8.21.

“**SCA**” means the New York City School Construction Authority, a public benefit corporation of the State of New York.

“**SCA Change Order**” is defined in Section 4.2.

“**SCA Pre- and Post-Turnover Work**” is defined in the School Unit Purchase Agreement.

“**School Construction Supervision Fee**” has the meaning ascribed to such term in the Master Loan Agreement.

“**School Cost Payments**” has the meaning ascribed to such term in the Master Loan Agreement.

“**School Unit**” has the meaning ascribed to such term in the Master Loan Agreement.

“**School Unit Purchase Agreement**” has the meaning ascribed to such term in the Master Loan Agreement.

“**Securities**” is defined in Section 14.13.

“**Securitization**” is defined in Section 14.13.

“**Servicer**” is defined in Section 14.11.

“**Services Contract**” has the meaning ascribed to such term in the Master Loan Agreement.

“**Servicing Agreement**” is defined in Section 14.11.

“**SPE Requirements**” is defined in Section 8.12.

“**Special Member**” is defined in Section 8.12(d).

“**State**” means the State of New York.

“**Subdivided Residential Unit**” has the meaning ascribed to such term in the Master Loan Agreement.

“**Sublease**” has the meaning ascribed to such term in the Master Loan Agreement.

“**Subordination of Exclusive Sales Agreement**” means the Mezzanine Subordination of Exclusive Sales and Marketing Agreement, dated as of the date hereof, by and among Borrower, Mortgage Borrower, Administrative Agent (for the benefit of Lender) and the Sales Agent, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

“**Subordination of Management Agreement**” means the Mezzanine Subordination of Management Agreement to be executed by and among Mortgage Borrower, Administrative

Agent (for the benefit of Lender) and the Property Manager in connection with the Loan substantially in the form attached hereto as **Exhibit E**, pursuant to which the Property Manager shall, among other things, consent to the subordination of the Management Agreement.

“**Title Company**” means Fidelity National Title Insurance Company.

“**Transfer**” is defined in Section 14.13.

“**UCC Policy**” means a UCC title insurance policy in form reasonable acceptable to Administrative Agent issued by the Title Company with respect to the Collateral and insuring the lien of the Pledge Agreement encumbering the Collateral.

“**Unit Owners**” is defined in the Declaration.

“**Upstream Owner**” means any Person having a direct or indirect legal, beneficial or other ownership interest in Borrower, Mortgage Borrower or Mortgage Pledgor (e.g., if Borrower, Mortgage Borrower or Mortgage Pledgor is a limited liability company, and one of Borrower’s, Mortgage Borrower’s or Mortgage Pledgor’s members is a limited partnership, whose partner is a corporation, then such limited partnership, corporation and the shareholders of such corporation would each be an Upstream Owner); provided, however, to the extent Indemnitor remains a publicly traded company, Upstream Owner shall not include any shareholder of, or Person having a direct or indirect legal and/or beneficial ownership interest in, Indemnitor.

“**Waived Restoration Provisions**” is defined in Section 5.2(b).

Section 1.2 Interpretation.

For all purposes under and pursuant to this Agreement and each other Loan Document, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

(a) the capitalized terms defined in this Article have the meanings assigned to them in this Article, include the plural as well as the singular, and, when used with respect to any instrument, contract or agreement, include all extensions, modifications, amendments and supplements from time to time thereto;

(b) the words “herein”, “hereof”, and “hereunder” and other words of similar import refer to this Agreement and each other Loan Document as a whole and not to any particular Article, Section, or other subdivision;

(c) the words “include” and “including” and other words of similar import shall be construed as if followed by the phrase “, without limitation,”;

(d) Administrative Agent’s or Lender’s consent, approval, acceptance or determination under the Loan Documents shall be in Administrative Agent’s or Lender’s sole discretion, unless a different standard for consent, approval, acceptance or determination is expressly set forth in the Loan Documents; and

(e) any provision of the Loan Documents permitting the recovery of “attorneys’ fees”, “attorneys’ fees and expenses”, “attorneys’ fees and costs” or “attorneys’ fees, costs and expenses” or any similar term shall: (i) include all reasonable out-of-pocket costs and expenses, including attorneys’ fees, costs and expenses related or incidental to, or incurred in any judicial, arbitration, administrative, probate, appellate, bankruptcy, insolvency or receivership proceeding, as well as in any post-judgment proceeding to collect or enforce any judgment or order relating to the Indebtedness or any of the Loan Documents, as well as any defense or assertion of the rights or claims of Administrative Agent or Lender in respect of any thereof, by litigation or otherwise; and (ii) be separate and several and survive merger into judgment.

(f) references to any Section, Article or Exhibit in a Loan Document shall mean a section, article or exhibit to such Loan Document, unless provided otherwise.

Borrower and Administrative Agent (for the benefit of Lender) hereby acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any of the other Loan Documents to the effect that Borrower (a) represents or warrants on behalf of, or covenants on behalf of, Mortgage Borrower or an Affiliate thereof, (b) shall cause Mortgage Borrower or an Affiliate thereof to act or refrain from acting, to comply with, to permit, to perform, to pay, to furnish, to cure, to remove, to observe, to deliver, to suffer, to initiate, to provide, to make available, to furnish in any manner, or (c) shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to Mortgage Borrower or an Affiliate thereof, such clause or provision is intended to mean, and shall be construed as meaning, (i) that Borrower shall cause Mortgage Pledgor to cause Mortgage Borrower or such Affiliate to take such action and in all such cases throughout the Loan Documents the words “Borrower shall” or “Borrower shall not” (or words of similar meaning) means “Borrower shall cause Mortgage Pledgor to cause Mortgage Borrower (or the applicable Affiliate)” or “Borrower shall not permit Mortgage Pledgor to permit Mortgage Borrower (or the applicable Affiliate)” to so act or not to so act, as applicable, as the context may require (and any instance in the Loan Documents where such words already appear shall not be deemed or construed to mean that any other instance where such words do not appear were not intended to be interpreted as provided above), and (ii) that Borrower is obligated only in Borrower’s capacity with respect to Mortgage Borrower or such Affiliate thereof, and not directly with respect to Mortgage Borrower or such Affiliate thereof in any other manner which would cause Borrower to fail to satisfy the covenants set forth in Section 8.12 of this Agreement, any other similar covenants contained in Borrower’s or Mortgage Borrower’s organizational documents, or any other similar covenants contained in any Loan Documents. With respect to terms defined by cross-reference to the Mortgage Loan Documents or other references to the provisions of the Mortgage Loan Documents, such defined terms shall have the definitions, and such other provisions shall be, as set forth in the Mortgage Loan Documents as of the date hereof (in each case, except that any reference to Mortgage Lender shall be deemed to mean Administrative Agent (for the benefit of Lender)), and no modifications to the Mortgage Loan Documents shall have the effect of changing such definitions or provisions (including changes to other definitions or provisions set forth in the Mortgage Loan Documents that are used in or otherwise modify such cross-referenced definitions or cross-referenced provisions) for the purposes of this Agreement unless Administrative Agent has approved of such modification in writing. Notwithstanding anything stated herein to the contrary, any provisions in this Agreement cross-referencing or incorporating by reference provisions of the Mortgage Loan Documents shall be effective notwithstanding the

termination of the Mortgage Loan Documents by payment in full of the Mortgage Loan or otherwise.

ARTICLE 2

LOAN TERMS

Section 2.1 The Loan and the Note. Lender agrees, on the terms and conditions of this Agreement, to advance the Loan, and Borrower agrees to accept the entire principal amount of the Loan, in the amount of **SEVEN MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$7,500,000.00)**, and to repay the Loan in accordance with this Agreement, the Note and the other Loan Documents. The Note evidences the indebtedness of Borrower under the Loan. Borrower acknowledges and agrees that the entire principal amount of the Loan was advanced by Lender and received by Borrower on the date of this Agreement and that the Loan is fully funded in the stated principal amount thereof.

Section 2.2 Interest Rate; Late Charge; Default Rate.

(a) Borrower shall pay interest on the entire principal amount of the Loan at the Interest Rate in accordance with the terms of Section 2.3(a).

(b) All interest accruing on the Loan shall be calculated on the basis of a three hundred sixty (360) day year and the actual number of days in the applicable period for which interest is being calculated.

(c) If any regular monthly installment of principal or interest due under this Agreement, or any monthly deposit for taxes, insurance, replacements and other sums if required under any Loan Document (other than the principal balance of the Loan on the Maturity Date), shall not be paid as required under this Agreement or any other Loan Document within five (5) days following the date the same is due, Borrower shall pay to Administrative Agent (for the benefit of Lender) a late charge (the "**Late Charge**") of four cents (\$0.04) for each dollar so overdue in order to compensate Lender for its loss of the timely use of the money and frustration of Lender in the meeting of its financial commitments and to defray part of Lender's incurred cost of collection occasioned by such late payment. Any Late Charge incurred shall be immediately due and payable. If, however, during any consecutive twelve (12) month period Borrower on more than two (2) occasions shall pay any such installment or deposits after the due date thereof (whether prior to or after the time that the Late Charge is payable as above), then the time period after which a Late Charge will be charged and paid shall thereafter be reduced from five (5) days to two (2) Business Days after the applicable due date. Nothing herein contained shall be deemed to constitute a waiver or modification of the due date for such installments or deposits or the requirement that Borrower make all payment of installments and deposits as and when the same are due and payable.

(d) Upon an Event of Default or on the Maturity Date, the unpaid principal balance of the Loan shall thereafter bear interest at the per annum interest rate (the "**Default Rate**") equal to the lesser of:

- (i) the highest rate permitted by law to be charged on a promissory note secured by a commercial mortgage, or
- (ii) the sum of five percent (5%) plus the Interest Rate.

Interest at the Default Rate as provided in this Section shall be immediately due and payable to Administrative Agent and shall constitute additional Indebtedness evidenced by the Note and secured by the Loan Documents.

Section 2.3 Terms of Payment. The Loan shall be payable by Borrower as follows:

(a) Notwithstanding anything to the contrary set forth herein, interest shall not be payable on each Payment Date but shall instead automatically be added to the unpaid principal amount on each Payment Date and upon the Maturity Date and shall thereafter constitute principal for all purposes of this Agreement (the “**Capitalized PIK**”).

(b) All payments and other amounts due under this Agreement and the other Loan Documents shall be made without any setoff, defense or irrespective of, and without deduction for, counterclaims. The principal amount of the Loan increased by the addition of the Capitalized PIK may be evidenced in writing only by Administrative Agent, which writing shall be deemed to be correct absent manifest error.

(c) From and after the date the Mortgage Loan is no longer outstanding, upon the sale of each Subdivided Residential Unit in accordance with the provisions of Article 16, Borrower shall pay Administrative Agent (for the benefit of Lender) the Residential Unit Net Sale Proceeds, to be applied by Administrative Agent on the date Administrative Agent actually receives such funds in accordance with the provisions of Section 2.7(d); provided, however, so long as no Event of Default exists, Borrower may elect upon the sale of any Subdivided Residential Unit to deliver the Residential Unit Net Sale Proceeds to Administrative Agent (for the benefit of Lender) to be held in escrow by Administrative Agent in a non-interest bearing account until the last Business Day of the then current calendar month, at which time, the Residential Unit Net Sale Proceeds shall be applied by Administrative Agent in accordance with the provisions of Section 2.7(d).

(d) On the Maturity Date or on any earlier date as a result of an Acceleration Event, Borrower shall pay all outstanding principal, accrued and unpaid interest (inclusive of the Capitalized PIK), and any other amounts due under the Loan Documents. Borrower acknowledges that, since the Loan is interest only and no principal payments are required to be made prior to the Maturity Date or an earlier date as a result of an Acceleration Event, all or a substantial portion of the principal amount of the Loan will be due on the Maturity Date.

Section 2.4 Loan Term.

(a) **Initial Loan Term.** The Loan Term shall commence on the date hereof and terminate on December 22, 2023 (the “Initial Maturity Date”), unless otherwise extended under the provisions of Section 2.4(b).

(b) **Extension Option.** Upon satisfaction of the Extension Conditions, Borrower shall have the option to extend the Initial Maturity Date of the Loan for two (2) successive terms of one year each (each such option, an “**Extension Option**” and each successive term, an “**Extended Term**”). During each Extended Term and except for any time when the Default Rate is applicable pursuant to the terms of this Agreement, the Loan (including any amounts added to principal under the Loan Documents) shall bear interest at the Interest Rate.

In connection with (and as a condition to) the exercise by Borrower of an Extension Option, Borrower must satisfy each of the following (collectively, the “**Extension Conditions**”):

(i) Borrower shall provide Administrative Agent with written notice (the “**Extension Notice**”) of its intent to exercise such Extension Option not later than sixty (60) days and not earlier than ninety (90) days, prior to the then-applicable Maturity Date, **TIME BEING OF THE ESSENCE**;

(ii) No Event of Default or Potential Event of Default shall exist as of the date of the applicable Extension Notice and on the first day of the applicable Extended Term;

(iii) Borrower shall pay Administrative Agent (for the benefit of Lender) the applicable Extension Fee prior to the first day of the applicable Extended Term, which Extension Fee shall be earned by Lender as of the date of the applicable Extension Notice; provided, however, if Borrower does not fully satisfy the Extension Conditions, no Extension Fee shall be payable, although Borrower shall remain liable for the payment of the costs set forth in clause (xii) below;

(iv) Mortgage Borrower has Completed the Improvements;

(v) Borrower has no further liability associated with the construction of the School Unit (other than the SCA Pre- and Post-Turnover Work);

(vi) The Subdivided Residential Units are being marketed for sale;

(vii) The Improvements shall be in compliance, in all material respects, with the Business Plan and the Approved Budget;

(viii) Mortgage Borrower is in compliance with the Sales Pace Covenant;

(ix) All financial statements required to be delivered pursuant to Section 9.1(a) and 9.1(b) of this Agreement have been received and Indemnitor continues to satisfy the Indemnitor’s Financial Covenants;

(x) Administrative Agent shall have received (A) if the Mortgage Loan remains outstanding, a copy of the title continuation from the Title Company indicating that there has been no undischarged new or intervening liens or encumbrances or other matter not previously approved or consented to by Administrative Agent in writing (unless contested in accordance with the terms of this Agreement and the Mortgage Loan Agreement), any cost of such title continuation being the sole responsibility of Borrower

or (B) if the Mortgage Loan is no longer outstanding, a title report dated within five (5) days of the then-applicable Maturity Date, confirming no encumbrances other than the Permitted Encumbrances;

(xi) The Loan to Value Ratio, measured as of the then-applicable Maturity Date, shall not be greater than eighty percent (80.0%). Borrower shall be permitted to prepay the Loan or post cash security or a letter credit, acceptable to Administrative Agent in each case, in an amount necessary to satisfy the foregoing Loan to Value Ratio requirement; and

(xii) Borrower shall pay all reasonable out-of-pocket costs and expenses incurred by Administrative Agent and Lender in connection with Borrower exercising its rights under this Section 2.4(b).

Section 2.5 Prepayment. There are no full or partial prepayment privileges of the principal amount of the Loan except as set forth in this Agreement:

(a) Notwithstanding anything to the contrary set forth herein, in no event shall the Loan be prepaid in whole or in part prior to the prepayment in full of the Mortgage Loan; provided, that if the Mortgage Loan is being prepaid in full, the Loan may be prepaid in whole or in part simultaneous with such prepayment. Subject to the prior sentence, Borrower may prepay the Loan in whole or in part, without penalty or premium (other than payment of the MOIC Amount as provided below), upon at least thirty (30) days' prior written notice to Administrative Agent.

(b) If the Maturity Date is accelerated by Administrative Agent because of the occurrence of an Event of Default (an "**Acceleration Event**"), the acceleration shall be deemed to be an election on the part of Borrower to prepay the Loan.

(c) In connection with any prepayment or repayment of the entire outstanding principal balance of the Loan, Borrower shall pay to Administrative Agent (for the benefit of Lender) the MOIC Amount. It is expressly agreed and understood that payment of the MOIC Amount shall be due under any and all circumstances where the entire outstanding principal balance of the Loan is paid prior to the Maturity Date, whether such payment is voluntary or involuntary, even if such payment results from an Acceleration Event (and irrespective of whether foreclosure proceedings have been commenced), and shall be in addition to any other sums due hereunder or under any of the other Loan Documents.

(d) Without limiting any other provision of this Agreement, if a Liquidation Event occurs, Borrower shall cause the resulting Net Liquidation Proceeds which are actually received by Borrower to be paid to Administrative Agent (for the benefit of Lender). On the next occurring Payment Date following the date on which Administrative Agent actually receives any such Net Liquidation Proceeds, Borrower is hereby deemed to have authorized Administrative Agent to apply such Net Liquidation Proceeds as a prepayment of the Indebtedness in an amount equal to one hundred percent (100%) of such Net Liquidation Proceeds. Once Borrower has knowledge that a Liquidation Event has occurred, Borrower shall, or shall cause Mortgage Borrower to, promptly deliver written notice of such Liquidation Event

to Administrative Agent. Borrower shall be deemed to have knowledge of (a) a sale (other than a foreclosure sale) of all or any portion of the Mortgaged Property on the date on which a contract of sale for such sale is entered into, and a foreclosure sale, on the date notice of such foreclosure sale is given and (b) a refinancing of all or any portion of the Mortgaged Property, on the date on which a term sheet for such refinancing has been entered into.

(e) The Loan is not a “revolving” loan and, therefore, Borrower may not borrow, repay and reborrow hereunder.

(f) In connection with any prepayment permitted under this Section 2.5, Borrower shall also reimburse Administrative Agent (for the benefit of Lender) for any actual reasonable out-of-pocket costs Administrative Agent and Lender may incur in connection with such prepayment.

(g) There will be due with any principal prepayment, all accrued and unpaid interest on the portion of the principal being prepaid and all other fees, charges and payments due under the Loan Documents.

(h) Borrower acknowledges and agrees that all of the economic terms set forth in the Loan Documents, including the Interest Rate, have been agreed to by Administrative Agent based on Administrative Agent’s and Lender’s expectation that the Loan will not be repaid prior to the Maturity Date. However, in order to accommodate Borrower, Administrative Agent has agreed to permit Borrower to repay the Loan prior to the Maturity Date in accordance with, and subject to, the terms set forth above provided that, and as consideration for such agreement, in connection with any prepayment or repayment of the entire outstanding principal balance of the Loan prior to the Maturity Date, Borrower agrees to pay Administrative Agent (for the benefit of Lender) the MOIC Amount. Borrower acknowledges and agrees that, even if Lender is able to loan the amount prepaid by Borrower to another Person on the same terms and conditions as herein provided, Lender shall not have fully recovered Lender’s lost profits, costs, expenses and damages suffered as a result of such early prepayment; therefore, Borrower and Administrative Agent have agreed on the MOIC Amount as compensation for Lender’s estimated lost profits, costs, expenses and damages resulting from such prepayment. The MOIC Amount shall be paid without prejudice to the right of Administrative Agent to collect any other amounts provided to be paid under this Agreement or the other Loan Documents, or pursuant to the provisions of law.

Section 2.6 Security. The Loan shall be secured by inter alia (i) the Pledge Agreement creating a first priority lien on the Collateral, (ii) the Environmental Indemnification Agreement, (iii) the Recourse Guaranty Agreement, (iv) the Carry Guaranty, (v) the Equity Funding Guaranty, (vi) the Completion Guaranty, and (vii) the other Loan Documents.

Section 2.7 Payments.

(a) All payments of principal, interest and other amounts to be made by Borrower under the Loan Documents, shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Administrative Agent (for the benefit of Lender). All such payments that are regularly scheduled monthly payments of principal, interest or

reserves shall be made by Borrower by automatic clearing house (“ACH”) debit of a bank account of Borrower of which Administrative Agent has received at least thirty (30) days’ prior written notice. All other payments from Borrower to Administrative Agent (for the benefit of Lender) shall be made by wire transfer of immediately available funds to an account designated by Administrative Agent in writing to Borrower.

(b) If the due date of any payment under the Loan Documents would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and interest shall accrue and be payable for any principal so extended for the period of such extension.

(c) Except for payments received by Administrative Agent (for the benefit of Lender) from the sale by Borrower of Subdivided Residential Units or the Retail Unit and applied by Administrative Agent in accordance with the provisions of Section 2.7(d) below, each payment received by Administrative Agent (for the benefit of Lender) under the Loan Documents which is not paid by Borrower with respect to a specific Obligation, shall be applied in the following order:

- (i) First, to the interest (including any Capitalized PIK) due on any Advances made by Lender under the Loan Documents;
- (ii) Next, to the principal amount of any Advances made by Lender under the Loan Documents;
- (iii) Next, to Late Charges, attorneys’ fees or any other amount due under any Loan Document save for the amounts described in clauses (iv) and (v) immediately below;
- (iv) Next, to accrued interest (including any Capitalized PIK) due Lender under the Loan Documents; and
- (v) Finally, to the principal balance of the Loan and, if such payment will result in the entire outstanding principal balance of the Loan being paid in full prior to the Maturity Date, to payment of the MOIC Amount.

Notwithstanding the foregoing, during the continuance of an Event of Default or in the event that Borrower does not pay the outstanding principal balance due under this Agreement, when due, whether on the Maturity Date or on any earlier date as a result of any Acceleration Event, Administrative Agent, at its option, shall apply any payments it then receives in such order as Administrative Agent (for the benefit of Lender) deems appropriate in its sole discretion.

(d) To the extent Mortgage Borrower has sold a Subdivided Residential Unit or the Retail Unit and, if the Mortgage Loan shall have been paid in full, pays Residential Unit Net Sale Proceeds or the Retail Unit Net Sales Proceeds, as applicable, to Administrative Agent (for the benefit of Lender) in accordance with this Agreement, such payments shall be applied in the following order:

- (i) First, to the interest (including any Capitalized PIK) due on any Advances made by Lender under the Loan Documents;
- (ii) Next, to the principal amount of any Advances made by Lender under the Loan Documents;
- (iii) Next, to Late Charges, attorneys' fees or any other amount due under any Loan Document save for the amounts described in clauses (iv) and (v) immediately below;
- (iv) Next, to accrued interest (including any Capitalized PIK) due Lender under the Loan Documents; and
- (v) Finally, to the principal balance of the Loan and, if such payment will result in the entire outstanding principal balance of the Loan being paid in full prior to the Maturity Date, to payment of the MOIC Amount.

Section 2.8 Changes in Law.

- (a) Intentionally Omitted.

(b) In the event that any change in any requirement of law or in the interpretation or application thereof other than charges relating to income, excise, franchise or other taxes applicable to Administrative Agent or Lender, or compliance in good faith by Administrative Agent or Lender with any request or directive (whether or not having the force of law) hereafter issued by any central bank or other Governmental Authority:

- (i) shall hereafter have the effect of reducing the rate of return on Lender's capital as a consequence of its obligations hereunder to a level below that which Lender could have achieved but for such adoption, change or compliance (taking into consideration Lender's policies with respect to capital adequacy) by any amount deemed by Lender to be material; or
- (ii) shall hereafter impose on Administrative Agent or Lender any other condition;

and the result of any of the foregoing is to increase the cost to Lender of making, renewing or maintaining loans or extensions of credit or to reduce any amount receivable hereunder, then, in any such case, Borrower shall promptly pay Administrative Agent (for the benefit of Lender), upon demand, any additional amounts necessary to compensate Lender for such additional cost or reduced amount receivable as determined by Lender (collectively, "**Increased Costs**"). Any determination under this Section 2.8(b) shall be made in good faith and not on an arbitrary or capricious basis. If Lender becomes entitled to claim any Increased Costs pursuant to this Section, Lender (with a copy to Administrative Agent) shall provide Borrower with not less than thirty (30) days' written notice specifying in reasonable detail the event or circumstance by reason of which it has become so entitled and the additional amount required to fully-compensate

Lender for such Increased Costs. A certificate as to any Increased Costs submitted by Lender to Borrower shall be conclusive in the absence of manifest error. Such certificate shall set forth Lender's method of calculating the amount of such Increased Costs. In the event Lender makes a request for compensation of Increased Costs in an amount that is greater than ten percent (10%) of the principal balance of the Loan, Borrower shall, upon payment of the same, have the right to prepay the Loan in full without penalty or premium. This provision shall survive the repayment of the Loan and the satisfaction of all other obligations of Borrower under the Loan Documents.

(c) Intentionally Omitted.

