

EMPIRE STATE

REALTY TRUST



2021 ANNUAL REPORT



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To Our Fellow Stockholders:

This annual letter was finalized on March 25, 2022.

I do not take lightly the privilege and responsibility to report on ESRT's 2021 progress and accomplishment and the priorities which lie before us. Nearly two years ago, I stated publicly that we would begin to see a change for the better in the narrative around COVID-19's impact on business at the end of the 1Q 2022. That has happened. That said, we will not return to normal, we are on to the next normal. We continued to pivot and flex with success in 2021, a year that brought disruption and heightened uncertainty and challenge for many of us, and a number of great successes and prospects for the future.

New York City has made positive progress towards the next normal. Newly elected Mayor Eric Adams supports the business community, acknowledges the rights of its stakeholders and all New York City residents and workers for safe streets, open schools, and a functioning physical and social infrastructure... all positive. Trains and subways are busier, there is traffic in the streets, many restaurants and clubs are full, Broadway is open, and tourism continues to improve. We remain confident in New York City and our ability to capitalize on the continued recovery.

I give thanks to the ESRT team, corporate and union, who in 2021 worked together to (i) serve our customers, (ii) enhance our workplace, and (iii) put our balance sheet to work on behalf of shareholders.

2021

In the face of disruptions of every kind, we leased over 1 million square feet. We (i) served our customers, (ii) fostered a productive and safe work community for our people, and (iii) utilized the benefits of our flexible and strong balance sheet to deliver long-term shareholder value. While we ended 2021 with the Omicron COVID-19 surge, it passed and was nowhere near as destructive as previous variants.

Our modernized properties offer a destination for the Flight to Quality trend for the majority of New York City tenants who want energy efficiency, low emissions, indoor environmental quality, healthy buildings, convenience to mass transit, and amenities and who do not want to pay the triple digits per square foot to be found in new buildings today. Investment in improvements and operations has produced a resilient and future-proofed office portfolio that has no anticipated fine under New York City's Local Law 97 through 2029. Our retail portfolio is well located, and approximately 90% of its rents are from national retailers. Our newly acquired residential properties were immediately accretive and have already begun to realize some of the tremendous potential we underwrote.

I give thanks to the ESRT team, corporate and union, who in 2021 worked together to (i) serve our customers, (ii) enhance our workplace, and (iii) put our balance sheet to work on behalf of shareholders.

To say we are a destination for the Flight to Quality is not just words; it is actions completed and underway. To cite just a few of the office tenants who call our portfolio home: Allianz, ASCAP, Berkley, Crown Castle, Diligent, Expedia, Franklin Templeton, iCapital, JCDecaux, LinkedIn, Nespresso, Progyny, Signature Bank, Universal Music Group and Workday. In retail, we look forward to the opening of the new Starbucks Reserve at the Empire State Building and the new Target store at our Union Square retail condominium. Thanks to senior vice president, leasing, Ryan Kass and his team.

Our focus on operating and capital expenditure costs control has been unrelenting. We are very fortunate to have Mike Prunty, senior vice president, property management, and Pete Sjolund, senior vice president, design and construction, and their teams to focus on costs and to get the best value from every dollar we spend, and we only spend on what makes the difference. All these property team members report to executive vice president Tom Durels.

OBSERVATORY

There is only one World's Most Famous Building, the Empire State Building's Observatory continues to recover with record revenues per visitor. There are new, bright, shiny pennies in the observatory attraction business, and just as with the opening of One World Trade Center's observatory, they have had strong openings. The Empire State Building remains the authentic New York City iconic brand and has maintained its competitive, market-leading position. Our Observatory president Jean-Yves Ghazi and his team deserve praise for how they moved through COVID-19 from the \$165 million renovation of the Observatory to a timed entry/reservations-only model with fantastic customer reaction.