(d) All payments made by Borrower under the Loan Documents shall be made free and clear of, and without reduction for or on account of, Foreign Taxes, excluding, in the case of Administrative Agent and Lender, taxes measured by its income, and franchise taxes imposed on it. If any non-excluded Foreign Taxes are required to be withheld from any amounts payable to Administrative Agent (for the benefit of Lender) under the Loan Documents, the amounts so payable to Administrative Agent (for the benefit of Lender) shall be increased to the extent necessary to yield to Administrative Agent (for the benefit of Lender) (after payment of all non-excluded Foreign Taxes) interest or any such other amounts payable under the Loan Documents at the rate or in the amounts specified hereunder. Whenever any non-excluded Foreign Tax is payable pursuant to applicable law by Borrower, as promptly as possible thereafter, Borrower shall send to Administrative Agent an original official receipt, if available, or certified copy thereof showing payment of such non-excluded Foreign Tax. Borrower shall indemnify Administrative Agent and Lender and hold Administrative Agent and Lender harmless from, and be responsible for paying, any incremental taxes, interest or penalties that may become payable by Administrative Agent or Lender which may result from any failure by Borrower to pay any such non-excluded Foreign Tax when due to the appropriate taxing authority, or any failure by Borrower to remit to Administrative Agent (for the benefit of Lender) the required receipts or other required documentary evidence. Administrative Agent's inability to notify Borrower of any such Foreign Tax in accordance with the immediately preceding sentence shall in no way relieve Borrower of its obligations under this Section. As used herein "**Foreign Taxes**" means, collectively, income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings imposed, levied, collected, withheld or assessed by any Governmental Authority, which are imposed, enacted or become effective after the date hereof. As used herein "**Governmental Authority**" shall mean any court, board, agency, commission, office or other authority of any nature whatsoever, or any governmental unit (federal, state, county, district, municipal, city or otherwise) whether new or hereafter in existence. Notwithstanding anything contained herein to the contrary, the foregoing obligation to pay such additional amounts resulting from the payment of Foreign Taxes and to indemnify Administrative Agent and Lender shall not apply to any Foreign Tax that is imposed on amounts payable to Administrative Agent or Lender under the Loan Documents on the date of this Agreement (or on the date that any Lender becomes a Lender hereunder) or is attributable solely to Administrative Agent's or Lender's failure to provide Borrower with proper and sufficient evidence under the IRS Code to establish that it is exempt from (or eligible for a reduced rate of) Foreign Tax with respect to amounts payable under the Loan Documents.

Section 2.9 Mortgage Loan Accounts.

(a) Borrower shall cause Mortgage Borrower to comply with the obligations of Mortgage Borrower set forth in Sections 2.9, 2.10, 2.11 and 2.12 of the Mortgage Loan Agreement.

(b) Borrower shall not, nor shall Borrower permit or cause Mortgage Borrower to, further pledge, assign or grant any security interest in the Mortgage Loan Accounts or the monies deposited therein (except in certain instances to the New York City Transit Authority in accordance with the Transit Improvement Agreement (as defined in the Master Loan Agreement)), or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, except for the security interests granted by Mortgage Borrower in favor of Mortgage Lender pursuant to the Mortgage Loan Documents or in favor of Administrative Agent (for the benefit of Lender) pursuant to the Loan Documents, or any UCC-1 Financing Statements, except those naming Administrative Agent (for the benefit of Lender) or Mortgage Lender as the secured party, to be filed with respect thereto.

(c) If the Mortgage Loan is no longer outstanding or if Mortgage Lender waives the requirement to maintain one or more of the Mortgage Loan Accounts, or if the Mortgage Loan has been repaid in full, (i) Administrative Agent (for the benefit of Lender) shall establish and maintain (or cause Borrower to establish and maintain) such collateral accounts that would operate in the same way as the Mortgage Loan Accounts, or shall use the applicable Mortgage Loan Accounts for such purpose, (ii) if applicable, Borrower and Administrative Agent shall execute and deliver account control agreements with respect to such accounts in the form of the account control agreements executed and delivered by Mortgage Borrower and Mortgage Lender with respect to the applicable Mortgage Loan Accounts, and (iii) Borrower and Administrative Agent shall execute and deliver an amendment to this Agreement, in form and substance reasonably acceptable to all parties, which shall incorporate herein the provisions of Sections 2.9, 2.10 and 2.11 of the Mortgage Loan Agreement, in each case, in substantially the form set forth in the Mortgage Loan Agreement, with such changes as are necessary if the Mortgage Loan has been paid in full.

ARTICLE 3

DISBURSEMENTS TO BORROWER

Section 3.1 Funding of Disbursements to Borrower. Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be re-borrowed.

ARTICLE 4

CONSTRUCTION COVENANTS

Section 4.1 Completion of Construction.

(a) Borrower shall diligently and continuously cause Mortgage Borrower to pursue the achievement of Completion. Borrower shall cause Mortgage Borrower to cause (i) the Construction Work to be performed, and the Improvements to be constructed, in a good and

workmanlike manner, free from all material defects in materials or workmanship, (ii) the Construction Work to conform in all material respects to the Business Plan, the School Unit Purchase Agreement, the Approved Plans and all Legal Requirements, as same may be modified in accordance with the terms of this Agreement and the Mortgage Loan Agreement, (iii) the Construction Work to proceed diligently and Completion of the Construction Work and the Improvements to occur on or before the Completion Date. In the case that there is a Force Majeure event, the Completion Date shall be extended on a day-for-day basis for each calendar day that Mortgage Borrower is unable to complete the Construction Work by the Completion Date, (A) subject to the terms and conditions set forth in Section 4.1 of the Mortgage Loan Agreement and (B) provided that the Completion Date shall in no event be extended beyond November 30, 2021 (the “**Outside Completion Date**”), **TIME BEING OF THE ESSENCE**.

(b) Borrower shall cause Mortgage Borrower to achieve each of the following conditions on or before the date specified therefor (each such condition shall be referred to individually as a “**Milestone Construction Hurdle**” and the corresponding dates for Mortgage Borrower to achieve such Milestone Construction Hurdle are referred to individually as a “**Milestone Deadline**”) in each case, as such date may be extended due to Force Majeure on a day-for-day basis for each day that Mortgage Borrower is unable to achieve the applicable Milestone Construction Hurdle by the applicable Milestone Deadline; provided, however, no Milestone Deadline shall be extended due to a Force Majeure event (i) beyond the applicable “**Outside Milestone Date**” set forth below, or (ii) beyond the Outside Completion Date:

<u>ID</u> <u>(from</u> <u>Construction</u> <u>Timeline)</u>	<u>Milestone Construction</u> <u>Hurdle</u> <u>(from Construction</u> <u>Timeline)</u>	<u>Schedule</u> <u>Date</u> <u>(from</u> <u>Construction</u> <u>Timeline)</u>	<u>Milestone</u> <u>Deadline</u>	<u>Outside</u> <u>Milestone</u> <u>Date</u>
1	Resi TCO 1 (lobby located in the Residential Unit & floors 11-16, except for hoist run units)	N/A	N/A	3/31/2021
2	Resi TCO 2 (floors 17-36, except for hoist run units)	N/A	N/A	7/1/2021
3	Project Completion	12/29/2020	Completion Date	Outside Completion Date

Notwithstanding anything herein to the contrary, Administrative Agent hereby acknowledges and agrees that due to the existence of a Force Majeure event, the Milestone Deadlines for Construction Hurdles 1, 2 and 3 have been extended to their respective Outside Milestone Dates set forth above and except as set forth in the next sentence, Borrower shall not be permitted to further extend such Outside Milestone Dates for any reason, including without limitation, a Force Majeure event. Further, if Borrower is unable to complete Milestone Construction Hurdle 1 and/or 2 by the applicable Outside Milestone Date set forth above, Borrower may request Administrative Agent’s consent to a reasonable extension of such Outside Milestone Date if all

subsequent Milestone Construction Hurdles can still be achieved prior to the applicable Outside Milestone Date set forth above, as same shall be determined by Administrative Agent in its sole and absolute discretion.

Section 4.2 Change Orders. All requests for changes (“**Change Orders**”) in the Approved Plans (other than minor field changes involving no extra cost (provided that if SCA’s approval of such change is required under the School Unit Purchase Agreement, Borrower shall have caused Mortgage Borrower to have obtained SCA’s written approval thereof and provided a copy thereof to Administrative Agent)) shall be in writing, signed by Mortgage Borrower and the Architect, and delivered to Administrative Agent promptly after execution. Borrower shall cause Mortgage Borrower to obtain the SCA’s approval or consent to all Change Orders that affect the School Unit or the School Program (as defined in the School Unit Purchase Agreement) (an “**SCA Change Order**”) in writing and a copy of such approval or consent shall be delivered to Administrative Agent as an attachment to the applicable Change Order request. Borrower agrees to not to cause or permit Mortgage Borrower to permit any work pursuant to any “material” Change Order without Administrative Agent’s prior written approval. A Change Order shall be deemed “material” if it (i) adversely affects the value or changes the use of the Improvements, (ii) alters the unit count below ninety (90) residential units or above ninety-three (93) residential units, (iii) is inconsistent with a luxury residential condominium development as set forth in the Business Plan, (iv) increases or decreases the cost of the Construction Work by more than \$500,000.00, (v) when added to other Change Orders not requiring the approval of Administrative Agent (other than Change Orders that Administrative Agent approved in writing), it increases or decreases the cost of the Construction Work by more than \$2,500,000.00 (except that Change Orders necessary to satisfy Legal Requirements of Governmental Authorities shall be permitted to be in excess of the foregoing limit subject to an aggregate cap of \$3,000,000.00), (vi) will cause Mortgage Borrower to be unable to achieve Completion of the Construction Work on or before the Completion Date, (vii) requires any consent or approval of the SCA under the School Unit Purchase Agreement that was not obtained, (viii) causes an increase in the hard costs of the School Fit-Out Work (as defined in the School Unit Purchase Agreement) for which Mortgage Borrower is responsible under the School Unit Purchase Agreement, or (ix) constitutes an SCA Change Order. If the cost of the Construction Work is increased by any Change Order and there are insufficient Funds (after any permitted re-allocations of Available Cost Savings and excluding the Contingency Line Item in the Approved Budget) to pay the increased cost, Borrower shall cause Mortgage Borrower to make an Equity Deposit in the amount of the increased cost with Mortgage Lender (or, if the Mortgage Loan is no longer outstanding or Mortgage Lender has waived the requirement that Mortgage Borrower make such Equity Deposit, with Administrative Agent (for the benefit of Lender)) in cash before permitting any work pursuant to the Change Order.

Section 4.3 Progress Reports. Borrower shall deliver (or cause Mortgage Borrower to deliver) to Administrative Agent not less frequently than monthly during construction, a report of the progress of construction of the Improvements, the cost of the Improvements compared to the Line Items in the Approved Budget, the Change Order and pending Change Order logs, the promotion and merchandising efforts for marketing the Subdivided Residential Units of the Project, current leasing reports (if applicable) with respect to the Retail Unit, and such other data and information concerning the Project as may be reasonably requested by Administrative

Agent. Such reports shall be provided on a monthly basis or more frequently if required by Administrative Agent.

Section 4.4 Access to Borrower's Books and Records. Administrative Agent, Lender and their representatives shall have reasonable access to the books, records, contracts, sub contracts, invoices, bills and statements of Borrower, Mortgage Borrower and Mortgage Pledgor, including any supporting or related vouchers or other instruments. If Administrative Agent or Lender so requires, copies of such items shall be delivered to Administrative Agent or Lender or their representatives for audit, examination, inspection, and photocopying.

Section 4.5 Inspections. Administrative Agent, Lender, Inspector and their respective representatives shall at reasonable times upon reasonable prior notice and, at Borrower's option, accompanied by a representative of Borrower, have the right of entry and access to the Project, and the right to inspect all work done, labor performed and materials furnished on or about the Project; provided that such entry and access to any Condominium Unit that has been conveyed shall be subject to the terms of the Condominium Documents. The Inspector will make periodic inspections of the Construction Work and the Improvements during construction to review and comment on the construction progress and percentage of completion, the conformity with the Approved Plans and Legal Requirements, the activity and coordination among trades, the quality of workmanship, and the accuracy of Mortgage Borrower's estimates of the percentage of work completed. The Inspector will perform such duties as Administrative Agent and/or Lender deems necessary or desirable. Borrower shall pay the reasonable fees of the Inspector within ten (10) days following written demand therefor. Borrower acknowledges and agrees that all inspections by Administrative Agent, Lender or their representatives, including but not limited to Inspector, are solely for the purpose of protecting the security of Lender. No such inspection shall constitute a representation by Administrative Agent or Lender to any person that the Improvements comply with the Approved Plans and the Legal Requirements, or that the construction is free from faulty materials or workmanship, nor shall any inspection by Administrative Agent or Lender or their representatives, including but not limited to Inspector, constitute approval of any certification or representation given to Administrative Agent or Lender or relieve any person making such certification or representation from the responsibility therefor. Each of Administrative Agent and Lender shall use commercially reasonable efforts not to interfere with (and shall cause its representatives and agents not to interfere with) the Construction Work.

Section 4.6 Corrective Work. If any portion of the Construction Work does not materially conform with the requirements of this Agreement and the Mortgage Loan Agreement, subject to the rights of Mortgage Lender under the Mortgage Loan Agreement, Administrative Agent shall have the right to require corrective work by delivery of written demand to Borrower. If Administrative Agent reasonably determines that the corrective work is likely to delay completion of the Construction Work beyond the Completion Date, no further construction except corrective work shall be performed without the prior written consent of Administrative Agent, and the corrective work shall be completed to Administrative Agent's reasonable satisfaction within fifteen (15) days from the date of the written demand or, if the corrective work is not reasonably capable of being completed within fifteen (15) days, within such additional time as is reasonably necessary, but not exceeding sixty (60) days, unless Borrower demonstrates to Administrative Agent's reasonable satisfaction that any time in excess of sixty

(60) days to complete the corrective work will not cause Mortgage Borrower to fail to satisfy a Milestone Construction Hurdle by the applicable Milestone Deadline.

Section 4.7 Liens. Borrower shall cause Mortgage Borrower to keep the Project free from all Liens (other than Permitted Encumbrances) other than as expressly set forth in this Section 4.7. If any Lien that is not a Permitted Encumbrance is filed or placed against the Project, Borrower shall cause Mortgage Borrower to obtain a release or discharge of the Lien in accordance with all applicable Legal Requirements, within thirty (30) days following the earlier of the date on which Borrower or Mortgage Borrower first receives notice of such lien or the date of written notice by Administrative Agent to Borrower of the existence of the Lien. If Borrower does not cause Mortgage Borrower to cause the release or discharge of such Lien within said thirty (30) days, subject to the rights of Mortgage Lender under the Mortgage Loan Agreement, Lender may make an Advance to pay such Lien. Administrative Agent's and Lender's rights under this Section shall not be affected by any claim of Borrower or Mortgage Borrower that the Lien is invalid. Borrower agrees to reimburse Administrative Agent (for the benefit of Lender) for any Advance made under this Section 4.7, together with interest at the Default Rate until the date of reimbursement.

Section 4.8 Disputes Endangering Completion. If an Event of Default exists and any dispute arises under a contract or subcontract for which there is either no expedited arbitration or such arbitration proceeding has not concluded in the time frames set forth in such contract or subcontract, Administrative Agent may, subject to the rights of Mortgage Lender under the Mortgage Loan Agreement, indemnify a title insurer against possible assertion of Liens, or Lender may agree to pay any disputed amounts to contractors or subcontractors if Borrower or Mortgage Borrower is unable or unwilling to pay the same. All sums paid or agreed to be paid under this Section 4.8 shall be for the account of Borrower and constitute an Advance, and Borrower agrees to reimburse Administrative Agent (for the benefit of Lender) for all such Advances, together with interest at the Default Rate until the date of reimbursement.

Section 4.9 Restriction. Without Administrative Agent's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, Borrower shall not cause or permit Mortgage Borrower to purchase or install any materials, equipment, fixtures, or any other part of the Improvements under conditional sales agreements or other arrangements wherein the right is reserved to remove or repossess any such items.

Section 4.10 Punch List Items. Borrower shall cause Mortgage Borrower to complete all Punch List Items no later than one hundred twenty (120) days following the date on which Completion of the Construction Work occurs (subject to reasonable extensions if Mortgage Borrower is diligently pursuing the completion of such Punch List Items), or such earlier date as required under the School Unit Purchase Agreement.

Section 4.11 Completion. Borrower shall cause Mortgage Borrower to achieve Completion of the Construction Work on or before the Completion Date, or, if applicable due to a Force Majeure event, the Outside Completion Date.

Section 4.12 Additional Required Equity. No later than October 22, 2021, Borrower shall have either (i) contributed (or caused Mortgage Borrower to contribute) the Required

Equity into the Project or (ii) deposited with Administrative Agent (for the benefit of Lender) (or caused Mortgage Borrower to deposit with Mortgage Lender) the positive difference, if any, between (A) Required Equity less (B) the sum of (1) the Initial Required Equity, (2) the School Construction Supervision Fee, and (3) all Additional Equity contributed to date.

Section 4.13 Developer Fee. The Developer Fee set forth in the Approved Budget shall not exceed \$4,500,000.00 (the “**Developer Fee**”) in the aggregate and shall be paid in accordance with the terms of Section 3.10 of the Mortgage Loan Agreement.

Section 4.14 EB-5 Investments . EB-5 investors shall not be permitted to contribute any equity to the Project without Administrative Agent’s prior written approval, which approval may be withheld in Administrative Agent’s sole and absolute discretion.

Section 4.15 Union Labor. Administrative Agent and Lender encourage Borrower to cause Mortgage Borrower to seek competitive union bids where applicable on any subcontracts for Construction Work estimated to cost over Five Million and 00/100 Dollars (\$5,000,000.00).

Section 4.16 Change in Scope of Project. In the event that the SCA has materially defaulted under the School Unit Purchase Agreement, Borrower may request that Administrative Agent consent to a change in the scope of the Project, which consent may be withheld in Administrative Agent’s sole and absolute discretion.

Section 4.17 Balancing. If at any time during the term of the Loan, Mortgage Lender reasonably determines that the Mortgage Loan is Out of Balance but waives or otherwise elects not to enforce the terms of Section 3.11 of the Master Loan Agreement, at Administrative Agent’s option, Borrower shall cause Mortgage Borrower to make an additional Equity Deposit to Mortgage Lender in accordance with the terms of the Mortgage Loan Agreement in an amount sufficient to bring the Mortgage Loan “in balance” within twenty (20) Business Days following demand from Administrative Agent. Anything contained in this Agreement to the contrary notwithstanding, it is expressly understood and agreed that Borrower shall cause Mortgage Borrower to cause the Mortgage Loan to be “in balance” at all times.

ARTICLE 5

INSURANCE AND CONDEMNATION

Section 5.1 Insurance Requirements.

(a) **Property Insurance.** Borrower shall cause Mortgage Borrower to obtain and maintain, or cause to be maintained, insurance for Mortgage Borrower and the Mortgaged Property satisfying the requirements of Section 5.1 of the Mortgage Loan Agreement (regardless of whether the Mortgage Loan has been repaid or has otherwise been terminated or any such provisions thereof have been waived by Mortgage Lender).

(b) **Evidence of Insurance by Acceptable Insurers.** At all times during the term of the Loan, Borrower shall cause Mortgage Borrower or shall cause Mortgage Borrower to cause the Condominium Association to provide to Administrative Agent the following evidences of insurance: (i) an ACORD 28 (current version) Evidence of Property Insurance provided by an

authorized insurance agent, broker or insurance company or, where ACORD 28 (current version) is not available, other evidence of insurance confirming the same rights as are provided by ACORD 28 (current version) and all applicable policy endorsements; and (ii) an ACORD 25 (current version) Certificate of Liability Insurance, provided by an authorized insurance agent, broker or insurance company confirming coverages are maintained for liability insurance as required to be carried by Mortgage Borrower. Any ACORD or equivalent evidencing a Blanket insurance policy shall specifically identify the replacement cost of the improvements and the annual gross rents. The foregoing evidence shall be provided to Administrative Agent at least five (5) Business Days prior to the expiration date of each such policy. Each evidence of insurance and certificate must include a loss payee clause satisfactory to Administrative Agent, and any Certificate of Liability Insurance must name each of Administrative Agent and Lender as an Additional Insured for Commercial General Liability with respect to the Premises. Each insurance company providing coverage must have an A.M. Best rating of A-X or better.

(c) **Blanket Insurance Policies.** The insurance requirements under Article 5 of the Mortgage Loan Agreement may be satisfied by maintaining either individual policies covering only the Premises, or blanket insurance policies covering multiple properties, provided that with respect to any blanket insurance policies Borrower also covenants to cause Mortgage Borrower to either immediately reinstate any limits and coverages which are used, reduced or cancelled back up to the blanket policy limits approved by Administrative Agent (which shall not be unreasonably withheld, conditioned or delayed), or to secure individual policy coverages for the Premises satisfying these insurance requirements. Borrower will deliver (or cause Mortgage Borrower to deliver) to Administrative Agent a Schedule of Locations Insured under any blanket insurance policy together with the related certificates of insurance.

(d) **Miscellaneous Insurance Requirements.** All insurance policies and endorsements required pursuant to this Agreement and the Mortgage Loan Agreement must be reasonably satisfactory to Administrative Agent and shall: (i) be endorsed to name Administrative Agent and Lender as additional insureds thereunder, as its interest may appear; (ii) be fully paid for and contain such provisions and expiration dates and be in such form and issued by such insurance companies licensed to do business in the State; and (iii) without limiting the foregoing, provide that such policy or endorsement may not be canceled or materially changed except upon at least thirty (30) days' (or, in the case of cancellation for nonpayment of the applicable premium, ten (10) days') prior written notice of intention of non-renewal, cancellation or material change to Administrative Agent, and that no act or thing done by Borrower, Mortgage Borrower, Mortgage Pledgor, Administrative Agent or Lender shall invalidate the policy as against Administrative Agent or Lender. Within ten (10) Business Days following a request by Administrative Agent, Borrower shall deliver (or cause Mortgage Borrower to deliver) to Administrative Agent copies of all policies including all endorsements and renewals thereof, certified by the insurance company or authorized agent, together with all endorsements required hereunder and any other insurance policy information and other related information (such as "Probable Maximum Loss" or "Scenario Upper Loss" studies) as Administrative Agent may reasonably request from time to time. Borrower may request an extension of time not exceeding sixty (60) days to deliver copies of the foregoing policies, endorsements and renewals or certified copies thereof if (1) Borrower has done all things reasonably necessary to cause Mortgage Borrower to obtain the issuance of the policies, endorsements and renewals including the payment of all premiums therefor, and (2) Borrower

has delivered (or caused Mortgage Borrower to deliver) to Administrative Agent within the above ten (10) day period an insurance binder and evidence of insurance reasonably satisfactory to Administrative Agent issued by the insurer showing all required coverage to be in full force and effect for the succeeding twelve (12) month period along with evidence reasonably satisfactory to Administrative Agent of payment in full of all premiums. If Borrower fails to cause Mortgage Borrower to maintain insurance in compliance with this Agreement and the Mortgage Loan Agreement, so long as, if the Mortgage Loan is outstanding, Administrative Agent shall have first consulted with Mortgage Lender and received written confirmation from Mortgage Lender that it has elected not to procure such insurance, Administrative Agent may (but shall not be obligated to) obtain such insurance and make Advances to pay the premium therefore.

Section 5.2 Damage, Destruction, Condemnation and Restoration.

(a) In the event of any damage to or destruction of the Premises and/or Equipment, or any actual or threatened commencement of any proceedings for the condemnation or taking of the Premises or any portion thereof, Borrower shall, or shall cause Mortgage Borrower to, give prompt written notice to Administrative Agent and Borrower shall cause Mortgage Borrower to comply in all material respects with Section 5.2 and 5.3 of the Mortgage Loan Agreement.

(b) Borrower shall deliver to Administrative Agent all reports, plans, specifications, documents and other materials that are delivered to Mortgage Lender under the Mortgage Loan Agreement in connection with the restoration of the Premises and/or Equipment after a casualty or condemnation. Borrower shall cause Mortgage Borrower to comply with the terms and conditions of the Mortgage Loan Documents relating to restoration, including, without limitation, the provisions contained in Section 5.2 and 5.3 of the Mortgage Loan Agreement (the “**Mortgage Loan Restoration Provisions**”). Borrower shall cause Mortgage Borrower to pay all costs of such restoration whether or not such costs are covered by insurance, to the extent required by the Mortgage Loan Documents. Subject to the terms of the Mortgage Loan Documents, Administrative Agent (for the benefit of Lender) may, but shall not be obligated to, make proof of loss if not made promptly by Borrower or Mortgage Borrower, subject to the prior rights of Mortgage Lender. To the extent applicable, Administrative Agent (for the benefit of Lender) may participate in any condemnation proceedings and settlement discussions. Notwithstanding anything to the contrary contained in this Agreement, if at any time and for any reason the Mortgage Loan Restoration Provisions cease to exist or are waived or modified in any material respect (in each case, including, without limitation, due to any waiver, amendment or refinancing) (such provisions, the “**Waived Restoration Provisions**”), Borrower shall promptly (i) notify Administrative Agent of the same, (ii) execute any amendments to this Agreement and/or the Loan Documents implementing the Waived Restoration Provisions as may be reasonably required by Administrative Agent (provided such amendments are substantially similar to the provisions set forth in the Mortgage Loan Agreement relating to the same) and shall cause Mortgage Borrower to acknowledge and agree to the same and (iii) remit to Administrative Agent (for the benefit of Lender) (and shall cause Mortgage Borrower to remit to Administrative Agent (for the benefit of Lender)) any Proceeds to the extent required by such Waived Restoration Provisions as implemented under clause (ii) above.

ARTICLE 6

ENVIRONMENTAL MATTERS

Section 6.1 Terms Incorporated By Reference.

The terms and provisions of the Environmental Indemnification Agreement are incorporated herein by reference in their entirety.

ARTICLE 7

CERTAIN PROPERTY MATTERS

Section 7.1 Lease Covenants and Limitations.

(a) Subject to Section 7.1(c) below, Borrower shall not cause or permit Mortgage Borrower to enter into any Lease or other occupancy agreement without the prior written consent of Administrative Agent, which consent may be granted or withheld in Administrative Agent's sole and absolute discretion; provided, that if Mortgage Lender shall have consented to such Lease, Administrative Agent's consent to such Lease shall not be unreasonably withheld, delayed or conditioned. If Administrative Agent shall approve a Lease, Borrower shall provide Administrative Agent with a complete copy of said Lease within ten (10) Business Days following its execution.

(b) With respect to each Lease so approved in writing by Administrative Agent, Borrower shall cause Mortgage Borrower to perform all obligations as lessor or lessee, as applicable, and, to the extent it is commercially reasonable to do so, shall enforce all of the terms, covenants and conditions contained therein on the part of the lessor or lessee thereunder to be performed or observed, short of termination thereof. Borrower shall not cause or permit Mortgage Borrower to take any action which would cause any Lease to cease to be in full force and effect, except with the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld, delayed or conditioned, until repayment of the entire Indebtedness. Without Administrative Agent's consent (not to be unreasonably withheld, conditioned or delayed), Borrower shall not cause or permit Mortgage Borrower to: (i) cancel, terminate or surrender any Lease, or consent to any cancellation, termination or surrender thereof; (ii) sublease or assign any Lease, or consent to the sublease or assignment thereof; (iii) subordinate any Lease to any mortgage, deed of trust or other security interest that is subordinate to the Mortgage; (iv) amend, modify or renew any existing Lease; (v) waive any material default under or breach of any Lease; (vi) consent to or accept any prepayment or discount of rent or advance rent under any Lease; (vii) take any other action in connection with any Lease which may impair or jeopardize the validity of such Lease or Administrative Agent's or Lender's interest therein; or (viii) alter, modify or change the terms of any guaranty, letter of credit or other credit support with respect to any Lease or cancel or terminate such guaranty, letter of credit or other credit support.

(c) As long as no Event of Default exists, the following parameters for a Lease of the Retail Unit or any portion thereof are hereby pre-approved by Administrative

Agent: the potential new Lease for the Retail Unit or portion thereof (i) provides for a Net Effective Rent of not less than \$65.00; and (ii) has an initial term not longer than twenty (20) years, and any renewal options exercisable by the tenant thereunder for an aggregate term longer than twenty (20) years shall be at no less than ninety percent (90%) of then current fair market rent. Administrative Agent shall have the right to review and approve a new Lease for the Retail Unit in all other respects, such approval not to be unreasonably withheld, conditioned or delayed, and such Lease must at a minimum satisfy the following conditions: (A) be an arm's-length transaction with a bona-fide, independent third party tenant, (B) not violate any provision of any other lease, restriction, covenant or public or private agreement affecting Borrower, Mortgage Borrower, Mortgage Pledgor, the Mortgaged Property, the Collateral, or the Declaration; (C) provide that tenant will unconditionally attorn to a foreclosing lender without requiring Mortgage Lender to execute a non-disturbance agreement or else Mortgage Lender, Mortgage Borrower and tenant mutually agree to execute an SNDA (as defined in the Master Loan Agreement); (D) impose no tenant improvement obligations on the landlord beyond the initial lease-up and occupancy by the tenant; and (E) contain no tenant right to acquire any ownership interest in any of the Mortgaged Property. If, within 7 Business Days after Administrative Agent's receipt of Borrower's written request for such approval stating: **"TIME SENSITIVE RESPONSE REQUIRED WITHIN 7 BUSINESS DAYS OF RECEIPT OR DEEMED APPROVAL MAY OCCUR"**, together with the following: (x) a true and complete copy of the proposed final Lease, including any amendments, exhibits and side agreements relating thereto executed in connection therewith, (y) a lease summary describing in reasonable detail all material terms, and (z) any tenant financial statements or credit reports received by Borrower and Mortgage Borrower with respect to the tenant thereunder (collectively, the **"Lease Approval Package"**), Administrative Agent does not approve or disapprove such Lease (disapproval to include reasons), Borrower may deliver a second notice to Administrative Agent, together with a second Lease Approval Package, stating: **"PURSUANT TO THE TERMS OF SECTION 7.1(c) OF THE MEZZANINE LOAN AGREEMENT EXECUTED BY TPHGREENWICH SUBORDINATE MEZZ LLC, AS BORROWER, DATED DECEMBER 22, 2020, ADMINISTRATIVE AGENT HAS FAILED TO RESPOND TO THE REQUEST FOR APPROVAL OF A NEW LEASE. FAILURE OF ADMINISTRATIVE AGENT TO RESPOND TO BORROWER'S REQUEST FOR SUCH APPROVAL WITHIN 5 BUSINESS DAYS OF RECEIPT OF THIS SECOND NOTICE SHALL BE DEEMED TO BE ADMINISTRATIVE AGENT'S APPROVAL OF SUCH NEW LEASE"**. If Administrative Agent fails to approve or disapprove (which such disapproval shall include reasons) such Lease within such additional 5 Business Day period, such Lease shall be deemed approved by Administrative Agent (for the benefit of Lender).

(d) For each Lease, upon Administrative Agent's written request, Borrower shall use commercially reasonable efforts to provide (or cause Mortgage Borrower to provide) Administrative Agent with a tenant estoppel certificate (which request shall not be made more than once each calendar year absent an Event of Default).

(e) Any ground lease must be approved by Administrative Agent in advance in writing. Unless otherwise specifically approved, any ground lease affecting the Mortgaged Property must be or be made to be expressly subject and subordinate to the lien and terms of the Pledge Agreement. Fee owner(s) shall provide Administrative Agent with an estoppel and recognition agreement acceptable to Administrative Agent.

(f) From and after such time as the Mortgage Loan is no longer outstanding or if Mortgage Lender has waived its right to hold security deposits pursuant to Section 7.1(f) of the Mortgage Loan Agreement, Administrative Agent may require at any time an Event of Default continues to exist uncured that Borrower transfer to Administrative Agent (for the benefit of Lender) all tenant security deposits, including any letters of credit securing tenant lease obligations. Administrative Agent (for the benefit of Lender) may hold and co-mingle such security deposits without interest, except as required by applicable law.

Section 7.2 The Master Lease, Sublease and School Unit Purchase Agreement.

(a) Borrower hereby makes the following representations, warranties, covenants and agreements with respect to the Master Lease, the Sublease and the School Unit Purchase Agreement:

- (i) The Master Lease and the Sublease have been terminated and are of no further force and effect.
- (ii) Borrower has delivered to Administrative Agent a true, accurate and complete copy of the School Unit Purchase Agreement. The School Unit Purchase Agreement have not been amended, modified, extended, renewed, substituted or assigned.
- (iii) Borrower shall not cause or permit Mortgage Borrower to amend, modify, terminate, extend or assign the School Unit Purchase Agreement or surrender its rights thereunder without Administrative Agent's prior written consent, which may be withheld in Administrative Agent's sole and absolute discretion. Borrower shall not cause or permit Mortgage Borrower to enter into any further agreements, contracts, documents or side letters with the SCA without Administrative Agent's prior written consent, which may be withheld in Administrative Agent's sole and absolute discretion. Any attempted action in violation of this section shall be null and void and of no force and effect.
- (iv) No default by Mortgage Borrower has occurred and is continuing under the School Unit Purchase Agreement and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default by Mortgage Borrower under the School Unit Purchase Agreement. To the best of Borrower's knowledge, no default by SCA has occurred and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default by the SCA under the School Unit Purchase Agreement. The School Unit Purchase Agreement is in full force and effect.
- (v) Borrower shall deliver (or cause Mortgage Borrower to deliver) to Administrative Agent all notices from the SCA under the School

Unit Purchase Agreement within five (5) Business Days following receipt thereof.

- (vi) If Borrower shall fail to cause Mortgage Borrower to perform (and Mortgage Borrower fails to perform) its obligations as developer under the School Unit Purchase Agreement, and an Event of Default exists, Borrower grants Administrative Agent the right (but not the obligation), subject to the rights of Mortgage Lender under the Mortgage Loan Documents, after two (2) Business Days' notice to Borrower to take any action as may be necessary to prevent or cure any default of Mortgage Borrower under the School Unit Purchase Agreement, including the right to enter all or any portion of the Premises at such times and in such manner as Administrative Agent reasonably deems necessary, in order to cure any such default (unless Administrative Agent is curing a default by acting under Sections 7.6(c) or 8.5 which shall require no notice to Borrower). Borrower shall cause Mortgage Borrower to comply at all times with and timely perform its obligations and enforce its rights and the SCA's obligations under the School Unit Purchase Agreement.
- (vii) No action or payment taken or made by Administrative Agent to cure any default by Mortgage Borrower under the School Unit Purchase Agreement shall remove or waive, as between Borrower and Administrative Agent, any default or Event of Default which occurred hereunder by virtue of the default by Mortgage Borrower under the School Unit Purchase Agreement. All reasonable out-of-pocket sums expended by Administrative Agent or Lender in order to cure any such default by Mortgage Borrower under the School Unit Purchase Agreement shall be paid by Borrower to Administrative Agent (for the benefit of Lender), upon demand, with interest thereon at the Default Rate if not paid within five (5) Business Days of demand;
- (viii) Borrower shall notify Administrative Agent in writing within five (5) Business Days of (A) Borrower or Mortgage Borrower obtaining actual knowledge of a material default by, or Mortgage Borrower's delivery of a notice (written or otherwise), to the SCA under the School Unit Purchase Agreement noting or claiming the occurrence of any event which, with the passage of time or giving of notice, or both, would constitute a default by the SCA thereunder, and (B) the receipt by Borrower or Mortgage Borrower of any notice (written or otherwise) from the SCA under the School Unit Purchase Agreement noting or claiming the occurrence of any default by Mortgage Borrower under (or any termination of) the School Unit Purchase Agreement or the occurrence of any event which, with the passage of time or giving

of notice, or both, would constitute a default by Mortgage Borrower thereunder. Borrower shall deliver (or cause Mortgage Borrower to deliver) to Administrative Agent a copy of any such written notice of default;

- (ix) Subject to the rights of Mortgage Lender under the Mortgage Loan Documents, following five (5) days advance written notice to Borrower, Administrative Agent (for the benefit of Lender) shall have the right to intervene and participate in any judicial, arbitration or other proceeding relating to the School Unit Purchase Agreement;
- (x) Borrower shall within five (5) Business Days after Borrower or Mortgage Borrower obtains knowledge thereof, notify Administrative Agent of any filing by or against the SCA of a petition under the Federal Bankruptcy Code. Said notice shall set forth any information in the possession of Borrower or Mortgage Borrower and its counsel as to the date of such filing directly related to such petition including, without limitation, the court in which such petition was filed and the relief sought therein (to the extent Borrower or Mortgage Borrower has knowledge of the foregoing). Borrower shall deliver to Administrative Agent, within five (5) Business Days following receipt by Borrower or Mortgage Borrower thereof, any and all notices, summonses, pleadings, applications and other documents received by Borrower or Mortgage Borrower in connection with any such petition and any proceedings relating thereto;
- (xi) Borrower shall not without the prior written consent of Administrative Agent, which consent may be granted or withheld in Administrative Agent's sole and absolute discretion, cause or permit Mortgage Borrower to agree or acquiesce to any rejection or termination of the School Unit Purchase Agreement in bankruptcy, or elect to treat the School Unit Purchase Agreement as terminated, whether under Section 365 of the Bankruptcy Code (or other successor provision) or under any similar law or right of any nature or otherwise, in any respect, and any attempt on the part of Borrower to cause or permit Mortgage Borrower to exercise any such right or election without such written consent of Administrative Agent shall be null and void and of no effect and shall constitute an Event of Default under this Agreement for which no grace or curative period shall apply.
- (xii) Borrower shall promptly send Administrative Agent (or cause Mortgage Borrower to send Administrative Agent) a copy of any material notices delivered by Mortgage Borrower to the SCA or received by the SCA.

- (xiii) Mortgage Borrower has fulfilled as of the Closing Date and Borrower shall cause Mortgage Borrower to at all times fulfill, in all material respects, all of Mortgage Borrower's duties and obligations in, under and to the School Unit Purchase Agreement. Borrower shall, at Borrower's sole cost and expense, appear in and defend Administrative Agent, Lender and/or any other Lender Party in any action or proceeding in any way connected with the School Unit Purchase Agreement (excluding in connection with Administrative Agent's or Lender's gross negligence or willful misconduct), and shall pay all reasonable costs and expenses, including, without limitation, attorneys' fees and disbursements which any of the Lender Parties may incur in connection with Lender Party's appearance, voluntarily or otherwise, in any action or proceeding (including, without limitation, arbitration) in any way connected with the School Unit Purchase Agreement (excluding in connection with Administrative Agent's, Lender's or any other Lender Party's gross negligence or willful misconduct) or in connection with enforcing the SCA's or Mortgage Borrower's obligations under the School Unit Purchase Agreement (excluding in connection with Administrative Agent's, Lender's or any other Lender Party's gross negligence or willful misconduct).
- (xiv) In the event Administrative Agent or Lender cures a Developer Event of Default, Borrower shall reimburse Administrative Agent (for the benefit of Lender) for all reasonable costs and expenses incurred by Administrative Agent or Lender in curing such Developer Event of Default, together with interest at the Default Rate from the date incurred until paid, within five (5) Business Days following written demand from Administrative Agent to Borrower.
- (xv) The SCA has fulfilled its obligation to fund School Cost Payments under the School Unit Purchase Agreement and is no longer required to fund any additional School Cost Payments. The last School Cost Payment, in the amount of \$850,000.00 has been deposited in escrow pursuant to that certain Third Amendment to School Design, Construction, Funding and Purchase Agreement dated as of April 6, 2020, by and between Mortgage Borrower and SCA, to be disbursed in accordance with the terms thereof and of the Mortgage Loan Documents.

(b) Borrower hereby agrees to pay and protect, defend, indemnify and hold Administrative Agent, Lender and the other Lender Parties harmless from, for and against any and all Losses to which any such Lender Party may become exposed, or which any such Lender Party may incur, in connection with the School Unit Purchase Agreement (including without limitation all such costs and expenses incurred by Lender in connection with the curing of Mortgage Borrower's defaults under the School Unit Purchase Agreement, excluding those

arising from Administrative Agent's or any Lender Party's gross negligence or willful misconduct, and such liability shall only be to the extent of Administrative Agent's or such Lender Party's gross negligence or willful misconduct. All such amounts due from Borrower to Administrative Agent or Lender pursuant to this Section 7.2(b) shall be payable to Administrative Agent (for the benefit of Lender) within ten (10) Business Days of demand and shall accrue interest at the Default Rate from the due date thereof.

Section 7.3 Intentionally omitted.

Section 7.4 Intentionally omitted.

Section 7.5 Sales and Marketing Agreement/Management Agreement. Borrower shall not cause or permit Mortgage Borrower to enter into any management agreement, leasing commission agreement, brokerage agreement or other similar agreement without Administrative Agent's prior written approval in each case, which approval shall not be unreasonably withheld, conditioned or delayed. Prior to the completion of the first Subdivided Residential Unit, Borrower shall cause Mortgage Borrower to enter into (i) a sales and marketing agreement, which sales and marketing agreement must be reasonably satisfactory to Administrative Agent, and (ii) a management agreement with a third-party manager, which management agreement must be reasonably satisfactory to Administrative Agent. Administrative Agent approves the Sales Agreement and the Sales Agent. Any management agreement, leasing commission agreement, brokerage agreement or other similar agreement shall be subordinated to the Loan in substantially the forms, as applicable, as the Subordination of Exclusive Sale Agreement delivered on the Closing Date or the form of subordination of management agreement attached hereto as **Exhibit F**. If at any time during the existence of an Event of Default the management company, management agreement or leasing commissions agreement is not satisfactory to Administrative Agent, Borrower shall have up to sixty (60) days after written notice to Borrower of Administrative Agent's disapproval, to cause Mortgage Borrower to obtain a management company, management agreement and/or leasing commissions agreement approved by and satisfactory to Administrative Agent.

Section 7.6 Impositions.

(a) Borrower shall (or shall cause Mortgage Borrower to) pay and discharge all Impositions prior to delinquency and shall provide to Administrative Agent validated receipts or other evidence reasonably satisfactory to Administrative Agent showing the payment of such Impositions within ten (10) Business Days after the same would otherwise have become delinquent. Borrower's obligation to pay (or cause Mortgage Borrower to pay) Impositions pursuant to this Agreement shall include, to the extent permitted by applicable law, taxes resulting from future changes in law which impose upon Administrative Agent or Lender an obligation to pay any property taxes or other Impositions. Should Borrower default in the payment of any Impositions, Lender may (but shall not be obligated to) make an Advance to pay such Impositions or any portion thereof.

(b) Borrower shall not be required to (or cause Mortgage Borrower to) pay, discharge or remove any Imposition so long as Borrower or Mortgage Borrower contests in good faith such Imposition or the validity, applicability or amount thereof by an appropriate legal

proceeding which operates to prevent the collection of such amounts and the sale of the Mortgaged Property or any portion thereof; provided, however, that such contest will not result in a tax certificate or other sale of the tax lien and prior to the date on which such Imposition would otherwise have become delinquent, Borrower shall have: (i) given Administrative Agent prior written notice of such contest; and (ii) unless otherwise deposited by Mortgage Borrower with Mortgage Lender in accordance with the terms of the Mortgage Loan Agreement, deposited with Administrative Agent (for the benefit of Lender), and shall deposit such additional amounts as are necessary to keep on deposit at all times, an amount equal to at least one hundred five percent (105%) of the total of: (A) the balance of such Imposition then remaining unpaid; plus (B) all interest, penalties, costs and charges accrued or accumulated thereon. Any such contest shall be prosecuted with due diligence, and Borrower shall promptly pay (or cause Mortgage Borrower to pay) the amount of such Imposition as finally determined, together with all interest, penalties, costs and charges payable in connection therewith. Administrative Agent shall have full power and authority to apply any amount deposited with Administrative Agent (for the benefit of Lender) under this Section 7.3(b) to the payment of any unpaid Imposition to prevent the sale of any tax lien or the sale or forfeiture of the Mortgaged Property (or any portion thereof) for non-payment thereof. Neither Administrative Agent nor Lender shall have liability, however, for failure to so apply any amount deposited unless Borrower requests the application of such amount to the payment of the particular Imposition for which such amount was deposited. Any surplus retained by Administrative Agent (for the benefit of Lender) after payment of the Imposition for which a deposit was made shall be repaid to Borrower unless an Event of Default shall have occurred, in which case said surplus may be retained by Administrative Agent (for the benefit of Lender) to be applied to the Indebtedness. Notwithstanding any provision of this Section 7.3(b) to the contrary, Borrower shall pay (or cause Mortgage Borrower to pay) any Imposition which it might otherwise be entitled to contest if, in the reasonable opinion of Administrative Agent, failure to pay will result in a tax certificate or other sale of the tax lien or the Mortgaged Property (or any portion thereof) is in jeopardy or in danger of being forfeited or foreclosed; or, subject to the rights of Mortgage Lender under the Mortgage Loan Agreement, Lender may make an Advance to pay the same. Additionally, in such event, subject to the rights of Mortgage Lender under the Mortgage Loan Agreement, if Lender is prevented by law or judicial or administrative order from paying such Imposition and Borrower fails to pay (or cause Mortgage Borrower to pay) the same, then Administrative Agent (for the benefit of Lender), at its option, may declare the entire Indebtedness immediately due and payable.

(c) To the extent cash flow from the Mortgaged Property is insufficient to pay same, real estate taxes, assessments, municipal charges and insurance premiums shall be funded as a Disbursement to Mortgage Borrower subject to the terms and conditions of disbursement in the Mortgage Loan Agreement. To the extent Mortgage Borrower fails to satisfy the conditions of disbursement in the Mortgage Loan Agreement, Borrower shall cause Mortgage Borrower to pay the real estate taxes, assessments, municipal charges and insurance premiums that would otherwise be funded as a Disbursement to Mortgage Borrower; provided that if an Event of Default exists, Borrower shall cause Mortgage Borrower to deposit with Mortgage Lender (or, if the Mortgage Loan is no longer outstanding or if Mortgage Lender has waived the obligation of Mortgage Borrower to deposit such amounts, with Administrative Agent (for the benefit of Lender)), monthly, on each Payment Date, 1/12th of the annual charges (as reasonably estimated by Mortgage Lender or Administrative Agent, as applicable) for Impositions and insurance

premiums, and, if required by Mortgage Lender or Administrative Agent, as applicable, 1/12th of the annual charges for rent (if Mortgage Borrower is lessee of an interest in any of the Mortgaged Property) with respect to the Mortgaged Property. If required by Mortgage Lender or Administrative Agent, as applicable, Borrower shall also deposit with Mortgage Lender or Administrative Agent (for the benefit of Lender), as applicable, simultaneously with such monthly deposits, a sum of money which together with such monthly deposits will be sufficient to make the payment of each such charge at least fifteen (15) days prior to the date initially due. Should such charges not be ascertainable at the time any deposit is required to be made, the deposit shall be made on the basis of the charges for the prior year or payment period, as reasonably estimated by Mortgage Lender or Administrative Agent, as applicable. When the charges are fixed for the then current year or period, Borrower shall cause Mortgage Borrower to deposit any deficiency on demand. All funds deposited with Administrative Agent (for the benefit of Lender) shall be held without interest (unless the payment of interest thereon is required under applicable law), may be commingled with Administrative Agent's other funds, and shall be applied in payment of the foregoing charges when and as payable provided that no Event of Default shall have occurred and be continuing. Should an Event of Default occur and be continuing, the funds so deposited may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the Indebtedness or any other charges affecting the Mortgaged Property, as Administrative Agent in its sole discretion may determine, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Administrative Agent as herein provided. Borrower shall provide (or cause Mortgage Borrower to provide) Administrative Agent with bills and all other documents necessary for the payment of the foregoing charges within ten (10) Business Days following Borrower's receipt of the same, but in any event at least fifteen (15) days prior to the date on which each payment thereof shall first become due.

Section 7.7 Operating Expenses. Borrower shall cause Mortgage Borrower to use any cash flow from the Mortgaged Property to pay all operating expenses of the Mortgaged Property and all payments due under the Loan Documents and the Mortgage Loan Documents.

ARTICLE 8

REPRESENTATIONS, WARRANTIES AND COVENANTS

Borrower, jointly and severally (if applicable), represents, warrants and covenants that:

Section 8.1 Organization and Authority.

(a) The execution and delivery of the Loan Documents have been duly authorized and there is no provision in Borrower's organizational documents, as amended, requiring further consent for such action by any other Person.

(b) Borrower is duly organized, validly existing and in good standing under the laws of the state of its formation.

(c) Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its assets and to transact the business in

which it is now engaged, and the sole business of Borrower is the ownership of the Collateral and the management of Mortgage Pledgor and activities related thereto.

(d) The execution and delivery of and performance of its obligations under the Loan Documents: (i) will not result in Borrower being in default under any provision of its organizational documents, as amended, any court order, or any mortgage, deed of trust or other agreement to which it is a party; and (ii) does not require the consent of or any filing with any governmental authority.

(e) All necessary and required actions have been duly taken by and on behalf of Borrower to make and constitute the Loan Documents, and the Loan Documents constitute, legal, valid and binding obligations enforceable in accordance with their respective terms, subject only to the application of bankruptcy and other laws affecting the rights of creditors generally.

(f) Borrower is, and at all times until repayment in full of the Indebtedness shall be, a “single asset real estate entity”, as defined in Section 101 (51B) of the Federal Bankruptcy Code.

Section 8.2 Maintenance of Existence. So long as it owns the Collateral, Borrower shall do all things necessary to preserve and keep in full force and effect its existence, franchises, licenses, authorizations, registrations, permits and approvals under the laws of the state of its formation and the State where the Premises is located and shall comply in all material respects with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court now or hereafter applicable to Borrower or to the Collateral or any portion thereof.

Section 8.3 Title. Borrower is the record and beneficial owner of, and has good, marketable and insurable to, the Collateral, free and clear of all Liens whatsoever, and Mortgage Borrower has good, marketable and insurable fee simple title to the Premises and good indefeasible title to the balance of the Mortgaged Property, free and clear of all Liens whatsoever, in each case except the Permitted Encumbrances. The Pledge Agreement, together with the UCC-1 financing statements relating to the Collateral when properly filed in the appropriate records, will create a valid, perfected first priority security interests in and to such portion of the Collateral for which a Lien can be perfected by filing a UCC-1 financing statement, subject only to Permitted Encumbrances.

The Pledge Agreement, together with Borrower’s delivery to Administrative Agent of the membership certificates evidencing the Pledged Company Interests, together with powers executed in blank, as required under the Pledge Agreement, creates a first priority valid and perfected security interest in the Pledged Company Interests. Borrower will preserve such title and will forever warrant and defend the same and validity and priority of the Lien hereof to Administrative Agent (for the benefit of Lender) against all claims whatsoever.

Mortgage Borrower is the owner of or has right to all easements and other appurtenant rights (collectively, the “**Easements**”) created under the agreements listed and described on **Exhibit C** hereof (collectively the “**Easement Agreements**”). Borrower has delivered to Administrative Agent true, correct and complete copies of all Operating Agreements and Easement Agreements, if applicable. To the best of Borrower’s knowledge, (A) no

Operating Agreement, Easement Agreement or Easement created thereunder has been modified, amended or supplemented and they are all in full force and effect; and (B) no defaults have occurred under any Operating Agreement or Easement Agreement, and, to Borrower's knowledge, no event has occurred which with notice or the passage of time would constitute an event of default under any Operating Agreement or Easement Agreement.