DEPLOYMENT OF OUR BALANCE SHEET

We have long discussed our flexible and strong balance sheet, and we highlighted in last year's letter the formation of our investment team under senior vice president Aaron Ratner. I said that we were focused on acquisition opportunities in what I called a marathon, not a sprint, and that we maintain a prudent approach to capital deployment. We are very pleased with our accretive participation in the recapitalization of two Manhattan multifamily assets totaling 625 units in which we now own 90%. We saw opportunity for growth, the chance to work with a great partner, and a new avenue for ESRT to enhance shareholder value.

Concurrently, we have found a great bargain in our own stock. Since we activated our share repurchase program in March 2020, we have repurchased

The Empire State Building remains the authentic New York City iconic brand and has maintained its competitive, market-leading position.

an aggregate of \$200.5 million of shares at a weighted average price of \$8.63 per share¹. This represents approximately 7.8% of total shares outstanding as of March 2020 at a tremendous discount to private real estate market values in alignment with ESRT's focus on shareholder value.

We have reviewed every one of our assets for their value to our ongoing enterprise. As we have said in our earnings calls, along with external growth and share repurchases we have the opportunity to recycle capital from fully redeveloped and stable assets to allow us to pursue attractive growth opportunities which arise. In these efforts I am greatly assisted by Christina Chiu, our executive vice president and CFO+.

ESG

Senior vice president, director of energy, sustainability and ESG, Dana Robbins Schneider has been a stand-out achiever with her leadership of our focus on Environmental, Social and Governance (ESG). We commit to deliver long-term value to our shareholders through excellence in ESG with continued focus on:

1. Transparency, alignment and best in class practices;
2. Leadership in policy setting and tenant education; and
3. Implementation and active monitoring and measurement in our portfolio.

I encourage everyone to read Dana's annual sustainability report. That said, highlights over the past year include:

- Signed up to Science Based Targets initiative (SBTi) Net Zero Standard and committed to set our target in-line with a 1.5-degree scenario
- Committed to net-zero carbon emissions at the Empire State Building by 2030 and across our commercial portfolio by 2035
- 100% of portfolio fully powered by renewable wind electricity
- Local Law 97 compliant with no anticipated fine through 2029 for our office properties
- GRESB five-star rated with disclosure score of "A"
- First commercial portfolio in the Americas to achieve the WELL Health-Safety Rating
- 2021 Energy Star Partner of the Year with 76% of our portfolio ENERGY STAR certified

Committed
to net-zero
carbon
emissions at
the Empire
State Building
by 2030 and
across our
commercial
portfolio by
2035.

¹ As of March 24, 2022.

- Align with TCFD and SASB and disclose in alignment with GRI

I continue to serve as the Chair of the Real Estate Roundtable's Sustainability Policy Advisory Committee and NYC's Climate Mobilization Advisory Board for the implementation of Local Law 97.

DIVERSITY, EQUITY AND INCLUSION

Our diversity, equity and inclusion (DE&I) initiatives are built around a system of beliefs and values:

- Diverse perspectives and experiences enhance effective decision-making and innovation
- We perform best when we enable the full potential of all our teammates
- Specific goals we can measure and verify translate our words to actions

In 2021, we continued to enhance DE&I in our organization. We formed an employee-led Inclusion Committee and established standards to increase our engagement with diverse vendors and service providers, hold our vendors and service providers accountable for their diversity, and support the Real Estate Roundtable's development of a national MWBE vendor database. ESRT is included in the 2022 Bloomberg Gender-Equality Index.

Our entire Board of Directors is engaged in ESG oversight with specific committee responsibilities outlined in committee charters, and to ensure direct accountability and alignment, we have adopted ESG metrics as part of executive management incentive compensation, in both annual incentive bonus and performance-based equity.