With respect to each Operating Agreement, Easement Agreement and Permitted Encumbrance, Borrower shall cause Mortgage Borrower to, to the extent commercially reasonable to do so: (i) observe, perform and discharge all material obligations, covenants and warranties required to be kept and performed by Mortgage Borrower, and (ii) enforce or secure the performance of each and every material obligation, term, covenant, condition and agreement to be performed by any other party. Borrower shall also (a) promptly deliver to Administrative Agent copies of all material written notices, demands or requests sent or otherwise made by Borrower, Mortgage Borrower or any other Person, and (b) timely pay (or cause Mortgage Borrower to pay) any charges assessed against the Premises as and when finally due pursuant to the Operating Agreements or Easement Agreements or Permitted Encumbrances. Without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld, delayed or conditioned, Borrower will not cause or permit Mortgage Borrower to consent to or enter into any agreement or writing that modifies, amends, supplements, restates, terminates or reduces any:

(V) Operating Agreement, (W) Easement Agreement, or (X) any appurtenant rights or interests, including any reversionary interests which Mortgage Borrower possesses or may acquire.

Section 8.4 UCC Insurance. Administrative Agent shall have received the UCC Policy, which shall be dated as of the Closing Date. The UCC Policy shall (a) provide coverage in the amount of the Loan, (b) insure Administrative Agent and Lender that the Pledge Agreement creates a valid first priority Lien on the Collateral, in each case free and clear of all exceptions from coverage other than the Permitted Encumbrances, and (c) name Administrative Agent (for the benefit of Lender) as the insured. Administrative Agent shall have received evidence that all premiums in respect of the UCC Policy have been paid.

Section 8.5 Payment of Liens. Borrower shall (or shall cause Mortgage Borrower to) discharge and pay when due all payments and charges due under or in connection with any Liens in accordance with the provisions of Section 4.7, or if not so discharged, subject to the rights of Mortgage Lender under the Mortgage Loan Agreement, Lender may (but shall not be obligated to) make Advances to do so. Borrower shall cause Mortgage Borrower to do or cause to be done, at the sole cost of Borrower or Mortgage Borrower, everything reasonably necessary to fully preserve the priority of the Lien of the Mortgage. Borrower shall do or cause to be done, at the sole cost of Borrower, everything reasonably necessary to fully preserve the priority of the Lien of the Pledge Agreement. If Borrower fails to make, or fails to cause Mortgage Borrower to make, any such payment or if a Lien attaches to the Mortgaged Property, the Collateral, or any portion thereof and is not discharged within the thirty (30) day period referenced in Section 4.7, subject to the rights of Mortgage Lender under the Mortgage Loan Agreement, Administrative Agent and/or Lender may (but shall not be obligated to) make such payment or discharge such lien and Borrower shall reimburse Administrative Agent (for the benefit of Lender) on demand for all such Advances.

Section 8.6 Representations Regarding Mortgaged Property.

(a) No part of the Premises has been designated as wetlands under any federal, state or local law or regulation or by any governmental agency, and no portion of the Premises is located within a 100-year flood plain, except as may be disclosed as such on the survey of the Premises delivered to Administrative Agent in connection with the closing of the Loan.

(b) Public water supply, storm and sanitary sewers and sanitary sewer capacity, and electrical, gas, cable and telephone facilities are available to the Premises within the boundary lines thereof or by an executed agreement, including without limitation that certain agreement between Triborough Bridge and Tunnel Authority and Mortgage Borrower, dated as of March 22, 2017.

(c) Each of Borrower, Mortgage Borrower and Mortgage Pledgor reports, for accounting purposes, on a fiscal year basis commencing on January 1 and terminating on December 31.

(d) There are no actions, suits or proceedings, pending or threatened in writing, affecting Borrower, Mortgage Borrower, Mortgage Pledgor, Indemnitor, the Collateral or the Mortgaged Property at law or in equity, on, before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or other governmental instrumentality that would, if adversely determined, have a Material Adverse Effect on Borrower, Mortgage Borrower, Mortgage Pledgor, Indemnitor, the Collateral or the Mortgaged Property. There are no outstanding judgments, arbitration awards, decrees or awards of any kind pending against Borrower, Mortgage Borrower, Mortgage Pledgor, Indemnitor, the Collateral or any of the Mortgaged Property. Borrower, Mortgage Borrower, Mortgage Pledgor, Indemnitor and Principals have never (i) been charged for any criminal offense, (ii) filed for bankruptcy, insolvency or similar relief, and (iii) been involved in a foreclosure, deed-in-lieu or similar transaction.

(e) Indemnitor is in full compliance with all of Indemnitor's Financial Covenants set forth in Section 12 of the Recourse Guaranty Agreement.

(f) None of Borrower, Mortgage Borrower or Mortgage Pledgor has entered into a property management agreement as of the Closing Date.

Section 8.7 Operating Accounts. At all times that the Loan remains outstanding, Borrower shall cause Mortgage Borrower to establish and maintain, or cause Mortgage Borrower to cause its Property Manager to maintain the Operating Account, into which all cash proceeds resulting from any and all operations of Borrower and the Project shall be deposited. Borrower shall not maintain any, and shall not cause or permit Mortgage Borrower to maintain any other, operating accounts.

Section 8.8 Indemnification. Borrower shall indemnify, defend and hold Administrative Agent, Lender and the Lender Parties harmless from and against, and be responsible for paying, all Losses which may be imposed upon, asserted against, or incurred or paid by any of them by reason of, on account of or in connection with any act or occurrence relating to the Mortgaged Property or any bodily injury, death, other personal injury or property

damage occurring in, upon or in the vicinity of the Mortgaged Property from any cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of Administrative Agent or any Lender Party.

Section 8.9 Estoppel Certificates. Within ten (10) Business Days following a request by Administrative Agent, Borrower shall provide to Administrative Agent a duly acknowledged written statement confirming: (a) the original principal amount of the Loan; (b) the unpaid principal amount of the Loan; (c) the rate of interest of the Loan; (d) the maturity date of the Loan; (e) the date installments of interest and/or principal were last paid; (f) that, except as provided in reasonable detail in such statement, to Borrower's actual knowledge, there are no presently exercisable offsets or defenses against the Indebtedness, Potential Events of Default or Events of Default under the Loan Documents; and (g) such other information that Administrative Agent shall reasonably request.

Section 8.10 ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken hereunder (or the exercise by Administrative Agent or Lender of any of its rights under the Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA and/or Section 4975 of the IRS Code, provided, that Borrower may assume for purposes of this Section 8.10(a) that the Loan proceeds are not "plan assets" within the meaning of 29 C.F.R. § 2510.3-101 (as modified by Section 3(42) of ERISA, the "**Plan Assets Regulation**").

(b) Borrower further covenants and agrees to deliver to Administrative Agent such certifications and other evidence from time to time, until full repayment of the Indebtedness, as are reasonably requested by Administrative Agent that (i) none of Borrower, Mortgage Pledgor and Mortgage Borrower are (and are not deemed to include the assets of) an "employee benefit plan" that is subject to Title I of ERISA and/or a "plan" that is subject to Section 4975 of the IRS Code; (ii) none of Borrower, Mortgage Pledgor and Mortgage Borrower are a "governmental plan" within the meaning of Section 3(32) of ERISA and is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following statements is and remains true:

- (i) Equity interests in each of Borrower, Mortgage Pledgor and Mortgage Borrower are "publicly offered securities" within the meaning of Plan Assets Regulation; or
- (ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in each of Borrower, Mortgage Pledgor and Mortgage Borrower are held by "benefit plan investors" (determined in accordance with the Plan Assets Regulation).

(c) Borrower shall not agree to, enter into or consummate any transaction which would render Borrower unable to furnish the certification or other evidence referred to in Section 8.10(b), to the extent applicable.

(d) Borrower represents, warrants and covenants to each Lender Party that none of Borrower, Mortgage Pledgor, Mortgage Borrower or any ERISA Affiliate maintains, contributes to, or has any obligation to contribute to, or has any direct or indirect liability with respect to any “employee benefit plan” as defined in Section 3(3) of ERISA (including any “multiemployer plan” as defined in Section 3(37) of ERISA) that is subject to Title IV or Section 302 of ERISA or Section 412 of the IRS Code. Borrower shall take or refrain from taking, as the case may be, such actions as may be necessary to cause the representation and warranty in this Section 8.10 to remain true and accurate until full repayment of the Indebtedness.

(e) Lender Parties shall each have the right to consult with Borrower on significant business issues relating to the management of the Collateral. Representatives of Borrower shall make themselves available quarterly, either personally or by telephone at mutually agreeable times for such consultations. Such consultations need not result in any changes in Borrower’s decisions or actions. Lender Parties intend to use such rights to satisfy the management rights requirements under the Plan Assets Regulation.

Section 8.11 Terrorism and Anti-Money Laundering.

(a) As of the date hereof and until full repayment of the Indebtedness, none of: (i) Borrower, Mortgage Pledgor or Mortgage Borrower; (ii) any Person Controlling or Controlled by Borrower, Mortgage Pledgor or Mortgage Borrower; (iii) if any of Borrower, Mortgage Pledgor, Mortgage Borrower is a privately held entity, any Person having a ten percent (10%) or more direct or indirect beneficial interest in Borrower, Mortgage Pledgor or Mortgage Borrower (expressly excluding any direct or indirect shareholders of Indemnitor (collectively, the “**Public Shareholders**”)); or (iv) any Person for whom Borrower, Mortgage Pledgor or Mortgage Borrower is acting as agent or nominee in connection with this transaction, is an OFAC Prohibited Person.

(b) To comply with applicable Anti-Money Laundering Laws, all payments by Borrower to Administrative Agent or Lender or from Administrative Agent or Lender to Borrower will only be made and received in Borrower’s name and to and from a bank account of a bank based or incorporated in or formed under the laws of the United States or a bank that is not a “foreign shell bank” within the meaning of the U.S. Bank Secrecy Act (31 U.S.C. § 5311 *et seq.*), as amended, and the regulations promulgated thereunder by the U.S. Department of the Treasury, as such regulations may be amended from time to time.

(c) Borrower shall provide Administrative Agent at any time and from time to time until repayment in full of the Indebtedness with such information as Administrative Agent reasonably determines to be necessary or appropriate to comply with the Anti-Money Laundering Laws of any applicable jurisdiction, or to respond to requests for information concerning the identity of Borrower, Mortgage Pledgor or Mortgage Borrower, any Person Controlling or Controlled by Borrower, Mortgage Pledgor or Mortgage Borrower or any Person having a beneficial interest in Borrower, Mortgage Pledgor or Mortgage Borrower (other than Public Shareholders), from any governmental authority, self-regulatory organization or financial institution in connection with its anti-money laundering compliance procedures, or to update such information.

(d) The representations and warranties set forth in this Section 8.11 shall be deemed repeated and reaffirmed by Borrower as of each date that Borrower makes a payment to Administrative Agent or Lender under the Loan Documents or receives any funds from Administrative Agent or Lender. Borrower agrees promptly to notify Administrative Agent in writing should Borrower become aware of any change in the information set forth in these representations.

Section 8.12 Special Purpose Entity Requirements.

All of the provisions of this Section 8.12 are individually and collectively referred to as the “**SPE Requirements**”.

(a) None of Borrower, Mortgage Pledgor or Mortgage Borrower has and, until repayment in full of the Indebtedness, shall:

- (i) (A) in the case of Borrower, engage in any business or activity other than the ownership, holding, sale, transfer, exchange or management of the Collateral and being the sole member of Mortgage Pledgor, entering into this Agreement and the Loan Documents, and activities incidental thereto; (B) in the case of Mortgage Pledgor, engage in any business or activity other than the ownership of Mortgage Borrower and activities incidental thereto; and (C) in the case of Mortgage Borrower, engage in any business or activity other than the acquisition, ownership, operation, maintenance, demolition, alteration and development of and sale of condominium units in accordance with the terms of this Agreement with respect to the Mortgaged Property, and activities incidental thereto;
- (ii) (A) in the case of Borrower, acquire or own any material asset other than the Collateral; (B) in the case of Mortgage Pledgor, acquire or own any material asset other than 100% of the direct equity interests in Mortgage Borrower; and (C) in the case of Mortgage Borrower, acquire or own any material asset other than the Mortgaged Property and such incidental personal property as may be necessary for the operation of the Mortgaged Property;
- (iii) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case obtaining the prior written consent of Administrative Agent;
- (iv) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Administrative Agent, which consent shall not

be unreasonably withheld, delayed or conditioned, terminate the provisions of its respective formation or entity management documents or amend such organizational documents in a manner which would result in a breach of any of the representations, warranties or covenants set forth in this Section 8.12 or that would otherwise adversely affect its special purpose entity status;

- (v) own any subsidiary or make any investment in or acquire the obligations or securities of any other Person without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld, delayed or conditioned;
- (vi) commingle its assets with the assets of any of its shareholders, partners, members, Principals, affiliates, or any shareholder, partner, member, principal or affiliate thereof, or of any other Person or transfer any assets to any such Person other than distributions on account of equity interests in Borrower, Mortgage Pledgor or Mortgage Borrower permitted hereunder and properly accounted for;
- (vii) (A) in the case of Borrower, incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Indebtedness, except as permitted under Section 10.1; (B) in the case of Mortgage Pledgor, incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (C) in the case of Mortgage Borrower, incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Indebtedness (as defined in the Master Loan Agreement), except as permitted under Section 10.1 of the Mortgage Loan Agreement, provided that any such debt is satisfied when due and payable, subject to reasonable and customary rights to contest such obligations, and provided further that there is sufficient cash flow from the Mortgaged Property at such time to do so and Mortgage Borrower's constituent owners shall not be required to fund or advance any additional capital to satisfy such obligation;
- (viii) except for a payment of the Indebtedness by a guarantor or indemnitor of the Loan or the Mortgage Loan, (A) allow any Person to pay its debts and liabilities, or (B) fail to pay its debts and liabilities solely from its own assets;
- (ix) fail to maintain its records, books of account and bank accounts separate and apart from those of its shareholders, partners, members, Principals and Affiliates, or any shareholder, partner, member, principal or Affiliate thereof, and any other Person or fail to prepare and maintain its own financial statements in accordance

with generally accepted accounting principles and susceptible to audit, or if such financial statements are consolidated, fail to cause such financial statements to contain footnotes disclosing that the Mortgaged Property is actually owned by Mortgage Borrower;

- (x) enter into any contract or agreement with any of its shareholders, partners, members, Principals or Affiliates, any guarantor or indemnitor of all or a portion of the Loan or any shareholder, partner, member, principal or Affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties or otherwise approved by Administrative Agent;
- (xi) fail to correct any known misunderstandings regarding the separate identity of Borrower, Mortgage Pledgor or Mortgage Borrower;
- (xii) hold itself out to be responsible or pledge its assets or credit worthiness for the debts of another Person or allow any Person to hold itself out to be responsible or pledge its assets or credit worthiness for the debts of Borrower, Mortgage Pledgor or Mortgage Borrower (except for a guarantor or indemnitor of the Loan or the Mortgage Loan);
- (xiii) make any loans or advances to any third party, including any of its shareholders, partners, members, Principals or Affiliates, or any shareholder, partner, member, Principal or Affiliate thereof;
- (xiv) fail to use separate contracts, purchase orders, invoices and checks (other than such documents that bear the name of its manager or managing agent with reference to the Premises);
- (xv) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name in order not: (A) to mislead others as to the entity with which such other party is transacting business; or (B) to suggest that Borrower, Mortgage Pledgor or Mortgage Borrower is responsible for the debts of any third party (including any of its shareholders, partners, members, principals or Affiliates, or any shareholder, partner, member, principal or Affiliate thereof);
- (xvi) allow any Person to pay the salaries of its own employees or fail to maintain a sufficient number of employees for its contemplated business operations (which may be zero employees);
- (xvii) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations, provided that with respect to Mortgage Borrower there is sufficient cash flow from

the Mortgaged Property at such time to do so and Mortgage Borrower's constituent owners shall not be required to fund or advance any additional capital to satisfy this obligation;

- (xviii) seek dissolution or winding up in whole, or in part, or any Division;
- (xix) file a voluntary petition or otherwise initiate proceedings to have Borrower, Mortgage Pledgor or Mortgage Borrower or any Principal adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against Borrower, Mortgage Pledgor or Mortgage Borrower or any Principal, or file a petition seeking or consenting to reorganization or relief of Borrower, Mortgage Pledgor or Mortgage Borrower or any Principal as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to Borrower, Mortgage Pledgor or Mortgage Borrower or Principal; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of Borrower, Mortgage Pledgor or Mortgage Borrower or any Principal or of all or any substantial part of the properties and assets of Borrower, Mortgage Pledgor or Mortgage Borrower or any Principal, or make any general assignment for the benefit of creditors of Borrower, Mortgage Pledgor or Mortgage Borrower or any Principal, or admit in writing the inability of Borrower, Mortgage Pledgor or Mortgage Borrower or any Principal to pay its debts generally as they become due or declare or effect a moratorium on Borrower, Mortgage Pledgor or Mortgage Borrower or any Principal debt or take any action in furtherance of any such action; or
- (xx) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud its creditors or the creditors of any other Person.

(b) If any of Borrower, Mortgage Pledgor or Mortgage Borrower is a limited partnership, then any general partner of Borrower, Mortgage Pledgor or Mortgage Borrower must also be a special purpose entity and comply with the provisions of this Section 8.12.

(c) Borrower, Mortgage Pledgor, Mortgage Borrower and any Person required to be a special purpose entity pursuant to the terms of this Section 8.12 shall not amend or modify any of their respective formation or entity management documents in any manner that would result in a breach of any of the representations, warranties or covenants set forth in this Section 8.12 or that would otherwise adversely affect Borrower's, Mortgage Pledgor's or Mortgage Borrower's special purpose entity status without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld, delayed or conditioned. Promptly after Administrative Agent's written request from time to time, but not

more frequently than once in any calendar year, Borrower shall deliver to Administrative Agent evidence reasonably satisfactory to Administrative Agent that Borrower, Mortgage Pledgor, Mortgage Borrower and any other Person required to be a special purpose entity pursuant to the terms of this Section 8.12 are in compliance with the provisions of this Section 8.12.

(d) Borrower shall at all times be limited liability company formed under the laws of the State of Delaware that will have an operating agreement which provides, that as long as any portion of the Indebtedness remains outstanding: (i) Borrower shall have at least one (1) Independent Manager, and Borrower shall not institute proceedings to have the company be adjudicated bankrupt or consent to the institution of bankruptcy or insolvency proceedings against the company or file a voluntary bankruptcy petition with respect to the company, to file or consent to the filing of any petition to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute or other laws relating to the relief from debts or the protection of debtors generally, with respect to the company, or to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the company or all or a portion of its property, or to make any assignment for the benefit of creditors of Borrower, or to admit in writing the company's inability to pay its debts generally as they become due, or to take action in furtherance of any such actions, or, to the fullest extent permitted by law, dissolve or liquidate the company (each such action, a "**Bankruptcy Action**") unless, (a) such Bankruptcy Action is approved by the prior unanimous written consent of the member of Borrower and each Independent Manager and (b) at the time of such action there is at least one (1) Independent Manager; each Independent Manager shall be a "manager" of Borrower within the meaning of Section 18-101(10) of the Delaware Limited Liability Company Act (the "**Act**"); *provided, however*, the Independent Manager shall only have the rights and duties expressly set forth in Borrower's limited liability company agreement; (ii) upon the occurrence of any event that causes the last member of Borrower to cease to be a member of such limited liability company (other than upon an assignment by such member of all of its limited liability company interest in such limited liability company and the admission of the transferee in accordance with Borrower's limited liability company agreement), (1) the person(s) acting as Independent Manager of Borrower shall, without any action of any Person and simultaneously with such member ceasing to be a member of such limited liability company, automatically be admitted as the "**Special Member**" and shall preserve and continue the existence of such limited liability company without dissolution, and (2) without limiting the provisions of clause (1), upon the occurrence of any event that causes the last remaining member of Borrower to cease to be a member of Borrower or that causes the sole member to cease to be a member of Borrower (other than upon continuation of Borrower without dissolution upon an assignment by the member of all of its limited liability company interest in Borrower and the admission of the transferee in accordance with Borrower's limited liability company agreement), to the fullest extent permitted by law, the personal representative of such member shall be authorized to, and shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of such member in such limited liability company, agree in writing to continue Borrower without dissolution and to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of such limited liability company, effective as of the occurrence of the event that terminated the continued membership of such member in such limited liability company; (iii) no Special Member may voluntarily resign or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to such limited liability company as a Special Member, and (B) such successor Special

Member has also accepted its appointment as an Independent Manager and executed a counterpart to Borrower's limited liability company agreement; *provided, however*, that the Special Member shall automatically cease to be a member of Borrower upon the admission to Borrower of a substitute member; the Special Member shall be a member of Borrower that has no interest in the profits, losses and capital of Borrower and has no right to receive any distributions of limited liability company assets; pursuant to Section 18-301 of the Act, a Special Member shall not be required to make any capital contributions to Borrower and shall not receive a limited liability company interest in Borrower; (iv) a Special Member, in its capacity as Special Member, may not bind Borrower; (v) except as required by any mandatory provision of the Act, a Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower, including the Condominium Association, merger, consolidation or conversion of Borrower; (vi) in order to implement the admission to Borrower of each Special Member, each Person acting as an Independent Manager shall execute a counterpart to Borrower's limited liability company agreement; (vii) prior to its admission to Borrower as Special Member, each Person acting as an Independent Manager shall not be a member of Borrower; (viii) such limited liability company shall be dissolved, and its affairs shall be wound up only upon the first to occur of the following (but subject to clause (ii) above): (A) the termination of the legal existence of the last remaining member of such limited liability company or the occurrence of any other event which terminates the continued membership of the last remaining member of such limited liability company in such limited liability company unless the business of such limited liability company is continued in a manner permitted by its limited liability company agreement or the Act, or (B) the entry of a decree of judicial dissolution of Borrower under Section 18-802 of the Act; (ix) neither the bankruptcy of any member of Borrower or the Special Member shall cause such member or Special Member, respectively, to cease to be a member of such limited liability company and upon the occurrence of such an event, the business of such limited liability company shall continue without dissolution; (x) in the event of dissolution of such limited liability company, such limited liability company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of such limited liability company in an orderly manner), and the assets of such limited liability company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act; and (xi) to the fullest extent permitted by law, except as otherwise expressly provided in Borrower's limited liability company agreement, each member of Borrower and the Special Members shall irrevocably waive any right or power that they might have to cause such limited liability company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of such limited liability company, to compel any sale of all or any portion of the assets of such limited liability company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of such limited liability company; *provided, however*, that notwithstanding the foregoing, Administrative Agent acknowledges and agrees that the provisions of subsection (xi) above are required to be included in the organizational documents of such entity only from and after the Closing Date (and not during the period from the date of such entity's formation to the Closing Date);

(e) the organizational documents of Borrower shall provide that: (i) the board of directors or managers of Borrower (if Borrower has a board of directors or managers) and the constituent members or other direct equity owners of Borrower (the "**Constituent Equity Members**") shall not take any action which, under the terms of any organizational documents of

Borrower, requires a unanimous written consent of the board of directors or managers of Borrower (if applicable) or the Constituent Equity Members unless at the time of such action there shall be at least one (1) Independent Director or Independent Manager engaged as provided by the terms hereof; (ii) no Independent Director or Independent Manager may be removed or replaced except for Cause; (iii) any resignation, removal or replacement of any Independent Director or Independent Manager shall not be effective without five (5) Business Days prior written notice to, with respect to Borrower and Administrative Agent (unless such resignation, removal or replacement occurs as a result of the death or incapacity of such Independent Director or Independent Manager, or the termination of such individual's employment with the applicable service provider, in which case, with respect to Borrower, Borrower shall provide written notice to Administrative Agent of the removal and replacement of such Independent Director or Independent Manager promptly following such resignation, removal or replacement) accompanied by a statement as to the reasons for such removal, the identity of the proposed replacement Independent Director or Independent Manager, and a certificate that the replacement Independent Director or Independent Manager satisfies the applicable terms and conditions of the definition of "Independent Director/Independent Manager"; (iv) to the fullest extent permitted by applicable law, including Section 18-1101(c) of the Act and notwithstanding any duty otherwise existing at law or in equity, the Independent Directors or Independent Managers shall consider only the interests of the Constituent Equity Members and Borrower (including Borrower's creditors) in acting or otherwise voting on a Bankruptcy Action (which such fiduciary duties to the Constituent Equity Members and Borrower's creditors, in each case, shall be deemed to apply solely to the extent of their respective economic interests in Borrower exclusive of (x) all other interests of the Constituent Equity Members, (y) the interests of other affiliates of the Constituent Equity Members and Borrower and (z) the interests of any group of affiliates of which the Constituent Equity Members or Borrower is a part); (v) other than as provided in subsection (iv) above, to the fullest extent permitted by law the Independent Directors or Independent Managers shall not have any fiduciary duties to (A) any Constituent Equity Members or (B) any Person bound by the operating agreement of Borrower, provided that the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing under applicable law; and (vi) to the fullest extent permitted by applicable law, including Section 18-1101(e) of the Act, an Independent Director or Independent Manager shall not be liable to Borrower, any Constituent Equity Member or any other Person bound by the limited liability company agreement for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director or Independent Manager acted in bad faith or engaged in willful misconduct; provided, however, that notwithstanding the foregoing, Administrative Agent acknowledges and agrees that the provisions of this clause (e) are required to be included in the organizational documents of Borrower only from and after the Closing Date (and not during the period from the date of Borrower's formation to the Closing Date).

Section 8.13 Notices/Proceedings. Borrower shall promptly notify Administrative Agent in writing of the occurrence of any of the following: (i) receipt of any written notice from any holder of any other lien or security interest in any of the Mortgaged Property or the Collateral; it being understood that no such lien or security interest is ever permitted to exist at any time under any circumstances until after repayment in full of the Indebtedness (except as otherwise specifically provided herein); or (ii) commencement of any judicial or administrative proceedings by, against or otherwise affecting Borrower, Mortgage Pledgor, Mortgage Borrower,

Indemnitor or any of the Mortgaged Property or the Collateral, or any other action by any creditor thereof as a result of any default under the terms of any loan.

Section 8.14 Business Purpose of Loan. Borrower stipulates and warrants that the purpose of the Loan is for the sole purpose of carrying on or acquiring a business, professional or commercial enterprise. Borrower further stipulates and warrants that all proceeds of the Loan will be used for said business, professional or commercial enterprise.

Section 8.15 Legal Requirements and Maintenance of Mortgaged Property. To the best of Borrower's knowledge, except as disclosed to Administrative Agent in writing, the Mortgaged Property is, in all material respects, in compliance with all Legal Requirements. Borrower shall comply, and shall cause Mortgage Borrower to comply, with all Legal Requirements in all material respects, subject to Borrower's and Mortgage Borrower's right to contest the same in accordance with this Agreement and the Mortgage Loan Agreement. Borrower shall permit Administrative Agent, Lender and their respective agents to enter upon and inspect: (a) the areas of the Mortgaged Property which are open to the public at all reasonable hours without prior notice and (b) subject to the rights of tenants under the Leases and fee simple owners of portions of the Mortgaged Property conveyed in accordance with the terms of this Agreement and the Mortgage Loan Agreement, all other areas of the Mortgaged Property during regular business hours upon at least 48 hours prior written notice, except that no notice shall be required in the event of an emergency. Except as expressly contemplated herein, Borrower shall not (and shall not cause or permit Mortgage Borrower to), without the prior written consent of Administrative Agent, which consent may be granted or withheld in Administrative Agent's sole and absolute discretion: (a) change the use of the Premises from that contemplated in the Business Plan; (b) cause or permit the use or occupancy of any part of the Premises to be discontinued if such discontinuance would violate any zoning or other law, ordinance or regulation; (c) apply for or consent to any subdivision (other than the contemplated subdivision of the Residential Unit), re-subdivision (other than the contemplated subdivision of the Residential Unit), zoning reclassification, modification or restriction affecting the Premises; (d) commit or knowingly permit any waste, structural or material addition to or material alteration, demolition or removal of the Mortgaged Property (except alterations required pursuant to an Acceptable Lease) or any portion thereof (provided that Equipment may be removed if obsolete or if replaced with similar items of equal or greater value); (e) take any action whatsoever to apply for, consent to, or acquiesce in the conversion of the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of ownership, or (f) take any action whatsoever to apply for, consent to or acquiesce in any subdivision (other than the contemplated subdivision of the Residential Unit) or re-subdivision (other than the contemplated subdivision of the Residential Unit) of the Mortgaged Property, or any portion thereof. No provision of this Section 8.15 shall prohibit Borrower from causing Mortgage Borrower to undertake and complete tenant improvement work authorized under Leases previously approved by Administrative Agent or not requiring Administrative Agent's prior approval and the Construction Work in accordance with the terms of this Agreement and the Mortgage Loan Agreement.

Section 8.16 Solvency. (1) None of Borrower, Mortgage Pledgor, Mortgage Borrower, or Indemnitor has entered into the transaction contemplated by this Agreement or any Loan Document, or the Mortgage Loan Agreement or any Mortgage Loan Document, with the actual

intent to hinder, delay, or defraud any creditor, and (2) Borrower, Mortgage Pledgor, Mortgage Borrower and Indemnitor have each received reasonably equivalent value in exchange for its obligations under the Loan Documents and the Mortgage Loan Documents. The fair saleable value of Borrower's assets is, as of the date hereof, and will, immediately following the making of the initial disbursement of the Loan on the date hereof, be greater than Borrower's liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital for such entity to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and other liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by it and the amounts to be payable on or in respect of obligations of such party). Other than the bankruptcy of Indemnitor's predecessor, Syms Corp., filed in the United States Bankruptcy Court for the District of Delaware in 2011 as *In re Filene's Basement, LLC, et al.*, Case No. 11-13511-KJC (Bankr. D. Del), no petition in bankruptcy has been filed against Borrower, Mortgage Pledgor, Mortgage Borrower or any Indemnitor or any Principal and none of Borrower, Mortgage Pledgor, Mortgage Borrower or Indemnitor has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. None of Borrower, Mortgage Pledgor, Mortgage Borrower or Indemnitor has been involved in a foreclosure or in a default on any indebtedness owing to Lender or to any affiliate of Lender or, in the case of Borrower, Mortgage Pledgor or Mortgage Borrower, on any other indebtedness obtained for commercial purposes. All financial and other information submitted by or on behalf of Borrower, Mortgage Borrower, Mortgage Pledgor and Indemnitor to Administrative Agent in connection with the Loan is true, complete and correct in all material respects. All of Borrower's, Mortgage Pledgor's, Mortgage Borrower's obligations to creditors, including, but not limited to, all payments and accounts relating to the Premises, are current.

Section 8.17 Material Contracts. None of Borrower, Mortgage Borrower, or Mortgage Pledgor has entered into or is bound by any Material Contract which continues in existence except those listed on **Exhibit H** attached hereto. Each such Material Contract listed on **Exhibit H** is in full force and effect, there are no monetary or other material defaults by Borrower, Mortgage Borrower, or Mortgage Pledgor thereunder (as applicable) and, to the knowledge of Borrower, there are no monetary or other material defaults thereunder by any other party thereto. Borrower has delivered a true, correct and complete copy of each such Material Contract (including all amendments and supplements thereto) to Administrative Agent.

Section 8.18 Representations Regarding the Construction Work. Borrower makes the following representations and warranties to Administrative Agent as of the date of this Agreement.

(a) Borrower has received (or has caused Mortgage Borrower to receive) all Permits and Approvals to commence construction of the Project and has received all Permits and Approvals for the Project necessary for the stage of construction then underway, except for those, if any, as Administrative Agent reasonably determines may be obtained at a later date during the course of construction, so long as such Permits and Approvals as are in effect shall be sufficient to allow the Project to proceed to completion in the ordinary course.

(b) Borrower has delivered (or has caused Mortgage Borrower to deliver) a complete set of Approved Plans which Administrative Agent has reviewed and approved, which Approved Plans shall not be amended without Administrative Agent's prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed); provided that Administrative Agent's approval shall not be required for (i) any amendment that Mortgage Borrower is required to make under the School Unit Purchase Agreement which are (1) initiated by the SCA, (2) the cost of which shall be solely borne by the SCA (with respect to which the SCA has evidenced its ability to pay the increased costs to the reasonable satisfaction of Borrower, Mortgage Borrower and Administrative Agent) or by Borrower or Mortgage Borrower with additional equity, and (3) such amendment solely affects the School Unit, and (ii) any amendment in connection with a Change Order permitted hereunder or under the Mortgage Loan Agreement. The Approved Plans include and are consistent with the 100% School Base Building CD's.

(c) The Approved Budget, as amended with Administrative Agent's written approval (which approval shall not be unreasonably withheld, conditioned or delayed), sets out the total itemized costs, direct and indirect, for the Completion of the Construction Work and the payment and performance of Borrower's and Mortgage Borrower's other obligations under the Loan Documents and the Mortgage Loan Documents.

(d) To Borrower's knowledge, the Initial Required Equity (plus additional equity unconditionally committed to Borrower, Mortgage Borrower or Mortgage Pledgor, or deposited or contributed pursuant hereto) and the Loan proceeds are sufficient to pay all the costs set out in the Budget.

Section 8.19 Limitations on Distributions. Until full repayment of the Indebtedness, no Upstream Owner shall receive any cash flow distributions from Borrower, Mortgage Pledgor or Mortgage Borrower or from the Mortgaged Property. Further, until full repayment of the Indebtedness, none of Borrower, Mortgage Pledgor or Mortgage Borrower or any Upstream Owner shall receive any Residential Unit Net Sale Proceeds. In addition, except for the Developer Fee (which may be paid to Mortgage Borrower in accordance with the provisions of the Mortgage Loan Agreement), none of Borrower, Mortgage Pledgor or Mortgage Borrower or any Affiliate of none of Borrower, Mortgage Pledgor or Mortgage Borrower shall receive a fee for any acquisition, asset management, disposition, leasing or any other reason related to the Premises or the Collateral until the Indebtedness has been fully repaid.

Section 8.20 Condominium.

(a) Borrower has provided Administrative Agent with true, correct and complete copies of the Condominium Documents.

(b) Borrower agrees that:

(i) Borrower shall not, without Administrative Agent's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed provided (x) no Event of Default exists and (y) such amendment or modification complies with all

Condominium Laws, cause or permit Mortgage Borrower to amend, modify or supplement, or consent to or suffer the amendment, modification or supplementation of any of the Condominium Documents (except with respect to price change amendments to the Offering Plan increasing the Schedule A—Purchase Prices (each a “**Price Change Amendment**”) as provided in Article 16 hereof). Borrower shall not cause or permit Mortgage Borrower to consent to the merger of the Condominium with any other condominium without Administrative Agent’s prior written consent, which may be withheld in its sole and absolute discretion. Administrative Agent shall endeavor to respond to each request by Borrower for Administrative Agent’s approval of an amendment to the Condominium Documents within twenty (20) Business Days following Administrative Agent’s receipt of such request and all required documents and information relating to such request. If Administrative Agent does not notify Borrower of its approval or disapproval of a proposed amendment to the Condominium Documents within twenty (20) Business Days after request by Borrower and submission by Borrower of all information needed by Administrative Agent to evaluate said request, then Borrower may deliver a second request, which request shall state on the top of the first page in bold lettering “**ADMINISTRATIVE AGENT’S RESPONSE IS REQUIRED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF THE MEZZANINE LOAN AGREEMENT BETWEEN THE UNDERSIGNED AND ADMINISTRATIVE AGENT.**” If Administrative Agent does not notify Borrower of its approval or disapproval of the proposed amendment to the Condominium Documents within ten (10) Business Days after such second request, then as long as no Event of Default or Potential Event of Default exists, the same shall be deemed approved;

- (ii) Borrower will cause Mortgage Borrower to pay, or cause Mortgage Borrower to cause to be paid, all assessments for common charges and expenses made against the Mortgaged Property owned by Mortgage Borrower pursuant to the Condominium Documents as the same shall become due and payable;
- (iii) Borrower will cause Mortgage Borrower to comply in all material respects with all of the terms, covenants and conditions on Mortgage Borrower’s part to be complied with, pursuant to the Condominium Documents and any rules and regulations that may be adopted for the Condominium, as the same shall be in force and effect from time to time;

- (iv) Borrower will cause Mortgage Borrower, or cause Mortgage Borrower to cause Mortgage Borrower's designated members of the Condominium Board of Managers, to take all actions as may be reasonably necessary from time to time to preserve and maintain the Condominium in accordance with the Condominium Laws;
- (v) Borrower will not, without the prior written consent of Administrative Agent (which consent may be granted or withheld in Administrative Agent's sole and absolute discretion), cause or permit Mortgage Borrower to take (and, subject to the rights of Mortgage Lender under the Mortgage Loan Documents, hereby assigns to Administrative Agent (for the benefit of Lender) any right it may have to take) any action to terminate the Condominium, withdraw the Condominium from the Condominium Laws, or cause a partition of the Condominium to be so withdrawn;
- (vi) it shall be an Event of Default if (A) pursuant to any judgment, decision, order, rule or regulation of either a court of competent jurisdiction or a governmental agency with jurisdiction over the Premises and following the expiration of all applicable appeal periods, any material provision of the Condominium Documents is held to be invalid and such invalidity shall materially and adversely affect the lien of the Pledge Agreement or Administrative Agent's or Lender's other security interests under the Loan Documents, or (B) the Condominium shall become subject to any action for partition by any Unit Owner and said action has not been dismissed within ninety (90) days after commencement thereof, or (C) the Condominium is withdrawn from the condominium regime established under the Condominium Laws;
- (vii) Borrower will not, without Administrative Agent's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed so long as no Event of Default exists, cause or permit Mortgage Borrower to exercise any right it may have to vote for (A) any additions or improvements to the common elements of the Condominium that are not included in the Condominium Plans, except as such additions or improvements may be required by Legal Requirements, (B) any borrowing on behalf of the Condominium or (C) the expenditure of any insurance proceeds or condemnation awards for the repair or restoration of the Improvements (unless Borrower or Mortgage Borrower is entitled to utilize such insurance proceeds in accordance with Section 5.2(d) of the Mortgage Loan Agreement);

- (viii) Except as may be otherwise provided in the Offering Plan or as may be required by the Condominium Laws, Borrower shall cause Mortgage Borrower to control the Condominium Board of Managers and the Condominium Association formed by the Condominium Documents at least until such time as more than fifty percent (50%) of the Subdivided Residential Units have been sold in accordance with this Agreement and the Mortgage Loan Agreement;
- (ix) For so long as Mortgage Borrower controls the Condominium Board of Managers, Borrower will cause Mortgage Borrower, in accordance with Mortgage Borrower's rights under the Condominium Documents, to cause the Condominium Board of Managers to maintain insurance on the Condominium in accordance with the Condominium Documents and this Agreement; and
- (x) For so long as Mortgage Borrower controls the Condominium Board of Managers, Borrower shall cause Mortgage Borrower, in accordance with Mortgage Borrower's rights under the Condominium Documents, shall cause the Condominium Board of Managers to enforce the Management Agreement.

Section 8.21 Sales Pace Covenant. Borrower shall cause Mortgage Borrower to satisfy the minimum sales pace for the sale of Subdivided Residential Units attached hereto as **Exhibit A** (subject to the cure rights set forth thereon) (the "**Sales Pace Covenant**").

Section 8.22 Anticipated TCO Date Schedule. On or prior to January 15, 2021, Borrower shall deliver (or shall cause Mortgage Borrower to deliver) to Administrative Agent a schedule of the dates by which Mortgage Borrower expects to receive a temporary certificate of occupancy for each such Subdivided Residential Unit, which schedule shall be subject to Administrative Agent's reasonable approval (the "**Anticipated TCO Date Schedule**").

ARTICLE 9

FINANCIAL REPORTING

Section 9.1 Financial Statements; Records. Borrower shall keep adequate books and records of account in accordance with generally accepted accounting principles related to real estate, consistently applied and shall provide to Administrative Agent in both hard copy and in electronic format, if available, via e-mail to addresses specified by Administrative Agent, within the time periods set forth, the following (collectively, the "**Financial Information**"):

- (a) **Financial Information.** Borrower shall deliver to Administrative Agent the following:
 - (i) an annual Business Plan which includes operating and capital budgets (including expected capital expenditures, a detailed project

of sales, selling costs and profits), including cash flow projections for the upcoming Fiscal Year, and all proposed capital replacements and improvements, within thirty (30) days prior to the close of each Fiscal Year.

- (ii) an annual financial statement for the Premises and for Borrower, Mortgage Borrower and Mortgage Pledgor, including balance sheets, income statements and itemization of any contingent liabilities, to be prepared by an accountant and certified by an authorized and responsible officer or representative of Borrower in the form approved by Administrative Agent in its reasonable discretion, within one hundred twenty (120) days after the close of each Fiscal Year of Borrower;
- (iii) a monthly Progress Report;
- (iv) a monthly internally prepared income statement and balance sheet for each of Borrower, Mortgage Borrower and Mortgage Pledgor, within twenty (20) days following the end of each calendar month (beginning with the first month of leasing activity and no later than three (3) months after the Completion Date);
- (v) Monthly, detailed marketing and sales reports (once sales of the Subdivided Residential Units begin), deposit and escrow accounts, and calculations of selling costs in connection with the sale by Mortgage Borrower of Subdivided Residential Units commencing on the first month after approval of the Offering Plan by the Attorney General;
- (vi) copies of federal tax returns of Borrower, Mortgage Borrower, Mortgage Pledgor and Indemnitor, within thirty (30) days following the filing thereof; and
- (vii) with respect to Indemnitor, such reports, statements and information as and when required pursuant to Section 5.03 of the Corporate Credit Agreement.

(b) **Financial Information Upon Request.** Upon written request from Administrative Agent, Borrower shall deliver the following:

- (i) such other financial or management information from Borrower, Mortgage Borrower, Mortgage Pledgor and Indemnitor as may, from time to time, be reasonably required by Administrative Agent and in form and substance reasonably satisfactory to Administrative Agent;
- (ii) updates to the financial information delivered under Section 9.1(a)(vii), within ten (10) days of Administrative Agent's request;

- (iii) Borrower's, Mortgage Borrower's and Mortgage Pledgor's books and records regarding the Premises for examination, review, copying and audit by Administrative Agent or its auditors during normal business hours and convenient facilities for such examination review, copying and audit of Borrower's, Mortgage Borrower's and Mortgage Pledgor's books and records of account;
- (iv) a statement confirming: (A) that no Borrower, Mortgage Borrower, Mortgage Pledgor or Indemnitor or Principal has, since the date hereof, been the subject of any bankruptcy, reorganization, dissolution, insolvency proceeding or Division; (B) that there does not exist any subordinate, mezzanine or other indebtedness prohibited by any Loan Document; (C) that there has not occurred any transfer, sale, pledge or encumbrance prohibited by any Loan Document, except as previously disclosed to Administrative Agent in writing and approved by Administrative Agent in writing; and (D) that, to Borrower's actual knowledge, (1) there is no Event of Default and (2) no condition exists which, following notice to Borrower and following the expiration of any applicable cure period, would constitute an Event of Default, or if an Event of Default or such condition exists, Borrower shall disclose such Event of Default or condition.

(c) **Failure to Deliver Financial Information.** If Borrower fails to deliver or cause to be delivered to Administrative Agent any Financial Information required hereunder within fifteen (15) days following written notice from Administrative Agent to Borrower that Borrower has failed to timely deliver said Financial Information, Administrative Agent may, in its sole and absolute discretion, charge Borrower (and Borrower shall pay to Administrative Agent (for the benefit of Lender)) a fee equal to \$2,500 (the "**Financial Information Fee**"), for each thirty (30) day period or portion thereof during which Borrower fails to timely deliver to Administrative Agent any such Financial Information.

ARTICLE 10

CONVEYANCES, ENCUMBRANCES AND BORROWINGS

Section 10.1 Prohibition Against Conveyances, Encumbrances and Borrowing.

(a) Except with the prior written consent of Administrative Agent, and except as expressly permitted in Sections 10.2, (i) none of Borrower, Mortgage Pledgor, Mortgage Borrower or any other Person shall sell, transfer, convey, assign, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) (collectively, a "**Conveyance**") all or any portion of any legal or beneficial interest in: (A) all or any portion of the Mortgaged Property including the Leases; (B) all or any portion of the Collateral; or (C) all or any ownership interest in Borrower, Mortgage Pledgor, Mortgage Borrower or in any Upstream Owner, except that a Conveyance of

any publicly traded shares in (or issuance of any publicly traded equity of) any Upstream Owner (or the issuance of any equity in or debt of a publicly traded Upstream Owner) shall be specifically permitted without the consent of Administrative Agent and (ii) Borrower shall not, and shall not cause or permit Mortgage Borrower or Mortgage Pledgor to, Divide.

(b) In furtherance of the foregoing, subordinate liens (voluntary or involuntary) secured by any portion of the Mortgaged Property or the Collateral, or any beneficial interest in the Mortgaged Property or the Collateral, and any mezzanine or any other financing, whether unsecured or secured by any ownership interest in Borrower, Mortgage Borrower, Mortgage Pledgor or in any Upstream Owner, shall not be permitted, except with the prior written consent of Administrative Agent in each case. Without limiting Administrative Agent's right to withhold its consent to any Conveyance, any Conveyance must not be to a tenancy in common or an OFAC Prohibited Person. All requests for Administrative Agent's consent under this Section 10.1 shall be on a form previously approved by Administrative Agent and shall be accompanied by the payment of Administrative Agent's standard processing fee for such transactions then in effect. Administrative Agent's consent to any of the foregoing actions, if given, may be conditioned upon a change in the interest rate, maturity date, amortization period or other terms under this Agreement, the payment of a Conveyance fee and/or any other requirements of Administrative Agent. Notwithstanding the foregoing, Administrative Agent shall not unreasonably withhold, delay or condition its consent to easements or access licenses (or amendments thereto), nor shall Administrative Agent require a change in the terms of the Loan in connection with a request for consent to easements or access licenses (or amendments thereto) so long as such easements or access licenses do not have an adverse impact on the use, operation or value of the Mortgaged Property or the Collateral. In addition to the standard processing fee and the transfer or encumbrance fee referred to in this Section 10.1, Borrower shall pay or reimburse Administrative Agent within five (5) days after demand for all reasonable out-of-pocket expenses (including reasonable out-of-pocket attorneys' fees, costs and expenses, title search costs, and title insurance endorsement premiums) incurred by Administrative Agent and Lender in connection with the review, approval and documentation of any such transaction. The foregoing prohibitions are not intended to prevent individual Upstream Owners (other than any general partner or managing member of Borrower, Mortgage Borrower, Mortgage Pledgor or any other Upstream Owner that is required to comply with the provisions of Section 8.12) from obtaining personal loans unrelated to Borrower, Mortgage Borrower, Mortgage Pledgor, the Collateral and the Mortgaged Property and are also not intended to prevent Mortgage Borrower from incurring reasonable and customary equipment leases, trade payables and unsecured operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Mortgaged Property in such amounts as are reasonable and customary under the circumstances that will be satisfied within sixty (60) days of the date same becomes payable (subject to the right to contest same in good faith), provided that such debt is not evidenced by a note and is paid when due.

Section 10.2 Permitted Transfer.

(a) Notwithstanding the provisions of Section 10.1(a) above, as long as no Event of Default exists, Borrower shall have the right to sell or permit the sale of up to an aggregate of forty-nine percent (49%) of the direct and indirect equity interests in Borrower to one or more third-parties provided that:

- (i) Any new equity investor must be a Qualified Real Estate Investor and any new equity investor must also be an Institutional Real Estate Investor if it will own more than ten percent (10%) of the direct and indirect interests in Borrower, Mortgage Pledgor or Mortgage Borrower;
- (ii) Administrative Agent shall have reviewed and approved (which approval shall not be unreasonably withheld, conditioned or delayed) all relevant joint venture agreements, partnership agreements and limited liability company operating agreements (and other related documents) and must be reasonably satisfied that any decision-making provisions, as well as any major decision rights granted to the equity investor(s), do not result in a change of Control over Borrower, Mortgage Pledgor, Mortgage Borrower and/or the Project;
- (iii) Indemnitor must retain Control and decision-making authority over Borrower, Mortgage Pledgor, Mortgage Borrower and the Project subject to the terms of the joint venture agreement approved by Administrative Agent;
- (iv) Such Conveyance shall not be to a tenancy in common or an OFAC Prohibited Person;
- (v) Borrower pays Administrative Agent's standard processing fee (not to exceed \$50,000) and pays Administrative Agent all reasonable out-of-pocket expenses (including reasonable out-of-pocket attorneys' fees, costs and expenses, title search costs, and title insurance endorsement premiums) incurred by Administrative Agent and Lender in connection with the review, approval and documentation of any such transaction; and
- (vi) The consent of the SCA is not required or written consent thereof has been obtained and delivered to Administrative Agent.

For the avoidance of doubt, (A) any Conveyance of more than forty-nine percent (49%) of the direct and indirect interests in Borrower, Mortgage Borrower or Mortgage Pledgor to one or more third-parties shall be subject to Administrative Agent's prior written approval, which approval may be granted or withheld in Administrative Agent's sole and absolute discretion and which approval, if granted, may be conditioned upon material changes to the terms and conditions of the Loan Documents as may be required by Administrative Agent in its sole and absolute discretion and (B) no Conveyance of a direct interest in Mortgage Borrower or Mortgage Pledgor is permitted.

(b) Notwithstanding the provisions of Section 10.1(a) above, the sale or transfer of the Retail Unit or any Subdivided Residential Unit in accordance with the Business

Plan will not be deemed to be a violation of the prohibitions on partial transfers of ownership in the Borrower.