LOOK AHEAD TO 2022

Our priorities for 2022 are simple:

- Increase our leased percentage, to lead to increased occupancy
- Sell tickets to the Empire State Building Observatory
- Deploy our balance sheet to enhance shareholder value

We have confidence in the future of New York City—a city that offers a unique mix of diverse, ambitious human capital, multiculturalism, amenities, and connectivity. We are a welcome destination for businesses in the Flight to Quality with our modernized, healthy buildings that are centrally located near mass transit and offer energy efficiency and indoor environmental quality which help meet objectives for talent retention and attraction as well as sustainability.

Diverse perspectives and experiences enhance effective decision-making and innovation. We perform best when we enable the full potential of all our teammates.

No matter
what happens,
our people,
our planning
and prudence
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sheet position
us well for
any market
environment.

Now is the right time for me to call out Tom Keltner, our executive vice president, general counsel, and my friend and partner for more than 33 years. Tom has been a relentless force for good in ESRT and its predecessors and was good at it long before I met him in January 1989. Tom will retire at the end of this year, and I am sure will enhance shareholder value every second of every day until that time. Thank you, Tom.

And I always thank our deeply engaged Board of Directors and the entire ESRT team... while we are not huge, we are too numerous to mention. We ran to the fire again in 2021. No matter what happens, our people, our planning and prudence and balance sheet position us well for any market environment.

Finally, I thank my fellow stockholders for your continued support.

ONWARD AND UPWARD.



Anthony E. Malkin

Chairman, President and Chief Executive Officer



EMPIRE STATE

REALTY TRUST

FORM 10-K

This Annual Report contains forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act. We intend these forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and are including this statement for purposes of complying with those safe harbor provisions. You can identify forward-looking statements by the use of forward-looking terminology such as “believes,” “expects,” “may,” “will,” “should,” “seeks,” “approximately,” “intends,” “plans,” “estimates,” “contemplates,” “aims,” “continues,” “would” or “anticipates” or the negative of these words and phrases or similar words or phrases. In particular, statements pertaining to our capital resources, portfolio performance, dividend policy and results of operations contain forward-looking statements. Likewise, all of our statements regarding anticipated growth in our portfolio from operations, acquisitions and anticipated market conditions, demographics and results of operations are forward-looking statements.

Forward-looking statements are subject to substantial risks and uncertainties, many of which are difficult to predict and are generally beyond our control, and you should not rely on them as predictions of future events. Forward-looking statements depend on assumptions, data or methods which may be incorrect or imprecise, and we may not be able to realize them. We do not guarantee that the transactions and events described will happen as described (or that they will happen at all).

The following factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements: (i) economic, political and social impact of, and uncertainty relating to, the COVID-19 pandemic; (ii) a failure of conditions or performance regarding any event or transaction described herein; (iii) resolution of legal proceedings involving the Company; (iv) reduced demand for office, multifamily or retail space, including as a result of the COVID-19 pandemic; (v) changes in our business strategy; (vi) changes in technology and market competition that affect utilization of our office, retail, broadcast or other facilities; (vii) changes in domestic or international tourism, including due to health crises such as the COVID-19 pandemic, geopolitical events and/or currency exchange rates, which may cause a decline in Observatory visitors; (viii) defaults on, early terminations of, or non-renewal of, leases by tenants; (ix) increases in the Company’s borrowing costs as a result of changes in interest rates and other factors, including the potential phasing out of LIBOR after 2021; (x) declining real estate valuations and impairment charges; (xi) termination of our ground leases; (xii) changes in our ability to pay down, refinance, restructure or extend our indebtedness as it becomes due and potential limitations on our ability to borrow additional funds in compliance with drawdown conditions and financial covenants; (xiii) decreased rental rates or increased vacancy rates; (xiv) our failure to execute any newly planned capital project successfully or on the anticipated timeline or at the anticipated costs; (xv) difficulties in identifying and completing acquisitions; (xvi) risks related to our development projects (including our Metro Tower development site); (xvii) impact of changes in governmental regulations, tax laws and rates and similar matters; (xviii) our failure to qualify as a REIT; (xix) environmental uncertainties and risks related to climate change, adverse weather conditions, rising sea levels and natural disasters; and (xx) accuracy of our methodologies and estimates regarding ESG metrics and goals, tenant willingness and ability to collaborate in reporting ESG metrics and meeting ESG goals, and impact of governmental regulation on our ESG efforts. For a further discussion of these and other factors that could impact the company’s future results, performance or transactions, see the section entitled “Risk Factors” of this Annual Report.