ARTICLE 11

EVENTS OF DEFAULT

Section 11.1 Events of Default. Each of the following shall constitute an Event of Default under the Loan Documents (each an “**Event of Default**”):

(a) Failure to pay (i) any interest (including the Capitalized PIK) in accordance with Section 2.3 within five (5) Business Days following the date such amount is due; (ii) if the Mortgage Loan is no longer outstanding, the Residential Unit Net Sale Proceeds to Administrative Agent in accordance with Section 2.3(c), or (iii) the entire amount due under the Loan Documents by the Maturity Date;

(b) Except for the payments described in Sections 11.1(a) and 11.1(h) (relating to insurance premiums), failure to pay any other amount due under the Loan Documents within ten (10) days following notice from Administrative Agent that such amount is due;

(c) Except as provided in Section 11.1(a), 11.1(b) and 11.1(d) to 11.1(gg), inclusive, failure to perform or comply with any term, obligation, covenant or condition contained in this Agreement or any other Loan Documents, within thirty (30) days after the delivery of written notice (“**Cure Notice**”) from Administrative Agent of such failure; provided that if such default is not reasonably capable of being cured (without taking into account financial capability) within such thirty (30) day period, such failure shall not constitute an Event of Default so long as Borrower commences the cure of such default within such thirty (30) day period, diligently prosecutes such cure to completion and completes such cure within one hundred twenty (120) days after delivery of the Cure Notice from Administrative Agent;

(d) The occurrence of an Event of Default, or default following any required notice to Borrower and following the expiration of any applicable grace or cure period, under any Loan Document;

(e) If any representation, warranty, certification or other written statement made in any Loan Document or in any written statement or certificate at any time given by Borrower, Mortgage Borrower, Indemnitor or Mortgage Pledgor (or any officers or employees thereof, in their capacity as such) to Administrative Agent or Lender in connection with the Loan shall prove to be untrue or misleading in any material respect at the time when made or given; provided, however, if (i) Borrower, Mortgage Borrower, Indemnitor or Mortgage Pledgor (or any officers or employees thereof, in their capacity as such) makes a good faith, unintentional misrepresentation in any Loan Document or in any such other written statement or certificate, (ii) there is no failure by Borrower to timely pay (or cause Mortgage Borrower to timely pay) any sum of money when due under the Loan Documents, and (iii) the underlying facts or situation that rendered such representation inaccurate or untrue can be remedied to Administrative Agent’s reasonable satisfaction within thirty (30) days following the earlier to occur of the discovery of such misrepresentation by Borrower or written notice from Administrative Agent to Borrower of

such misrepresentation and Borrower actually remedies (or causes Mortgage Borrower to remedy) said underlying facts or situation so as to make the original representation in the Loan Document(s) true and correct on a going forward basis prior to the expiration of said thirty (30) day period and there are not remaining material adverse consequences to Administrative Agent, Lender, the Loan, the Collateral or the Mortgaged Property, then such misrepresentation shall not be deemed to be an Event of Default;

(f) If Administrative Agent (for the benefit of Lender) fails to have a legal, valid, binding and enforceable first priority lien on the Collateral or any portion thereof;

(g) Failure to permit Administrative Agent, Lender or their respective agents to enter to the Mortgaged Property or to access Borrower's, Mortgage Borrower's and/or Mortgage Pledgor's books and records in accordance with the terms of the Loan Documents, such failure continuing for more than seven (7) Business Days after written notice from Administrative Agent to Borrower of such failure;

(h) Failure to maintain (or to cause Mortgage Borrower to maintain) insurance or apply insurance proceeds as required by this Agreement;

(i) The Liens created pursuant to any Loan Document shall cease to be a fully perfected enforceable first priority security interest other than, with respect to priority, solely as a result of Administrative Agent's failure to file a UCC financing statement or continuation thereof or Administrative Agent's failure to control and keep in its possession the Pledged Company Interests delivered by Borrower to Administrative Agent;

(j) Except as permitted in this Agreement or otherwise approved in writing by Administrative Agent: (i) any change from the planned use (i.e., school and residential condominiums) of the upper floors of the Improvements, and any material change in the use that is inconsistent with the current lawful permitted use of the planned first floor retail space or causing or permitting the use or occupancy of any part of the Premises to be discontinued if such change of use or discontinuance would violate any zoning or other law, ordinance or regulation; (ii) consent to any zoning reclassification, modification or restriction affecting any of the Premises; or (iii) except as expressly contemplated by Section 8.20 or Article 16, taking any steps whatsoever to convert any of the Premises, or any portion thereof, to a condominium, cooperative or tenancy in common form of ownership;

(k) Failure by Borrower within ten (10) days following notice from Administrative Agent to deliver (or to cause Mortgage Borrower to deliver) copies of any material notices from governmental or regulatory authorities in accordance with the terms of the Loan Documents;

(l) Failure to deliver (i) financial statements required by Article 9 within thirty (30) days following written notice from Administrative Agent to Borrower of such failure; provided, however, the foregoing thirty (30) day cure period shall be extended by such additional time as may be necessary solely in connection with Borrower's obligation to deliver items requested by Administrative Agent under Sections 9.1(b)(i), (ii) and (iii) as long as Borrower diligently pursues the delivery of said items to Administrative Agent, or (ii) the estoppel

certificates required by Section 8.9 within five (5) Business Days after the delivery of written notice from Administrative Agent, which notice and five (5) Business Day cure period under this Section 11.1(l) shall be in addition to the notice and ten (10) Business Day cure period set forth in Section 8.9;

(m) Material violation by Borrower, Mortgage Borrower or Mortgage Pledgor of the terms, obligations, covenants or conditions set forth in Section 8.12 (Single Purpose Entity Requirements) or Article 10 (Conveyances, Encumbrances and Borrowings); or entering into any Lease of all or any portion of the Retail Unit in violation of the provisions of Section 7.1;

(n) If a default or event of default shall occur under any permitted pledge agreement or similar agreement encumbering all or any portion of the Collateral which is subordinate or superior to the lien of the Pledge Agreement beyond the expiration of any applicable notice and cure period thereunder, or if any party under any such instrument shall commence a foreclosure or other collection or enforcement action in connection therewith (excluding mechanics' liens);

(o) If Borrower, Mortgage Borrower or Mortgage Pledgor breaches any covenant contained in subclauses (b), (c), (e) or (g) of Section 5 of the Pledge Agreement;

(p) If Borrower, Mortgage Borrower, Mortgage Pledgor or Indemnitor consents to the filing of, or commences or consents to the commencement of, any Bankruptcy Proceeding with respect to Borrower, Mortgage Borrower, Mortgage Pledgor or any Indemnitor;

(q) If any Bankruptcy Proceeding shall have been filed against Borrower, Mortgage Borrower, Mortgage Pledgor or Indemnitor and the same is not withdrawn, dismissed, canceled or terminated within ninety (90) days of such filing;

(r) If Borrower, Mortgage Borrower, Mortgage Pledgor or Indemnitor is adjudicated bankrupt or insolvent or a petition for reorganization of Borrower, Mortgage Borrower or any Indemnitor is granted;

(s) If a receiver, liquidator or trustee of Borrower, Mortgage Borrower, Mortgage Pledgor or Indemnitor, or of any of the properties of Borrower, Mortgage Borrower or Indemnitor shall be appointed and not dismissed within ninety (90) days of such appointment;

(t) If Borrower, Mortgage Borrower, Mortgage Pledgor or Indemnitor shall make an assignment for the benefit of its creditors;

(u) Except as otherwise permitted herein, if Borrower, Mortgage Borrower, Mortgage Pledgor or any Principal or any Indemnitor shall institute or cause to be instituted any proceeding for the termination or dissolution of Borrower, Mortgage Borrower, Mortgage Pledgor or Indemnitor;

(v) Failure to achieve (or to cause Mortgage Borrower to achieve) Completion of the Construction Work by the Completion Date or, to the extent applicable, by the Outside Completion Date;

(w) With respect to the Construction Work, (i) the suspension or discontinuance of the Construction Work for a continuous period of at least forty-five (45) days, for reasons other than Force Majeure, (ii) the occurrence of more than two (2) distinct suspensions or discontinuances of the Construction Work, each lasting for a period of greater than thirty (30) consecutive days, for reasons other than Force Majeure, (iii) the abandonment of the Construction Work, for reasons other than Force Majeure, or (iv) the failure of Mortgage Borrower to diligently prosecute Completion of the Construction Work in good faith, for reasons other than Force Majeure;

(x) Failure to achieve (or to cause Mortgage Borrower to achieve) a Milestone Construction Hurdle by the Milestone Deadline, subject to extensions for Force Majeure, in accordance with the provisions of Section 4.1(b) of this Agreement.

(y) An event of default by Mortgage Borrower which continues after the giving of the applicable notice and expiration of the applicable cure period, if any, occurs under the School Unit Purchase Agreement or a notice of termination of the School Purchase Agreement is delivered by the SCA (other than as a result of the Closing occurring thereunder) which Administrative Agent reasonably believes is valid and effective;

(z) Failure to adhere (or to cause Mortgage Borrower to adhere) to the Major Points of the Business Plan in all material respects within thirty (30) days after the delivery of a Cure Notice from Administrative Agent of such failure, or such longer time as may be reasonably necessary to cure such failure provided Borrower promptly commences and diligently pursues (or causes Mortgage Borrower to promptly commence and diligently pursue) such cure, which additional time shall not exceed an additional sixty (60) days, for an aggregate of ninety (90) days;

(aa) The sale of a Subdivided Residential Unit for less than the Residential Unit Minimum Sales Price without Administrative Agent's prior written consent, which may be withheld in Administrative Agent's sole and absolute discretion;

(bb) Failure to satisfy the Sales Pace Covenant;

(cc) Intentionally omitted;

(dd) Intentionally omitted;

(ee) Failure of Indemnitor to meet the Indemnitor's Financial Covenants; or

(ff) An event occurs as provided in Section 8.20(b)(vi) hereof with respect to the Condominium.

(gg) if a Mortgage Loan Event of Default occurs (without regard to any subsequent payment or performance of any obligations of Mortgage Borrower under the Mortgage Loan Documents).

ARTICLE 12

REMEDIES

Section 12.1 Remedies. Upon the occurrence of any Event of Default, Administrative Agent may (1) declare the entire Loan to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or other notice of default of any kind, all of which are hereby expressly waived by Borrower and (2) exercise all rights and remedies therefor under this Agreement, the Pledge Agreement and the other Loan Documents and otherwise available at law or in equity. Neither Administrative Agent nor Lender shall be precluded from bringing any foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Administrative Agent or Lender to enforce and realize upon its interest under the Note, the Loan Agreement, the Pledge Agreement and the other Loan Documents, or in the Collateral or any other collateral given to Administrative Agent (for the benefit of Lender) pursuant to the Loan Documents.

Section 12.2 Lender's Right to Perform the Obligations. If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then while any Event of Default exists, and without notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Administrative Agent or Lender may have because of such Event of Default, Lender may (but shall not be obligated to) make Advances to make such payment or perform such act, and Administrative Agent or Lender shall have the right to enter upon the Premises for such purpose and to take all such action thereon and with respect to the Collateral as it may deem necessary or appropriate. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, neither Administrative Agent nor Lender shall be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before Lender makes an advance for the purpose of preventing or removing the same. Borrower shall indemnify, defend and hold Administrative Agent and Lender harmless from and against, and be responsible for, any and all Losses incurred or accruing by reason of any acts performed by Administrative Agent or Lender pursuant to the provisions of this Section 12.2, including those arising from the joint, concurrent, or comparative negligence of Administrative Agent or Lender, except as a result of Administrative Agent's or Lender's gross negligence or willful misconduct.

Section 12.3 Waiver of Marshalling of Assets.

(a) To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, and others with interests in Borrower, and of the Collateral, and agrees not to assert any right under any laws pertaining to the marshalling of assets, homestead exemption, the administration of estates of decedents, to defeat, reduce or affect the right of Administrative Agent and Lender under the Loan Documents to a sale of the Collateral for the collection of the Indebtedness without any prior or different resort for collection or of the right of Administrative Agent and Lender to the payment of the Indebtedness out of the net proceeds of the Collateral in preference to every other claimant whatsoever. Borrower agrees that the actions, sales, proceedings and foreclosure

described herein or in any of the other Loan Documents may be commenced in any order determined by Administrative Agent.

Section 12.4 Advances. At any time when an Event of Default exists, Lender shall have the right (but not the obligation) to make Advances and obtain reimbursement for any and all Advances to satisfy any of Borrower's obligations under this Agreement that Borrower fails to timely satisfy, which Advances shall constitute additions to the Loan. Lender may make an Advance in reliance on any bill, statement or assessment procured from the appropriate governmental authority or other issuer thereof without inquiring into the accuracy or validity thereof. All Advances shall bear interest at the Default Rate from the date that each such Advance or expense is made or incurred to the date of repayment, if not paid within five (5) Business Days after demand. Borrower shall pay or reimburse Administrative Agent (for the benefit of Lender) within five (5) Business Days after written demand for any and all Advances made pursuant to this Agreement, including for all interest thereon and for all costs and expenses (including reasonable out-of-pocket attorneys' and appraisers' and receivers' fees, costs and expenses and the expenses and reasonable fees of any similar official) related or incidental to the collection of the Indebtedness, any foreclosure of the Pledge Agreement or any other Loan Document, any enforcement, compromise or settlement of any Loan Document or the Indebtedness in any judicial, arbitration, administrative, probate, appellate, bankruptcy, insolvency or receivership proceeding, as well as in any post-judgment proceeding to collect or enforce any judgment or order relating to the Indebtedness or any Loan Document, as well as any defense or assertion of the rights or claims of Administrative Agent or Lender in respect of any thereof, by litigation or otherwise. All Advances made by Lender and any reasonable expenses incurred at any time by Administrative Agent or Lender pursuant to the provisions the Loan Documents or under applicable law shall be secured by the Pledge Agreement as part of the Indebtedness, with equal rank and priority.

Section 12.5 Participation In Proceedings. Administrative Agent may, after written notice to Borrower, subject to the rights of Mortgage Lender under the Mortgage Loan Documents: (i) appear in and defend any action or proceeding, in the name and on behalf of Administrative Agent, Lender or Borrower, in which Administrative Agent or Lender is named or which Administrative Agent reasonably determines may adversely affect the Mortgaged Property, the Collateral, the Pledge Agreement, the Lien thereof or any other Loan Document; and (ii) institute any action or proceeding which Administrative Agent reasonably determines should be instituted to protect its interest in the Collateral or its rights under the Loan Documents, including foreclosure proceedings.

ARTICLE 13

LIMITATIONS ON LIABILITY

Section 13.1 Limitation on Liability.

(a) Subject to the provisions of this Section 13.1, in any action or proceedings brought on any Loan Document in which a money judgment is sought, Administrative Agent and Lender will look solely to the Collateral for payment of the Indebtedness and, specifically and

without limitation, Administrative Agent agrees to waive any right to seek or obtain a deficiency judgment against Borrower.

- (b) The provisions of Section 13.1(a) shall not:
 - (i) constitute a waiver, release or impairment of any obligation evidenced or secured by any Loan Document;
 - (ii) be deemed to be a waiver of any right which Administrative Agent or Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the Federal Bankruptcy Code to file a claim for the full amount of the Indebtedness evidenced by this Agreement and the Note and secured by the Pledge Agreement or to require that all of the Collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents;
 - (iii) impair the right of Administrative Agent to name Borrower or Indemnitor as a party or parties' defendant in any action or suit for judicial foreclosure and sale under the Pledge Agreement;
 - (iv) affect the validity or enforceability of, or limit recovery under, any indemnity (including the Environmental Indemnification Agreement), guaranty, master or other lease or similar instrument made in connection with the Loan Documents;
 - (v) impair the right of Administrative Agent or Lender to obtain the appointment of a receiver; or
 - (vi) impair Administrative Agent's or Lender's rights and remedies under this Agreement or the Pledge Agreement.

(c) Notwithstanding any provisions of Section 13.1(a), Borrower and Indemnitor shall be personally liable to Administrative Agent and Lender and Administrative Agent and Lender shall have full recourse to Borrower in connection with the Loan to the extent provided below in connection with the following:

- (i) Fraud or intentional material misrepresentation in connection with the Loan Documents or the making of the Loan – Recourse liability for the entire Indebtedness if such fraud or intentional material misrepresentation was performed or made by or at the direction of any officer of Borrower, Mortgage Borrower, Mortgage Pledgor or Indemnitor, and Recourse liability for any Losses incurred by Administrative Agent and Lender in all other instances of fraud or intentional material misrepresentation performed or made by Borrower, Mortgage Borrower, Mortgage Pledgor or Indemnitor, their respective Affiliates or employees who are not officers of Borrower, Mortgage Borrower, Mortgage

Pledgor or Indemnitor, in connection with the Loan Documents or the making of the Loan;

- (ii) Insurance and/or condemnation Proceeds received by or on behalf of Borrower or Mortgage Borrower but not applied in accordance with the terms of the Loan Documents or the Mortgage Loan Documents – Recourse liability for any such proceeds which are neither paid over to Administrative Agent (for the benefit of Lender) or Mortgage Lender, nor applied in accordance with the terms of Article 5 or Article 5 of the Mortgage Loan Agreement;
- (iii) Failure to apply any security deposits, advances or prepaid rents, cancellation or termination payments and other sums received by Borrower, Mortgage Borrower or Mortgage Pledgor or by an Affiliate of Borrower, Mortgage Borrower or Mortgage Pledgor or on behalf of Borrower, Mortgage Borrower or Mortgage Pledgor in connection with the operation of the Premises in accordance with the terms of the Loan Documents or the Mortgage Loan Documents, or misappropriation of any of the aforementioned sums received by Borrower, Mortgage Borrower or Mortgage Pledgor or on behalf of Borrower, Mortgage Borrower or Mortgage Pledgor – Recourse liability for the amount of any such sums not applied in accordance with the terms of the Loan Documents or the Mortgage Loan Documents or not paid over to Administrative Agent (for the benefit of Lender) or Mortgage Lender;
- (iv) Removal of any non-obsolete Equipment from the Mortgaged Property by or on behalf of Borrower, Mortgage Borrower, Mortgage Pledgor or their respective Affiliates which is not replaced with Equipment of equal or greater utility and value – Recourse liability for the replacement value of any Equipment which is so removed and not so replaced;
- (v) Any act of arson, malicious destruction or intentional physical waste of the Mortgaged Property by Borrower, Mortgage Borrower, Mortgage Pledgor, Upstream Owners, any Principal, or any general partner, manager or managing member of Borrower, Mortgage Borrower or Mortgage Pledgor – Recourse liability for any Losses incurred by Administrative Agent or Lender arising out of or related to each such act;
- (vi) Any failure to apply any income or proceeds of the Mortgaged Property received by or by an Affiliate of Borrower, Mortgage Borrower or Mortgage Pledgor or on behalf of Borrower, Mortgage Borrower or Mortgage Pledgor to any obligations under the Loan Documents or the Mortgage Loan Documents or for

capital improvements or operating expenses of the Premises (including any deposits or reserves required by a Loan Document or a Mortgage Loan Document) in violation of this Agreement or the Mortgage Loan Agreement – Recourse liability to the extent of any such income or proceeds which are not applied as aforesaid; provided that Administrative Agent shall not have the right to recover distributions made in good faith to any Upstream Owner (after determining the sufficiency of revenues to cover any such payments) more than 180 days prior to an Event of Default occurring under any Loan Document;

- (vii) Filing by Borrower, Mortgage Borrower, Mortgage Pledgor or any Indemnitor, or any general partner or managing member of Borrower, Mortgage Borrower or Mortgage Pledgor of a voluntary bankruptcy or insolvency proceeding, or the filing against any of them, or against any of the Mortgaged Property or the Collateral, of an involuntary bankruptcy or insolvency proceeding by a party other than Lender Parties with respect to which proceeding Borrower, Mortgage Borrower, Mortgage Pledgor, Indemnitor, or any Affiliate of Borrower, Mortgage Borrower, Mortgage Pledgor or Indemnitor has acted in concert with, solicited or caused to be solicited petitioning creditors, or has colluded or conspired with any party to cause the filing thereof (“**Collusive Insolvency**”) which is not dismissed within 90 days of filing – Recourse liability for the entire Indebtedness;
- (viii) Failure of Borrower or Mortgage Borrower to timely maintain, or pay the premiums for, any insurance required to be maintained under Article 5 of this Agreement or any other Loan Document; or to pay any Impositions against the Mortgaged Property – Recourse liability for any Losses incurred by Administrative Agent or Lender in connection with such failure to timely maintain insurance, pay any Imposition or pay insurance premiums; provided that Borrower shall not be liable for Losses as a result of the foregoing to the extent Mortgage Borrower has satisfied all of the conditions precedent to a Disbursement to Mortgage Borrower and Mortgage Lender has not made a Disbursement to Mortgage Borrower in accordance with the terms of the Mortgage Loan Agreement, or to the extent that cash flow from the Mortgaged Property is insufficient to pay same, and Borrower has provided Administrative Agent with written notice of the fact that cash flow from the Mortgaged Property is insufficient to pay same and that Borrower does not intend to pay (or cause Mortgage Borrower to pay) same at least thirty (30) days prior to the due date for the insurance premium or Imposition in question;

- (ix) Violation of the restrictions on transfers of the Mortgaged Property or Collateral or any ownership interest in Borrower, Mortgage Borrower or Mortgage Pledgor set forth in Section 10.1 – Recourse liability for the entire Indebtedness;
- (x) Violation of the restrictions on subordinate, mezzanine and other financing as described in the Loan Documents – Recourse liability for the entire Indebtedness;
- (xi) Violation of the SPE Requirements– Recourse liability for any Losses incurred by Administrative Agent or Lender relating to such violation of such SPE Requirements;
- (xii) Borrower, Mortgage Borrower, Mortgage Pledgor, Indemnitor and/or Principal or any of their respective Affiliates takes, in bad faith, any action which impedes, enjoins, prevents, hinders, frustrates, delays, stays or interferes with Administrative Agent's or Lender's exercise of any rights or remedies under any of the Loan Documents after the earlier to occur of the occurrence of an Event of Default or a Potential Event of Default under any Loan Document, at law or in equity, excluding good faith defenses – Recourse liability for any Losses incurred by Administrative Agent or Lender relating to such action;
- (xiii) Out-of-pocket costs and expenses incurred by Administrative Agent or Lender in enforcing the SCA's or Mortgage Borrower's obligations under the School Unit Purchase Agreement, including without limitation, out-of-pocket reasonable attorneys' fees incurred therewith – Recourse liability for any such costs and expenses not paid by Borrower in accordance with this Agreement;
- (xiv) Any failure of Borrower to comply with Sections 14.21(d), (g), (j), or (k) – Recourse liability for any Losses incurred by Administrative Agent or Lender relating to any such action;
- (xv) Any obligation or liability of Borrower, Mortgage Borrower or Mortgage Pledgor to indemnify or otherwise pay money to any Affiliate of Borrower, Mortgage Borrower or Mortgage Pledgor or any other Person (other than a Public Shareholder) that is a direct or indirect owner of Borrower, Mortgage Borrower or Mortgage Pledgor to the extent such obligation or liability continues to be an obligation or liability thereof after a UCC foreclosure sale or an assignment-in-lieu of foreclosure under the Loan Documents – Recourse liability for any Losses incurred by Administrative Agent or Lender relating to any such obligation or liability;

- (xvi) Any modification or amendment by Borrower or Mortgage Pledgor of the Mortgage Pledgor Company Agreement (as defined in the Pledge Agreement) or the certificates evidencing the Pledged Securities (as defined in the Pledge Agreement) after the date hereof such that the Mortgage Pledgor Company Agreement or such certificates do not comply with Section 5(g) of the Pledge Agreement – Recourse liability for the entire Indebtedness;
- (xvii) Any failure of Borrower, Mortgage Borrower, Condominium Board of Managers, Condominium Association, or the Condominium, as applicable, to (x) comply in all material respects with all Condominium Laws, or (y) fails to cause the Condominium Documents to comply in all material respects with all Condominium Laws – Recourse liability for any Losses incurred by Lender relating to such action;
- (xviii) Any acquisition of all or any portion of the Mortgage Loan by Principal or any Affiliate of a Principal without Administrative Agent's prior consent; and
- (xix) Any title defect with respect to Mortgage Borrower's ownership of the Mortgaged Property other than the items reflected in the Title Policy (as defined in the Mortgage Loan Agreement) brought down as of the date hereof – Recourse liability for any Losses incurred by Administrative Agent or Lender relating to any such defect.

ARTICLE 14

MISCELLANEOUS

Section 14.1 Notices.

(a) All notices, consents, approvals and requests required or permitted under any Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by: (i) certified or registered United States mail, postage prepaid, return receipt requested; or (ii) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery; addressed in either case as follows:

If to Administrative Agent, at the following address:

TPHS Lender II LLC
520 Madison Ave, 30th Fl.
New York, New York 10022
Attention: Andrew Shore, Principal, Kevin Dibble, Managing Director, and
Shulamit Leviant, Managing Member & General Counsel

With a copy to:

Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, Pennsylvania 19104
Attention: Matthew B. Ginsburg, Esq.

If to Lender, at the following address:

TPHS Lender II LLC
520 Madison Ave, 30th Fl.
New York, New York 10022
Attention: Andrew Shore, Principal, Kevin Dibble, Managing Director, and
Shulamit Leviant, Managing Member & General Counsel

With a copy to:

Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, Pennsylvania 19104
Attention: Matthew B. Ginsburg, Esq.

If to Borrower, at the following address:

TPHGreenwich Subordinate Mezz LLC
c/o Trinity Place Holdings Inc.
340 Madison Avenue
3rd Floor, Suite 3C
New York, New York 10173
Attention: Steven Kahn

With a copy to:

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Attention: James P. Godman, Esq.