While forward-looking statements reflect the company’s good faith beliefs, they are not guarantees of future performance. The company disclaims any obligation to update or revise publicly any forward-looking statement to reflect changes in underlying assumptions or factors, new information, data or methods, future events, or other changes after the date of this Annual Report, except as required by applicable law. Prospective investors should not place undue reliance on any forward-looking statements, which are based only on information currently available to the company.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

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

For the fiscal year ended December 31, 2021

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: 001-36105

EMPIRE STATE REALTY TRUST, INC.

(Exact name of Registrant as specified in its charter)

Maryland

(State or other jurisdiction of incorporation or organization)

37-1645259

(I.R.S. Employer Identification No.)

111 West 33rd Street, 12th Floor

New York, New York 10120

(Address of principal executive offices) (Zip Code)

(212) 850-2600

(Registrant's telephone number, including area code)

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

<u>Title of Securities</u>	<u>Trading Symbol</u>	<u>Exchange on Which Traded</u>
Class A Common Stock, par value \$0.01 per share	ESRT	The New York Stock Exchange
Class B Common Stock, par value \$0.01 per share	N/A	N/A

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, smaller reporting company, or 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	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

The aggregate market value of the voting stock held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second fiscal quarter was \$2,068,792,000 based on the June 30, 2021 closing price of the registrant's Class A common stock of \$12.00 per share on the New York Stock Exchange.

As of February 18, 2022, there were 169,133,348 shares of the registrants' Class A common stock outstanding and 995,210 shares of the registrants' Class B common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of Empire State Realty Trust, Inc.'s Proxy Statement for its 2021 Annual Stockholders' Meeting (which is scheduled to be held on May 12, 2022 virtually via a live webcast) to be filed within 120 days after the end of the Registrant's fiscal year are incorporated by reference into Part III of this Annual Report on Form 10-K.

EMPIRE STATE REALTY TRUST, INC.

FORM 10-K

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DEFINITIONS

- "annualized rent" represents annualized base rent and current reimbursement for operating expenses and real estate taxes;
- "formation transactions" means a series of transactions pursuant to which we acquired, substantially concurrently with the completion of the Offering, through a series of contributions and merger transactions, our portfolio of real estate assets that were held by existing entities, the ownership interests in the certain management entities of our predecessor and one development parcel;
- "fully diluted basis" means all outstanding shares of our Class A common stock at the time indicated plus shares of Class A common stock that may be issuable upon the exchange of operating partnership units on a one-for-one basis and shares of Class A common stock issuable upon the conversion of Class B common stock on a one-for-one basis, which is not the same as the meaning of "fully diluted" under generally accepted accounting principles in the United States of America ("GAAP");
- "enterprise value" means all outstanding shares of our Class A common stock at the time indicated plus shares of Class A common stock that may be issuable upon the exchange of operating partnership units on a one-for-one basis and shares of Class A common stock issuable upon the conversion of Class B common stock on a one-for-one basis multiplied by the Class A common share price at December 31, 2021, plus private perpetual preferred units plus consolidated debt at December 31, 2021;
- "Malkin Group" means all of the following, as a group: Anthony E. Malkin, Peter L. Malkin and each of their spouses and lineal descendants (including spouses of such descendants), any estates of any of the foregoing, any trusts now or hereafter established for the benefit of any of the foregoing, or any corporation, partnership, limited liability company or other legal entity controlled by Anthony E. Malkin or any permitted successor in such entity for the benefit of any of the foregoing; provided, however that solely with respect to tax protection rights and parties who entered into the contribution agreements with respect to the formation transactions, the Malkin Group shall also include the lineal descendants of Lawrence A. Wien and his spouse (including spouses of such descendants), any estates of the foregoing, any trusts now or hereafter established for the benefit of any of the foregoing, or any corporation, partnership, limited liability company or other legal entity controlled by Anthony E. Malkin for the benefit of the foregoing;
- the "Offering" means the initial public offering of our Class A common stock which was completed on October 7, 2013;
- "our company," "we," "us" and "our" refer to Empire State Realty Trust, Inc., a Maryland real estate investment trust, together with its consolidated subsidiaries, including Empire State Realty OP, L.P.;
- "operating partnership" refers to Empire State Realty OP, L.P., a Delaware limited partnership through which Empire State Realty Trust, Inc. conducts substantially all of its business and of which it is the general partner;
- "securityholder" means a holder of our Class A common stock or Class B common stock as well as a holder of our operating partnership's Series ES, Series 250, Series 60 and Series PR operating partnership units; and
- "traded OP units" mean our operating partnership's Series ES, Series 250 and Series 60 operating partnership units.