And, in the case of any default notice, with copies to:

New York City School Construction Authority
30-30 Thompson Avenue
Long Island City, New York 11101
Attn: Ross J. Holden, Executive Vice President & General Counsel
Facsimile: (718) 472-8088
E-mail: rholden@nycsca.org

and

Herrick, Feinstein LLP
2 Park Avenue
New York, New York 10016
Attn: Doug Heller, Esq.
Facsimile: (212) 545-3338
E-mail: dheller@herrick.com

or to such other address and person as shall be designated from time to time by Administrative Agent or Borrower, as the case may be, in a written notice to the other party in the manner provided for in this Section 14.1. A notice shall be deemed to have been given: in the case of hand delivery, at the time of actual delivery; in the case of registered or certified mail, three (3) Business Days after deposit in the United States mail; in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day. A party receiving a notice that does not comply with the technical requirements for notice under this Section 14.1 may elect to waive any deficiencies and treat the notice as having been properly given.

(b) Borrower acknowledges that Administrative Agent may elect to correspond or transmit information concerning the Loan or Borrower to Borrower, the Principals, Indemnitors, investors and other third parties via email or the internet. Such transmissions shall be for the convenience of the parties hereto and shall not replace or supplement the required methods of delivering notices provided for above. In addition, Borrower acknowledges that that such information may be transmitted via the internet or by email and with or without any algorithm enhanced security software and Borrower waives any right to privacy in connection therewith.

Section 14.2 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 14.3 Successors and Assigns. This Agreement shall be binding upon Borrower's successors and assigns and shall inure to the benefit of Administrative Agent, Lender, the Lender Parties and their respective successors and assigns.

Section 14.4 Joint and Several Liability. If more than one party is executing this Agreement as a Borrower, then each party that executes this Agreement shall be jointly and severally responsible for any and all obligations of Borrower hereunder.

Section 14.5 Captions. The captions of the sections and Sections of this Agreement are for convenience only and are not intended to be a part of this Agreement and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

Section 14.6 Further Assurances. Borrower shall do, execute, acknowledge and deliver, at Borrower's sole cost and expense, such further acts, instruments or documentation, including additional title insurance policies or endorsements, and title reinsurance, as Administrative Agent may reasonably require from time to time to better assure, transfer and confirm unto Administrative Agent (for the benefit of Lender) the rights now or hereafter

intended to be granted to Administrative Agent (for the benefit of Lender) under any Loan Document.

Section 14.7 Severability. All rights, powers and remedies provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent (but only to the extent) necessary so that they will not render this Agreement invalid or unenforceable.

If any term, covenant, condition, or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remaining terms, covenants, conditions and provisions of this Agreement, or the application of such term, covenant, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be modified and/or limited to the extent necessary to render the same valid and enforceable to the fullest extent permitted by law.

Section 14.8 Borrower's Obligations Absolute. All sums payable by Borrower hereunder shall be paid without notice (except as otherwise expressly provided), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any condemnation or similar taking of the Premises or any portion thereof; (b) any restriction or prevention of or interference with any use of the Premises or any portion thereof; (c) (A) any title defect or encumbrance or any eviction from the Premises or any portion thereof by title paramount or otherwise or (B) any title defect or encumbrance affecting the Collateral; (d) any Bankruptcy Proceeding relating to Borrower, Mortgage Borrower, Mortgage Pledgor, any Principal, any Indemnitor or any general partner, manager or managing member of Borrower, Mortgage Borrower or Mortgage Pledgor, or any action taken with respect to any Loan Document by any trustee or receiver of Borrower, Mortgage Borrower, Mortgage Pledgor, any Principal, any Indemnitor or any general partner, manager or managing member of Borrower, Mortgage Borrower or Mortgage Pledgor, or by any court, in any such proceeding; (e) any claim which Borrower has or might have against Administrative Agent or Lender; or (f) any default or failure on the part of Administrative Agent or Lender to perform or comply with any of the terms hereof or of any other agreement with Borrower. Except as expressly provided herein, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Borrower.

Section 14.9 Amendments; Consents. This Agreement cannot be altered, amended, modified or discharged orally and no executory agreement shall be effective to modify or discharge it in whole or in part, unless in writing and signed by the party against which enforcement is sought. No consent or approval required under any Loan Document shall be binding unless in writing and signed by the party sought to be bound.

Section 14.10 Other Loan Documents and Exhibits. All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Documents, and each of them, which are to be kept and performed by Borrower are hereby made a part of this Agreement to the same extent and with the same force and effect as if they were fully set forth in this

Agreement, and Borrower shall keep and perform the same, or cause them to be kept and performed, strictly in accordance with their respective terms. The Cover Sheet and each exhibit, schedule and rider attached to this Agreement are integral parts of this Agreement and are incorporated herein by this reference. In the event of any conflict between the provisions of any such exhibit, schedule or rider and the remainder of this Agreement, the provisions of such exhibit, schedule or rider shall prevail.

Section 14.11 Servicer.

(a) At the option of Administrative Agent, the Loan may be serviced by a servicer (any such servicer, together with its agents, nominees or designees, are collectively referred to as “**Servicer**”) selected by Administrative Agent and Administrative Agent may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a servicing agreement (the “**Servicing Agreement**”) between Administrative Agent and Servicer.

(b) Borrower shall be responsible for the following fees and costs:

- Setup Fee (one time): \$1,500.00
 - Monthly Servicing & Asset Management Fee: \$500.00
 - Condo Sales Tracking Set Up Fee (one time): \$1,000.00
 - Condo Sales Tracking: \$300.00 per unit closing
- If the Loan is refinanced before being fully sold, a closing/contract review fee of \$75 per remaining contracted unit will be due to Servicer upon the consummation of such refinance.

The above fees may, at Servicer’s option, be subject to an increase of not more than three percent (3%) per year commencing in 2022.

(c) In addition to those fees and costs set forth in clause (b) above, Borrower shall be responsible for the payment of any “special servicing”, “workout”, and “liquidation” fees incurred pursuant to the Servicing Agreement in connection with any default or workout of the Loan.

Section 14.12 Time of the Essence. Time shall be of the essence in the performance of all obligations of Borrower under every Loan Document.

Section 14.13 Transfer of Loan. Lender may, at any time, sell, transfer, encumber, pledge or assign the Loan Documents or any portion thereof, and any or all servicing rights with respect thereto (collectively, a “**Transfer**”), or grant participations therein (a “**Participation**”) or issue mortgage pass-through certificates or other securities (the “**Securities**”) evidencing a beneficial interest in a rated or unrated public offering or private placement (a “**Securitization**”). In the case of a Transfer, the transferee shall have, to the extent of such Transfer, the rights, benefits and obligations of “Lender” under the Loan Documents. Lender may forward to each purchaser, transferee, assignee, servicer, participant, investor in such Transfer, Participation or Securitization or any Rating Agency rating such Securitization (collectively, the “**Investor**”) that executes and delivers Lender’s form of (or another customary) non-disclosure agreement and

each prospective Investor or any agency maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Loan, the Mortgaged Property, the Collateral, Borrower, Mortgage Borrower, Mortgage Pledgor, any Principal, and any Indemnitor, whether provided by Borrower, Mortgage Borrower, Mortgage Pledgor, any Indemnitor, or otherwise, as Lender reasonably determines necessary or desirable. Borrower irrevocably waives any and all rights it may have under applicable state or federal law to prohibit disclosure in accordance with the provisions of this Section 14.13, including any right of privacy. Further Borrower acknowledges that such information may be transmitted via the internet or by email.

Section 14.14 Cooperation. Borrower shall, and shall cause each Principal and Indemnitor to, reasonably cooperate with Lender at no material cost to Borrower in connection with servicing the Loan and any Transfer, Participation, Securitization or any other financing created or obtained in connection with the loan, including:

(a) **Estoppel Certificates.** Borrower, within ten (10) Business Days following a request by Lender, shall provide Lender or any proposed assignee with an estoppel certificate containing the information set forth in Section 8.9 and such other information that Lender shall reasonably request, duly acknowledged and certified;

(b) **Bifurcation of Note.** The Note may, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes. To that end, Borrower, upon written request of Administrative Agent or Lender, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by any Indemnitor or the then owner of any of the Collateral, to Lender and/or its designee or designees substitute notes in such principal amounts, aggregating not more than the then unpaid principal amount of Indebtedness, and containing terms, provisions and clauses substantially the same as those contained herein and in the Note, which, in the aggregate, will have economic terms substantially consistent with the Loan, and such other documents and instruments as may be reasonably required by Lender, which have no adverse effect on Borrower. Lender shall reimburse Borrower for its reasonable out-of-pocket costs and expenses incurred in connection with any such Transfer, Participation or Securitization; and

(c) **Transfer of Funds.** In the event of a Securitization, all funds held by Administrative Agent or Lender in connection with the Loan may be deposited in eligible accounts at eligible institutions as then defined and required by any Rating Agency. Borrower and Indemnitor may be required to execute additional documents in connection with any such Transfer, Participation, Securitization or financing, including a new note or notes, which have no material adverse effect on Borrower. Borrower shall not be required to incur any out of pocket costs in connection with any such cooperation.

Section 14.15 Register. Administrative Agent (for the benefit of Lender) shall cause to be kept a register (the "**Register**") for the registration of ownership and transfer or assignment of the Note or any substitute note or notes secured by the Pledge Agreement. The names and addresses of the registered owners of such notes, the transfers or assignment of such notes and the names and addresses of the transferees of such notes will be registered in the Register under such reasonable regulations as Administrative Agent may prescribe. Borrower, Administrative

Agent and Lender shall deem and treat the registered owner of any note as shown in the Register as the absolute owner thereof for all purposes, and none of Borrower, Administrative Agent or Lender shall be affected by any notice to the contrary and payment of the principal of, interest on, and MOIC Amount, as applicable, if any, due on or with respect to the related note shall be made only to or upon the order of such registered owner. All such payments so made shall be valid and effective to satisfy and discharge the liability of Borrower upon such notes to the extent of the sums so paid. Upon reasonable request from time to time, Administrative Agent shall permit Borrower to examine the Register.

Section 14.16 Limitation on Interest. It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements between Borrower, Administrative Agent and Lender with respect to the Loan are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Administrative Agent (for the benefit of Lender) or charged by Lender for the use, forbearance or detention of the money to be lent hereunder or otherwise, exceed the maximum amount allowed by law. If the Loan would be usurious under applicable law (including the laws of the State and the laws of the United States of America), then, notwithstanding anything to the contrary in the Loan Documents: (a) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, taken, reserved, charged or received under the Loan Documents shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited to the outstanding principal of the Loan; and (b) if the Maturity Date is accelerated by reason of an election by Administrative Agent in accordance with the terms hereof, or in the event of any prepayment, then any consideration which constitutes interest may never include more than the maximum amount allowed by applicable law. In such case, excess interest, if any, provided for in the Loan Documents or otherwise, to the extent permitted by applicable law, shall be amortized, pro-rated, allocated and spread from the date of advance until payment in full thereof so that the actual rate of interest is uniform through the term hereof. If such amortization, pro-ration, allocation and spreading is not permitted under applicable law, then such excess interest shall be cancelled automatically on the Note as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited to the outstanding principal of the Loan. The terms and provisions of this Section 14.16 shall control and supersede every other provision of the Loan Documents. The Loan Documents are contracts made under and shall be construed in accordance with and governed by the laws of the State as set forth in Section 14.19, except that if at any time the laws of the United States of America permit Administrative Agent or Lender to contract for, take, reserve, charge or receive a higher rate of interest than is allowed by the laws of the State (whether such federal laws directly so provide or refer to the law of any state), then such federal laws shall to such extent govern as to the rate of interest which Administrative Agent or Lender may contract for, take, reserve, charge or receive under the Loan Documents.

Section 14.17 Survival. All of the representations, warranties, covenants, and indemnities of Borrower hereunder (other than relating to environmental matters which are instead addressed in the Environmental Indemnification Agreement) shall survive (a) until full and final repayment of the entire Indebtedness (including satisfaction of any outstanding obligations under the Recourse Guaranty Agreement), (b) the transfer (by sale, foreclosure, conveyance in lieu of foreclosure or otherwise) of any or all right, title and interest in and to the

Mortgaged Property to any party, and (c) any assignment by Lender of any interest in the Loan hereunder in accordance with the terms of this Agreement.

Section 14.18 WAIVER OF JURY TRIAL. BORROWER, ADMINISTRATIVE AGENT AND LENDER EACH HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY BORROWER, ADMINISTRATIVE AGENT AND LENDER, AND EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY HAS NOT MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER ACKNOWLEDGES THAT BORROWER HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS AGREEMENT BY INDEPENDENT LEGAL COUNSEL SELECTED BY BORROWER AND THAT BORROWER HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 14.19 Governing Law. In all respects, including matters of construction and performance of this Agreement and the obligations arising hereunder, this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York and any applicable laws of the United States of America. Interpretation and construction of this Agreement shall be according to the contents hereof and without presumption or standard of construction in favor of or against Borrower, Administrative Agent or Lender.

Section 14.20 Consent to Jurisdiction and Venue. Borrower hereby submits to personal jurisdiction in the State of New York for the enforcement of the provisions of this Agreement and irrevocably waives any and all rights to object to such jurisdiction for the purposes of litigation to enforce any provision of this Agreement. Borrower hereby consents to the jurisdiction of and agrees that any action, suit or proceeding to enforce this Agreement may be brought in any state or federal court in the state in which the Premises are located. Borrower hereby irrevocably waives any objection that it may have to the laying of the venue of any such actions, suit, or proceeding in any such court and hereby further irrevocably waives any claim that any such action, suit or proceeding brought in such a court has been brought in an inconvenient forum.

Section 14.21 Mortgage Loan Matters.

(a) **Notices.** Borrower shall deliver to Administrative Agent, promptly after the receipt or delivery, a copy of any notice of default received or sent by Borrower, Mortgage Borrower or Mortgage Pledgor with respect to the Mortgage Loan, and of any other material written correspondence (including electronically transmitted items) given or received by Mortgage Borrower or Indemnitor to or from Mortgage Lender or its agents.

(b) **Independent Approval Rights.** Unless expressly set forth in this Agreement, if any action, proposed action or other decision is consented to or approved by Mortgage Lender, such consent or approval shall not be binding or controlling on Administrative Agent. Borrower hereby acknowledges and agrees that (i) the risks of Mortgage Lender in

making the Mortgage Loan are different from the risks of Lender in making the Loan, (ii) in determining whether to grant, deny, withhold or condition any requested consent or approval, Mortgage Lender and Administrative Agent (for the benefit of Lender) may reasonably reach different conclusions, and (iii) Administrative Agent has an absolute independent right to grant, deny, withhold or condition any requested consent or approval based on its own point of view, but subject to the standards of consent set forth herein. Furthermore, the denial by Administrative Agent of a requested consent or approval shall not create any liability or other obligation of Administrative Agent or Lender if the denial of such consent or approval results directly or indirectly in a default under the Mortgage Loan Documents, and Borrower hereby waives any claim of liability against Administrative Agent and Lender arising from any such denial unless Borrower has any rights or remedies available to such denial failing to be in accordance with the terms of this Agreement or any other Loan Document. The rights described above may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Administrative Agent or Lender.

(c) Intercreditor Agreement. Borrower hereby acknowledges and agrees that any intercreditor agreement entered into between Lender and Mortgage Lender will be solely for the benefit of Lender and Mortgage Lender, and that none of Borrower, Mortgage Borrower or Mortgage Pledgor shall be third-party beneficiaries (intended or otherwise) of any of the provisions therein, have any rights thereunder, or be entitled to rely on any of the provisions contained therein. Lender and Mortgage Lender have no obligation to disclose to Borrower, Mortgage Borrower or Mortgage Pledgor the contents of any such intercreditor agreement. Borrower's obligations hereunder are and will be independent of any such intercreditor agreement and shall remain unmodified by the terms and provisions thereof. In the event that (i) the Mortgage Loan is in default (or the receipt by Administrative Agent (for the benefit of Lender) of a payment would cause the Mortgage Loan to be in default or would be in breach of any intercreditor agreement between Lender and Mortgage Lender), (ii) Lender is required pursuant to the terms of any intercreditor agreement between Lender and Mortgage Lender to pay over to Mortgage Lender any payment or distribution of assets, whether in cash, property or securities which is applied to the Indebtedness, including any proceeds of the Mortgaged Property or any other collateral for the Indebtedness previously received by Administrative Agent (for the benefit of Lender) on account of the Loan, (iii) Lender has actually paid over such amounts to Mortgage Lender, and (iv) Lender has not received such amounts in return, then Borrower agrees to indemnify Administrative Agent and Lender for any amounts so paid, and any amount so paid shall continue to be owing pursuant to the Loan Documents as part of the Indebtedness notwithstanding the prior receipt of such payment by Administrative Agent (for the benefit of Lender).

(d) Refinancing or Prepayment of the Mortgage Loan. Other than in connection with a prepayment of the Mortgage Loan pursuant to Section 2.5(a), Borrower shall not make or permit to be made (i) any partial or full prepayment of amounts owing under the Mortgage Loan without the prior written consent of Administrative Agent or (ii) any refinancing of the Mortgage Loan without the prior written consent of Administrative Agent as to both the identity of the refinancing lender and any intercreditor agreement entered into in connection therewith, in each case as to clause (i) and (ii), not to be unreasonably withheld, delayed or conditioned.

(e) Compliance with Mortgage Loan Documents. Borrower shall cause each of Mortgage Borrower and Mortgage Pledgor to: (i) diligently perform and observe in all material respects all of the terms, covenants and conditions of the Mortgage Loan Documents on the part of Mortgage Borrower or Mortgage Pledgor to be performed and observed within any applicable notice and cure periods under the Mortgage Loan Documents; (ii) not enter into or be bound by any Mortgage Loan Documents not in effect on the date hereof, agree to any material modifications, consolidation, restatement, or waiver of any existing Mortgage Loan Documents, grant to Mortgage Lender any consent or waiver, or exercise any remedy available to Mortgage Borrower or Mortgage Pledgor under the Mortgage Loan Documents or any right or election under the Mortgage Loan Documents, in each case without the prior written approval of Administrative Agent; and (iii) provide Administrative Agent with a copy of any amendment or modification of, or waiver or consent granted under, the Mortgage Loan Documents within five (5) Business Days after its receipt thereof.

(f) Mortgage Loan Defaults. If any Mortgage Loan Event of Default occurs under the Mortgage Loan Documents, Borrower agrees that Administrative Agent (for the benefit of Lender) shall have the immediate right to (but shall be under no obligation to), without prior notice to Borrower: (i) pay all or any part of the Mortgage Loan and any other sums that are then due and payable, and perform any act or take any action on behalf of Borrower, Mortgage Borrower and/or Mortgage Pledgor as may be appropriate, to cause all of the terms, covenants and conditions of the Mortgage Loan Documents on the part of Mortgage Borrower or Mortgage Pledgor to be performed or observed thereunder to be promptly performed or observed; and (ii) pay any other amounts and take any other action as Administrative Agent, in its sole and absolute discretion, shall deem necessary or reasonably advisable to protect or preserve the rights and interests of Administrative Agent and Lender in the Loan and/or the Collateral. Borrower shall not impede, interfere with, hinder or delay, and shall not permit Mortgage Borrower or Mortgage Pledgor to impede, interfere with, hinder or delay, any effort or action on the part of Administrative Agent or Lender to cure any default or asserted default under the Mortgage Loan, or to otherwise protect or preserve Administrative Agent's and Lender's interests in the Loan and the Collateral following a default or asserted default under the Mortgage Loan. Borrower hereby grants Administrative Agent, Lender and their respective designees the right to enter upon the Mortgaged Property at any time while an Event of Default exists, or the assertion by Mortgage Lender that an Event of Default has occurred, under the Mortgage Loan Documents, for the purpose of taking any such action or to appear in, defend or bring any action or proceeding to protect Administrative Agent's and/or Lender's interest. Administrative Agent (for the benefit of Lender) may take such action as Administrative Agent deems necessary to carry out the intents and purposes of this Section 14.21 (including communicating with Mortgage Lender with respect to any Mortgage Loan defaults), without prior notice to, or consent from, Borrower, Mortgage Borrower or Mortgage Pledgor. Administrative Agent shall have no obligation to complete any cure or attempted cure undertaken or commenced by Administrative Agent. All sums so paid and the costs and expenses incurred by Administrative Agent and Lender in exercising rights under this Section 14.21 (including its reasonable attorneys' fees and costs) (A) shall be added to the Indebtedness, (B) shall bear interest at the Default Rate for the period from the date that such costs or expenses were incurred to the date of payment to Administrative Agent (for the benefit of Lender), and (C) shall be secured by the Pledge Agreement. Borrower hereby indemnifies Administrative Agent and Lender from and against all losses of any kind or nature whatsoever which may be imposed

on, incurred by or asserted against Administrative Agent or Lender as a result of the foregoing actions, excluding such Losses arising from the gross negligence, willful misconduct or illegal acts of Administrative Agent or Lender. In the event that Administrative Agent or Lender makes any payment in respect of the Mortgage Loan, Administrative Agent and Lender shall be subrogated to all of the rights of Mortgage Lender under the Mortgage Loan Documents against the Mortgaged Property, in addition to all other rights it may have under the Loan Documents. If Administrative Agent shall receive a copy of any notice of default under the Mortgage Loan Documents sent by Mortgage Lender, such notice shall constitute full protection to Administrative Agent for any action taken or omitted to be taken by Administrative Agent, in good faith, in reliance thereon. As a material inducement to Lender's making the Loan, Borrower hereby absolutely and unconditionally releases and waives all claims against Administrative Agent and Lender arising out of Administrative Agent's or Lender's exercise of its rights and remedies provided in this Section 14.21(f), except for Administrative Agent's or Lender's gross negligence, or willful misconduct.

(g) Material Contracts. Borrower shall not, and shall not cause or permit Mortgage Borrower or Mortgage Pledgor to, without Administrative Agent's prior written consent (not to be unreasonably withheld, delayed or conditioned), enter into, modify, surrender, terminate, or waive any provision of, any Material Contracts to which it is a party.

(h) [Intentionally Omitted].

(i) [Intentionally Omitted].

(j) Acquisition of the Mortgage Loan. None of Borrower, Mortgage Borrower, Mortgage Pledgor, Indemnitor, or any Affiliate of any of the foregoing shall acquire or agree to acquire the Mortgage Loan, or any portion thereof or any interest therein, or any direct or indirect ownership interest in the holder of the Mortgage Loan, via purchase, transfer, exchange, operation of law, or otherwise. If, solely by operation of applicable subrogation law, Borrower, Mortgage Borrower, Mortgage Pledgor, Indemnitor, or any Affiliate of any of the foregoing shall have failed to comply with the foregoing, then Borrower shall (i) immediately notify Administrative Agent of such failure, and (ii) cause any and all such prohibited parties acquiring any interest in the Mortgage Loan to (A) discontinue and terminate any enforcement proceeding(s) under the Mortgage Loan Documents, and (B) without limiting the foregoing, pay over to Administrative Agent (for the benefit of Lender) any and all payments or proceeds received on account of the Mortgage Loan or the exercise of any rights or remedies with respect thereto.

(k) Deed in Lieu of Foreclosure. Without the express prior written consent of Administrative Agent, Borrower shall not, and Borrower shall not cause, suffer or permit (i) Mortgage Borrower to, enter into, execute, deliver, or consent to, as the case may be, any deed-in-lieu or other consensual foreclosure with or for the benefit of Mortgage Lender or any other Person or (ii) Mortgage Pledgor to, enter into, execute, deliver, or consent to, as the case may be, any assignment-in-lieu or other consensual foreclosure with or for the benefit of Mortgage Lender or any other Person; provided that, in the event that Borrower shall tender to Administrative Agent (for the benefit of Lender) an assignment-in-lieu of foreclosure of the Pledge Agreement in form and substance reasonably acceptable to Administrative Agent, and

Administrative Agent (for the benefit of Lender) shall have declined to accept such tender (which Administrative Agent may do in its sole and absolute discretion, it being understood and agreed that failure of Administrative Agent to accept such assignment-in-lieu of foreclosure within sixty (60) days after Borrower's tender shall be deemed to constitute Administrative Agent's declining to accept such assignment-in-lieu), Borrower shall have the right, but not the obligation, to cause or permit Mortgage Pledgor to tender to Mortgage Lender or its designee a deed-in-lieu of foreclosure of the Mortgage without the prior written consent of Administrative Agent (but without waiving or limiting any of Borrower's other obligations or liabilities under this Agreement and the other Loan Documents).

(l) **Distributions.** Subject to the terms of the Mortgage Loan Documents, on each date on which amounts are due and payable to Lender pursuant to the Loan Documents and/or are required to be disbursed to Lender pursuant to the terms of the Mortgage Loan Documents, Borrower shall exercise its rights under the organizational documents of Mortgage Borrower to cause Mortgage Borrower to make a distribution of funds to Borrower in an amount sufficient to allow Borrower to make such required payment to Administrative Agent (for the benefit of Lender), but only to the extent cash flow from the Mortgaged Property, after the payment of all amounts payable with respect to the Mortgage Loan, that is made available to Borrower (and not trapped by Administrative Agent (for the benefit of Lender) or Mortgage Lender) is sufficient to do so (provided that the foregoing is not intended to limit any of Borrower's obligations under this Agreement or the other Loan Documents). Subject to the terms of the Mortgage Loan Documents, during the existence of an Event of Default, Borrower shall not, and shall not cause Mortgage Borrower to, make any distributions of any kind, returns of capital, or repayment of any loans (in each case whether in cash, assets, equity interests, or proceeds of any kind) to any Person that owns any direct or indirect equity interest in Borrower.