PART I

ITEM 1. BUSINESS

Overview

We are a New York City focused real estate investment trust ("REIT") that owns and manages a well-positioned property portfolio of office, retail and multifamily assets in Manhattan and the greater New York metropolitan area. As the owner of the Empire State Building, the World's Most Famous Building, we also own and operate our iconic, newly reimaged Observatory Experience.

As of December 31, 2021, our office and retail portfolio contained 10.1 million rentable square feet of office and retail space, and was 82.4% occupied. Including signed leases not yet commenced, our total office and retail portfolio was 85.7% leased. As of December 31, 2021, we owned 14 office properties (including three long-term ground leasehold interests) encompassing approximately 9.4 million rentable square feet of office space, which were approximately 82.5% occupied or 85.3% leased including signed leases not yet commenced. Nine properties are located in the midtown Manhattan market and encompass approximately 7.6 million rentable square feet of office space, including the Empire State Building. Our Manhattan office properties also contain 0.5 million rentable square feet of premier retail space on their ground floor and/or contiguous levels. Five office properties are located in Fairfield County, Connecticut and Westchester County, New York, encompassing approximately 1.8 million rentable square feet. The majority of square footage for these five properties is located in densely populated metropolitan communities with immediate access to mass transportation. Additionally, we have entitled land at the Stamford Transportation Center in Stamford, Connecticut, adjacent to one of our office properties, that will support the development of an approximately 0.4 million rentable square foot office building and garage, which we refer to herein as Metro Tower. As of December 31, 2021, our portfolio also included four standalone retail properties located in Manhattan and two standalone retail properties located in the city center of Westport, Connecticut, encompassing 0.2 million rentable square feet in the aggregate. As of December 31, 2021, our standalone retail properties were 100.0% leased. Additionally, at December 31, 2021, our portfolio included two multifamily properties located in Manhattan totaling 625 units.

We were organized as a Maryland corporation on July 29, 2011. Our operating partnership holds substantially all of our assets and conducts substantially all of our business. As of December 31, 2021, we owned approximately 60.5% of the units of partnership interest in our operating partnership ("OP Units"). Empire State Realty Trust, Inc., as the sole general partner in our operating partnership, has responsibility and discretion in the management and control of our operating partnership, and the limited partners in our operating partnership, in such capacity, have no authority to transact business for, or participate in the management activities of, our operating partnership. We elected to be taxed as a REIT and have operated in a manner that we believe allows us to qualify as a REIT for U.S. federal income tax purposes commencing with our taxable year ended December 31, 2013.

Impact of COVID-19

Beginning with March 2020, the novel coronavirus disease 2019 ("COVID-19") pandemic created a global crisis with attendant uncertainty, volatility and disruption of the economy and social systems in the United States and globally. The stringent measures implemented by governments around the world to attempt to help control the spread of the virus have included business shutdowns and curtailments, and restrictions, prohibitions on all manner of events and gatherings, quarantines, "shelter-in-place" and "stay-at-home" orders, curfews, social distancing, and other measures. The impacts were especially harsh on the Northeastern United States, specifically New York City and the tri-state region, the business area for our company. Most of these restrictions have been lifted as the impact of the COVID-19 pandemic on the tri-state area has improved as a result of various factors, including the vaccination of a large portion of the local population, with most businesses now being permitted to open at full capacity, but under other limitations which change from time to time and are intended to control the spread of COVID-19.

Additional information regarding the impact of COVID-19 on our business can be found under the section titled "Impact of COVID-19" included within Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," of this Annual Report on Form 10-K and risks related to COVID-19 can be found under Part I, Item 1A, "Risk Factors," of this Annual Report on Form 10-K.

Business and Growth Strategies

Our primary business objectives are to maximize cash flow and total returns to our shareholders and to increase the value of our properties through the pursuit of the following business and growth strategies:

- ***Capitalize on our Environmental Leadership.*** We have pioneered certain practices in energy efficiency, beginning at the Empire State Building where we created and implemented a groundbreaking process to integrate energy efficiency retrofits in the existing built environment. The reduced energy consumption lowers costs for us and our tenants, and we believe creates a competitive advantage for our properties. We have implemented other cost justified energy efficiency retrofit projects in our Manhattan and greater New York metropolitan area office properties based on our work at the Empire State Building. Based on our calculations, we have no exposure to fines in 2024 under New York City's Local Law 97. Additionally, 100% of our portfolio has been contracted for renewable wind energy since January 2021. Finally, we maintain a series of management practices to recycle tenant and construction waste, recycled content carpets, low off-gassing paints and adhesives, “green” pest control and cleaning solutions and recycled paper products throughout our office portfolio. We have achieved a number of awards and certifications for our sustainability work, including among others, a GRESB 5 Star rating, ENERGY STAR Partner of the Year, a WELL Health-Safety Rating and Fitwel Champion. As a result of our leadership we were selected to receive a \$5.0 million grant in the first funding round of the Empire Building Challenge, a \$50 million state initiative spearheaded by the New York State Research and Development Authority (NYSERDA) to reduce greenhouse gas emissions. We believe that higher quality tenants in general place a higher priority on sustainability, controlling costs, and reduction in contributions to greenhouse gases.
- ***Pursue Attractive Acquisition and Redevelopment Opportunities.*** We have built a dedicated investment function which includes our Chief Investment Officer and a full acquisitions team. and positions us to take advantage of potential opportunities. We believe our flexible balance sheet, access to capital, expertise in redevelopment and ability to offer OP units in tax deferred acquisition transactions should give us significant flexibility in structuring and consummating acquisitions. In December 2021, we completed our first acquisition since the hire of our acquisitions team by purchasing two multifamily assets in Manhattan. See ITEM 2. Properties for more information. For the foreseeable future, we intend to focus our acquisition strategy primarily on NYC office, retail and multifamily properties where we can achieve attractive returns on invested capital. We also believe there may be opportunities to acquire and reposition additional stand-alone retail spaces. Further, we have a development site, Metro Tower at the Stamford Transportation Center, which is adjacent to our Metro Center property, which we believe to be one of the premier office buildings in Connecticut. All zoning approvals have been obtained to allow development of an approximately 0.4 million rentable square foot office tower and garage. We intend to develop this site when we deem the appropriate combination of market and other conditions are in place.
- ***Proactively Manage Our Portfolio.*** We believe our proactive, service-intensive approach to asset and property management helps increase occupancy and rental rates. We utilize our comprehensive building management services and our strong commitment to tenant and broker relationships and satisfaction to negotiate attractive leasing deals and to attract high credit-quality tenants. We proactively manage our rent roll and maintain continuous communication with our tenants. We foster strong tenant relationships by being responsive to tenant needs. We do this through the amenities we provide, the quality of our buildings and services, our employee screening and training, energy efficiency initiatives, and preventative maintenance and prompt repairs. Our attention to detail is integral to serving our clients and building our brand. Our properties have received numerous industry awards for their operational efficiency. We believe long-term tenant relationships will improve our operating results over time by reducing leasing, marketing and tenant improvement costs, as well as tenant turnover. We do extensive diligence on our tenants’ (current and prospective) balance sheets, businesses and business models to determine if we will establish long-term relationships in which they will both renew with us and expand over time. We have had greater than 200 tenant expansions within our portfolio totaling over 2.5 million square feet since 2013.
- ***Enhance and Recover our Observatory Operations.*** The Empire State Building offers panoramic views of New York and neighboring states from its world-famous 86th and 102nd floor observatories which historically have drawn millions of visitors each year. Prior to the outbreak of COVID-19, the number of visitors to the observatories was approximately 3.8 million and 3.5 million for the years ended December 31, 2018 and 2019, respectively, including approximately two-thirds international visitors. Due to government mandated closure from March 16, 2020 to July 20, 2020, travel restrictions on international and domestic tourists, and other impacts of the pandemic, the number of visitors declined for the year ended December 31, 2020 to 0.5 million visitors, ramping up slowly to 0.8 million in