(m) **Discussions with Mortgage Lender and Manager.** In connection with the exercise of its rights set forth in the Loan Documents, Administrative Agent and Lender shall have the right at any time to discuss the Mortgaged Property, the Mortgage Loan, the Loan, and any other matter directly with Mortgage Lender and Property Manager and their respective consultants, agents or representatives, as applicable, without notice to or permission from Borrower, nor shall Administrative Agent or Lender have any obligation to disclose such discussions or the contents thereof to Borrower or any other Person.

Section 14.22 Entire Agreement. This Agreement and the other Loan Documents embody the entire agreement and understanding between Administrative Agent, Lender and Borrower and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 14.23 Pledge and Grant of Security Interest. Borrower hereby pledges to Administrative Agent (for the benefit of Lender), and grants a security interest in, any and all monies now or hereafter deposited with Administrative Agent from time to time as additional security for the payment of the Loan, but subject to the rights of tenants with respect to any tenant security deposits under Leases and the rights of Unit Purchasers under Unit Contracts of Sale. Borrower shall not further pledge, assign or grant any security interest in any monies on

deposit therein from time to time or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 financing statements (except those naming Administrative Agent as the secured party) to be filed with respect thereto. Upon the occurrence of an Event of Default, Administrative Agent may apply any such sums then deposited with Administrative Agent to the payment of the charges for which such funds have been deposited or to the payment of the Loan or any other charges affecting the security of the Loan, as Administrative Agent may elect, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Administrative Agent. Until expended or applied as above provided, such funds shall constitute additional security for the Loan.

Section 14.24 Confidentiality. Except to the extent (i) required under applicable Legal Requirements, and/or (ii) in connection with a dispute between Administrative Agent/Lender/DK and Borrower, without obtaining the prior written consent of Administrative Agent, Lender and DK in each case, neither Borrower, nor any of its Affiliates, Upstream Owners, brokers, attorneys, accountants or other agents or other representatives shall disclose to any Person or party through any means (including, but not limited to, orally or by correspondence, electronic communications, signage, press-releases, interviews or any publicity or advertising), other than to Administrative Agent and its representatives: (A) the existence of any business relationship between Borrower and Administrative Agent, Lender and/or DK, or (B) the existence of any connection between the Loan and Administrative Agent, Lender and/or DK. Notwithstanding anything to the contrary, Borrower may make such disclosures as Borrower determines are required by law upon advice of counsel due to the fact that Indemnitor is a public company.

Section 14.25 Broker. Borrower shall indemnify, defend and hold harmless DK, Administrative Agent and Lender from and against, and shall be responsible for, any Losses arising from any claim or litigation made or threatened by any broker or finder (but excluding any brokers or finders claiming by or through DK, Administrative Agent or Lender) in connection with the proposed Loan, and any court costs and reasonable attorneys' fees (including, without limitation, the cost of post-judgment remedies and appeals) incurred by DK, Administrative Agent or Lender in connection with any such claim or litigation.

ARTICLE 15

THE ADMINISTRATIVE AGENT

Section 15.1 Appointment and Authority. Each Lender hereby irrevocably appoints TPHS Lender II LLC to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article XV are solely for the benefit of the Administrative Agent and Lender, and neither Borrower nor Indemnitor shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

Section 15.2 Exculpatory Provisions. Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Potential Event of Default or Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by Lender; provided that Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law; provided, further, that Administrative Agent may seek instruction or clarification from Lender prior to the exercise of any action it may be or is required to take hereunder and until it has received satisfactory responses from Lender, Administrative Agent may take any reasonable action or refrain from taking any action, without liability pursuant to Section 15.4.

(c) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of Borrower, Indemnitor or any of their Affiliates, that is communicated to, obtained or in the possession of, Administrative Agent or any of their Affiliates and Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to Lender by Administrative Agent herein;

(d) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of Lender or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. Administrative Agent shall be deemed not to have knowledge of any Potential Event of Default or Event of Default unless and until notice describing such Potential Event of Default or Event of Default is given in writing to Administrative Agent by Borrower or Lender; and

(e) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Potential Event of Default or Event of Default or (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document.

Section 15.3 Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic

message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. Administrative Agent may consult with legal counsel (who may be counsel for Borrower or Indemnitor), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 15.4 Indemnification by Lenders.

(a) Each Lender severally agrees to indemnify Administrative Agent, its affiliates and their respective directors, officers, agents and employees (to the extent not promptly reimbursed by Borrower) ratably in accordance with its interest in the Loan, against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or any action taken or omitted by the Administrative Agent under the Loan Documents (collectively, the “**Indemnified Costs**”); provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from Administrative Agent’s gross negligence or willful misconduct as found in a final, non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse Administrative Agent promptly upon demand for its ratable share of any costs and expenses (including, without limitation, fees and expenses of counsel) payable by Borrower under this Agreement or the other Loan Documents, to the extent that Administrative Agent is not promptly reimbursed for such costs and expenses by Borrower. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this Section 15.4 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person.

(b) The failure of any Lender to reimburse Administrative Agent promptly upon demand for its ratable share of any amount required to be paid by Lender to Administrative Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse Administrative Agent for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse Administrative Agent for such other Lender’s ratable share of such amount. Without prejudice to the survival of any other agreement of any Lender hereunder, the agreement and obligations of each Lender contained in this Section 15.4 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the other Loan Documents.

Section 15.5 Delegation of Duties. Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article XV shall apply to any such sub-agent and to the Related Parties of - Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of

the credit facilities provided for herein as well as activities as Administrative Agent. Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 15.6 Resignation of Administrative Agent.

(c) Administrative Agent may at any time give notice of its resignation to Lender and Borrower. Upon receipt of any such notice of resignation, the Lender shall have the right, in consultation with Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by Lender and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by Lender) (the “**Resignation Effective Date**”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of Lender, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(d) Lender may by notice in writing to Borrower and such Person remove such Person as Administrative Agent and, so long as no Event of Default has occurred and is continuing, in consultation with Borrower, appoint a successor. If no such successor shall have been so appointed by Lender and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by Lender) (the “**Removal Effective Date**”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(e) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as Lender appoints a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 15.6).

The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article XV shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and

their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

Section 15.7 Non-Reliance on the Administrative Agent and the Other Lenders. Each Lender expressly acknowledges that Administrative Agent has not made any representation or warranty to it, and that no act by Administrative Agent hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of Borrower or Indemnitor of any Affiliate thereof, shall be deemed to constitute any representation or warranty by Administrative Agent to any Lender as to any matter, including whether Administrative Agent has disclosed material information in its (or its Related Parties') possession. Each Lender represents to Administrative Agent that it has, independently and without reliance upon Administrative Agent, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their subsidiaries, and all applicable bank or other regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to make the Loan to Borrower. Each Lender also acknowledges that it will, independently and without reliance upon Administrative Agent, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making commercial loans in the ordinary course and is entering into this Agreement as a Lender for the purpose of making, acquiring or holding commercial loans, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender agrees not to assert a claim in contravention of the foregoing. Each Lender represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans, is experienced in making, acquiring or holding such commercial loans.

Section 15.8 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, Administrative Agent (irrespective of whether the principal of the Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise.

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loan and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of

Lender and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lender and the Administrative Agent and their respective agents and counsel and all other amounts due Lender and Administrative Agent under this Agreement) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lender, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under this Agreement.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 15.9 Reliance by Borrower on Administrative Agent. At all times when there is more than one Lender, (1) Borrower (a) is entitled to rely on the Administrative Agent for any waiver, amendment, approval or consent given by “Lender” under the Loan Documents, (b) shall adhere only to waivers, amendments, approvals or consents given by Administrative Agent, on behalf of “Lender” under the Loan Documents, and (c) shall make all payments under the Note and the other Loan Documents to Administrative Agent, as set forth herein, and (2) Administrative Agent shall, on behalf of all of the Lenders, be permitted to take all actions, including exercising all remedies, permitted to be taken by “Lender” under the Loan Documents (either by law or pursuant to the terms of the Loan Documents), and (3) all legal action taken respecting the Loan Documents shall be taken by the Administrative Agent on behalf of the Lenders, and all default notices under the Loan Documents will be provided by the Administrative Agent. The use of the term “agent” in this Agreement with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Notwithstanding anything to the contrary contained in the Note, unless otherwise directed by Administrative Agent in writing, all payments under the Loan Documents shall be made by Borrower to the Administrative Agent in accordance with the provisions of Section 2.7(a).

Section 15.10 Rights as a Lender. If the Administrative Agent is also a Lender hereunder it shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as the Administrative Agent, and the term “Lender” or “Lenders” shall, unless the context otherwise indicates, include the Administrative Agent in its individual capacity.

Section 15.11 Amendments Concerning Agency Function. Notwithstanding anything to the contrary contained in this Agreement, Administrative Agent shall not be bound by any waiver, amendment, supplement or modification of this Agreement or any other Loan Document which affects Administrative Agent's duties, rights, and/or functions hereunder or thereunder unless Administrative Agent shall have given Administrative Agent's prior written consent thereto.

ARTICLE 16

CONDOMINIUM UNIT RELEASE PROVISIONS

Section 16.1 The Offering Plan.

(a) The Offering Plan and the other Condominium Documents are in full compliance in all material respects with all Condominium Laws. The Declaration and Condominium Plans have been recorded with the Registers Office.

(b) Borrower shall not cause or permit Mortgage Borrower to submit an amendment to the Offering Plan to the Attorney General for the purpose of declaring the Offering Plan to be effective or record any of the Condominium Documents without Administrative Agent's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed provided (i) no Event of Default exists and (ii) such amendment or modification complies with all Condominium Laws. Administrative Agent will endeavor to review and approve or provide comments to the amendment to the Offering Plan declaring the Offering Plan to be effective with ten (10) Business Days from the date of receipt from the Borrower.

(c) Borrower shall deliver to Administrative Agent a copy of any Price Change Amendment or other amendment Offering Plan (or other Condominium Documents) within fifteen (15) days after acceptance by the Attorney General, along with a copy of the letter from the Attorney General approving such amendment to the Offering Plan.

Section 16.2 Contracts of Sale.

(a) Administrative Agent hereby approves the Residential Unit Contracts of Sale executed prior to the date hereof as described on Exhibit I attached hereto.

(b) Borrower shall not cause or permit Mortgage Borrower to enter into a Residential Unit Contract of Sale unless said Residential Unit Contract of Sale is in compliance with the terms and conditions of this Agreement and the Mortgage Loan Agreement. Each Residential Unit Contract of Sale shall be on the Approved Form of Contract of Sale (subject only to customary non-material negotiated revisions to said form that have no material adverse effect on Borrower, Mortgage Borrower, Administrative Agent, Lender or the Project), and all of the following conditions shall have been satisfied:

- (i) The purchase price under such Residential Unit Contract of Sale for a Subdivided Residential Unit shall be greater than or equal to

the Residential Unit Minimum Sales Price for such Subdivided Residential Unit;

- (ii) such Residential Unit Contract of Sale shall not provide for Mortgage Borrower, as seller, to provide any seller financing or to take back any purchase money mortgages as part of the sales price;
- (iii) such Residential Unit Contract of Sale shall not be subject to cancellation, except as provided in the Offering Plan, by the Condominium Laws (including those requiring disclosures to prospective and actual purchasers) and/or the Approved Form of Contract of Sale;
- (iv) such Residential Unit Contract of Sale shall have no contingencies thereunder, unless otherwise approved by Administrative Agent in writing, except (w) Completion of the Construction Work, (x) those set forth in the Approved Form of Contract of Sale or Offering Plan, (y) a contingency for Mortgage Borrower's obligation to consummate the closing in accordance with the provisions of the Residential Unit Contract of Sale on or before the date set forth therein for such closing, which date shall not be prior to the date set forth in the Anticipated TCO Date Schedule for said Subdivided Residential Unit, and (z) a financing contingency on then current market terms and conditions, provided that any Residential Unit Contract of Sale that contains a financing contingency shall not be included in the calculation of Residential Net Sale Proceeds in connection Mortgage Borrower's compliance with the Sales Pace Covenant until such time as the financing contingency has been satisfied, expired by its terms or been waived in writing by the purchaser thereunder, or the closing under such Residential Unit Contract of Sale has occurred;
- (v) such Residential Unit Contract of Sale requires the applicable Residential Unit Purchaser upon execution thereof, to make a cash deposit of not less than ten percent (10%) of the gross sales price of the Subdivided Residential Unit, unless Borrower obtains (or causes Mortgage Borrower to obtain) Administrative Agent's prior written consent to a deposit in an amount less than ten percent (10%) of the gross sales price of the applicable Subdivided Residential Unit, which consent shall not be unreasonably withheld, conditioned or delayed;
- (vi) such Residential Unit Contract of Sale provides for the entire purchase price and other payments thereunder payable to Mortgage Borrower, as seller under the Residential Unit Contract of Sale, to be paid by wire transfer, bank check or certified funds at the closing of such Subdivided Residential Unit (either by means of an

all-cash sale, or from institutional financing obtained by the purchaser);

- (vii) intentionally omitted;
- (viii) the Offering Plan and the other Condominium Documents shall have been submitted to and approved by Administrative Agent and the Offering Plan has been accepted for filing by the Attorney General;
- (ix) Borrower shall not cause or permit Mortgage Borrower to enter into a Bulk Sale without Administrative Agent's prior consent, which consent may be granted or withheld in Administrative Agent's sole and absolute discretion; and
- (x) Notwithstanding anything herein to the contrary, (i) Borrower shall not cause or permit Mortgage Borrower to sell any Subdivided Residential Unit to an Affiliate or relative of Borrower, Mortgage Borrower, Indemnitor or any Principal without Administrative Agent's approval, which approval shall be in Administrative Agent's sole and absolute discretion, and (ii) any closing expenses, fees, charges or otherwise incurred by Borrower or Mortgage Borrower in connection with the sale of a Subdivided Residential Unit shall only be paid to third parties unaffiliated with Borrower, Mortgage Borrower, Indemnitor or any Principal, unless payment of such expense is approved by Administrative Agent, which approval shall be in Administrative Agent's sole and absolute discretion.

(c) Borrower shall not cause or permit Mortgage Borrower to enter into a contract for the sale of the Retail Unit (a "**Retail Unit Contract of Sale**") unless it has been approved in writing by Administrative Agent (which approval shall not be unreasonably withheld, conditioned or delayed) and all of the following conditions shall have been satisfied:

- (i) The purchase price under such Retail Unit Contract of Sale shall be greater than or equal to the Retail Unit Minimum Sales Price for the Retail Unit;
- (ii) such Retail Unit Contract of Sale shall not provide for Mortgage Borrower, as seller, to provide any seller financing or to take back any purchase money mortgages as part of the sales price;
- (iii) such Retail Unit Contract of Sale shall not be subject to cancellation, except as provided in the Offering Plan, or by the Condominium Laws (including those requiring disclosures to prospective and actual purchasers) and/or pursuant to the terms of the Retail Unit Contract of Sale;

- (iv) such Retail Unit Contract of Sale provides for the entire purchase price and other payments thereunder payable to Mortgage Borrower, as seller under the Retail Unit Contract of Sale, to be paid by wire transfer, bank check or certified funds at the closing of the Retail Unit (either by means of an all-cash sale, or from financing obtained by the purchaser);
- (v) intentionally omitted;
- (vi) unless Mortgage Borrower shall have received a so-called “no action” letter from the Attorney General with respect to the sale of the Retail Unit (a “**No Action Letter**”), the Offering Plan and the other Condominium Documents shall have been submitted to and approved by Administrative Agent and the Offering Plan shall have been accepted for filing by the Attorney General;
- (vii) Notwithstanding anything herein to the contrary, (i) Borrower shall not cause or permit Mortgage Borrower to sell the Retail Unit to an Affiliate or relative of Borrower, Mortgage Borrower, Indemnitor or any Principal without Administrative Agent’s approval, which approval shall be in Administrative Agent’s sole and absolute discretion, and (ii) any closing expenses, fees, charges or otherwise incurred by Borrower or Mortgage Borrower in connection with the sale of the Retail Unit shall only be paid to third parties unaffiliated with Borrower, Mortgage Borrower, Indemnitor or any Principal, unless payment of such expense is approved by Administrative Agent, which approval shall be in Administrative Agent’s sole and absolute discretion.

(d) Intentionally Omitted.

(e) Borrower shall cause Mortgage Borrower to cause Purchase Agreement Deposit Escrowee to hold (at the Purchase Agreement Deposit Escrowee Bank), maintain and disburse all Purchase Agreement Deposits in accordance with the applicable Residential Unit Contract of Sale (or Retail Unit Contract of Sale), the Offering Plan (in the case of a sale of the Retail Unit, unless Mortgage Borrower obtained a No Action Letter), the Purchase Agreement Deposit Escrow Agreement and all other Legal Requirements. Borrower shall have no right to cause Mortgage Borrower to release Purchase Agreement Deposits from the Purchase Agreement Deposit Accounts, except as expressly provided in the applicable Residential Unit Contract of Sale or the Retail Unit Contract of Sale, as applicable. The funds on deposit in the Purchase Agreement Deposit Accounts shall be disbursed in accordance with this Article 16, Article 16 of the Mortgage Loan Agreement and the Purchase Agreement Deposit Escrow Agreement.

(f) Intentionally omitted.

(g) Once Mortgage Borrower shall have entered into a Retail Unit Contract of Sale or any Residential Unit Contract of Sale, Borrower shall cause Mortgage Borrower to:

- (i) comply with all of the obligations, covenants and agreements of Borrower set forth in the Retail Unit Contract of Sale or Residential Unit Contract of Sale, as applicable.
- (ii) make all necessary efforts to cause any sales to be in compliance with all Legal Requirements of any Governmental Authorities having jurisdiction thereof;
- (iii) except for customary non-material negotiated amendments that have no material adverse effect on Borrower, Mortgage Borrower, Administrative Agent, Lender or the Project, not modify, amend or terminate (unless such termination is as a result of a default by purchaser) any Retail Unit Contract of Sale or a Residential Unit Contract of Sale without Administrative Agent's prior written consent (which consent shall not be unreasonably withheld, conditioned, or delayed); and
- (iv) deliver to Administrative Agent a true and complete copy of each and every notice of default received or sent by Mortgage Borrower with respect to the obligations of Mortgage Borrower or the contract purchaser under any Residential Unit Contract of Sale or Retail Unit.

(h) Borrower shall deliver (or cause Mortgage Borrower to deliver) to Administrative Agent, promptly after execution thereof, an executed counterpart of the Retail Unit Contract of Sale and each Residential Unit Contract of Sale and any amendments, modifications and terminations thereof.

Section 16.3 Conditions for Release of Units. After all of the following conditions have been satisfied, Borrower shall have the right to cause Mortgage Borrower to send written request to Mortgage Lender requesting the release of any Subdivided Residential Unit or the Retail Unit, as applicable, from the lien of the Mortgage:

(a) Administrative Agent shall have received the Offering Plan and the other Condominium Documents in accordance with the terms and conditions of this Agreement, and the Offering Plan and any amendment thereto shall have been accepted for filing by the Attorney General;

(b) no Potential Event of Default or Event of Default under this Agreement or the other Loan Documents shall then exist;

(c) if such request is made with respect to a Subdivided Residential Unit, Administrative Agent shall have received a fully executed counterpart of the Residential Unit Contract of Sale for such Subdivided Residential Unit with a bona fide "third party" Residential Unit Purchaser of the Subdivided Residential Unit (unless otherwise approved by Administrative

Agent in its sole and absolute discretion), which Residential Unit Contract of Sale shall satisfy the conditions set forth in Section 16.2 hereof;

(d) if such request is made with respect to the Retail Unit, Administrative Agent shall have received a fully executed counterpart of the Retail Unit Contract of Sale with a bona fide "third party" purchaser (unless otherwise approved by Administrative Agent in its sole and absolute discretion), which Retail Unit Contract of Sale shall satisfy the conditions set forth in Section 16.2 hereof;

(e) Mortgage Borrower, Mortgage Lender and Purchase Agreement Deposit Escrowee have entered into the Purchase Agreement Deposit Escrow Agreement.

(f) Borrower shall notify (or cause Mortgage Borrower to notify) Administrative Agent not later than five (5) Business Days prior to any closing of such Subdivided Residential Unit or the Retail Unit of (i) the proposed closing date for the sale of such Subdivided Residential Unit or the Retail Unit, as applicable, and (ii) the amount of the Residential Unit Net Sale Proceeds or Retail Unit Net Sale Proceeds, as applicable, to be paid to Administrative Agent (for the benefit of Lender) in connection with such sale;

(g) Simultaneously with the closing under the Residential Unit Contract of Sale or the Retail Unit Contract of Sale, as applicable, Mortgage Lender (or, to the extent the Mortgage Loan is no longer outstanding, Administrative Agent (for the benefit of Lender)) shall receive the Residential Unit Net Sale Proceeds for the Subdivided Residential Unit in question or the Retail Unit Net Sale Proceeds for the Retail Unit, as applicable, which Residential Unit Net Sale Proceeds or Retail Unit Net Sale Proceeds, as applicable, shall be paid to Mortgage Lender (or, to the extent the Mortgage Loan is no longer outstanding, Administrative Agent (for the benefit of Lender)) in immediately available funds, by, at Borrower's or Mortgage Borrower's option, wire transfer in accordance with wiring instructions provided by Administrative Agent or check by overnight mail and if received by Administrative Agent shall, as long as no Event of Default exists, be applied by Administrative Agent in accordance with the provisions of Section 2.7(d); and

(h) All conditions related to the release of such Subdivided Residential Unit or the Retail Unit, as applicable, set forth in the Mortgage Loan Agreement shall have been satisfied or waived by Mortgage Lender.

[No Further Text on this Page.]

IN WITNESS WHEREOF, Administrative Agent, Lender and Borrower have executed and delivered this Agreement as of the date first written above.

ADMINISTRATIVE AGENT:

TPHS LENDER II LLC

By: Midtown Acquisitions GP LLC, its Manager

By: /s/ Joshua D. Morris

Name: Joshua D. Morris

Title: Manager

LENDER:

TPHS LENDER II LLC

By: Midtown Acquisitions GP LLC, its Manager

By: /s/ Joshua D. Morris

Name: Joshua D. Morris

Title: Manager

[Signature Page to Mezzanine Loan Agreement]

BORROWER:

TPHGREENWICH SUBORDINATE MEZZ LLC,
a Delaware limited liability company

By: /s/ Steven Kahn

Name: Steven Kahn

Title: Chief Financial Officer

[Signature Page to Mezzanine Loan Agreement]

LIST OF SUBSIDIARIES

470 4th Avenue Fee Owner LLC (DE)
470 4th Avenue Owner LLC (DE)
Filene's Basement, LLC (DE)
TPH 223 N 8th Investor LLC (DE)
TPH 250 N 10 Investor LLC (DE)
TPH 470 4th Avenue Investor LLC (DE)
TPH Forest Hill LLC (DE)
TPH IP LLC (DE)
TPH Merrick LLC (DE)
TPH Route 17 LLC (DE)
TPHGreenwich Holdings LLC (DE)
TPHGreenwich Owner LLC (DE)
TPHGreenwich Mezz LLC (DE)
TPHGreenwich Subordinate Mezz LLC (DE)

Consent of Independent Registered Public Accounting Firm

Trinity Place Holdings Inc.
New York, New York

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-207324 and 333-232266) and Form S-3 (Nos. 333-193396, 333-208740, 333-216754 and 333-235276) of Trinity Place Holdings Inc. of our report dated March 30, 2021, relating to the consolidated financial statements and schedule, which appears in this Form 10-K. Our report contains an explanatory paragraph regarding the Company's ability to continue as a going concern.

/s/ BDO USA, LLP

New York, New York
March 31, 2021

CERTIFICATION

I, Matthew Messinger, certify that:

1. I have reviewed this Annual Report on Form 10-K of Trinity Place Holdings Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2021

By: /s/ Matthew Messinger
Matthew Messinger
President and Chief Executive Officer
Trinity Place Holdings Inc.

CERTIFICATION

I, Steven Kahn, certify that:

1. I have reviewed this Annual Report on Form 10-K of Trinity Place Holdings Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2021

By: /s/ Steven Kahn
 Steven Kahn
 Chief Financial Officer
 Trinity Place Holdings Inc.

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Trinity Place Holdings Inc. ("Trinity") on Form 10-K for the year ended December 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Matthew Messinger, President and Chief Executive Officer of Trinity, certify, to the best of my knowledge, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Trinity.

By: /s/ Matthew Messinger

Matthew Messinger
President and Chief Executive Officer
Trinity Place Holdings Inc.
March 31, 2021

A signed original of this written statement required by Section 906 has been provided to Trinity Place Holdings Inc. and will be retained by Trinity Place Holdings Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Trinity Place Holdings Inc. ("Trinity") on Form 10-K for the year ended December 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Steven Kahn, Chief Financial Officer of Trinity, certify, to the best of my knowledge, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Trinity.

By: /s/ Steven Kahn
Steven Kahn
Chief Financial Officer
Trinity Place Holdings Inc.
March 31, 2021

A signed original of this written statement required by Section 906 has been provided to Trinity Place Holdings Inc. and will be retained by Trinity Place Holdings Inc. and furnished to the Securities and Exchange Commission or its staff upon request.