2021. Part of our business strategy is to return to the profitability at the Empire State Building observatory that we experienced pre-COVID-19 in the first months after our December 2019 completion of its comprehensive approximately \$165 million multi-year re-imagining and redevelopment. We plan to do this through enhanced operations such as timed-entry, enhanced marketing and cross-promotional activities as well as enhanced health and safety protocols, including indoor environmental quality measures with MERV 13 filters, ventilation and an Atmos Air bipolar ionization air purification system. Visitor feedback of the new experience and our safety protocols has been very positive thus far.

Leasing

Our focus is to maintain a brand that tenants associate with a consistently high level of quality of services, healthy buildings, amenities, maintenance, and tenant installations, with high performance design guidelines for energy efficiency and indoor environmental quality, and long-term financial stability. Through our commitment to brokers, we have developed long-term relationships that focus on negotiating attractive transactions with high credit-quality tenants. We proactively manage and cultivate our industry relationships and make the most senior members of our management team available to our constituencies. We believe that our consistent, open dialogue with our tenants and brokers enables us to maximize our results. Our focus on performance and long-term perspective allows us to concentrate on the ongoing management of our portfolio, while seeking opportunities for growth in the future.

Property Management

We protect our investments by regularly monitoring our properties, performing routine preventive maintenance, and implementing capital improvement programs in connection with property redevelopment and life cycle replacement of equipment and systems. We presently self-manage all of our office and retail properties. We proactively manage our properties and rent rolls to (i) aggregate smaller demised spaces to create large blocks of vacant space in order to attract high credit-quality tenants at higher rental rates, and (ii) create efficient, modern, pre-built offices that can be rented through several lease cycles and attract high credit-quality tenants. We aggressively manage and control operating expenses at all of our properties. In addition, we have made energy efficiency retrofitting and sustainability a portfolio-wide initiative driven by economic return. We pass on cost savings achieved by such improvements to our tenants through lower utility costs and reduced operating expense escalations. We believe these initiatives make our properties more desirable to a broader tenant base than the properties of our competitors.

Business Segments

Our reportable segments consist of a real estate segment and an observatory segment. Our real estate segment includes all activities related to the ownership, management, operation, acquisition, repositioning and disposition of our commercial and multifamily real estate assets, principally office properties, located in Manhattan and the greater New York metropolitan area. Our observatory segment operates the 86th and 102nd floor observatories at the Empire State Building. These segments are managed separately because each business requires different support infrastructure, provides different services and has dissimilar economic characteristics such as investments needed, stream of revenues and marketing strategies. We account for intersegment sales and rent as if the sales or rent were to third parties at current market prices. This intersegment rent is eliminated upon consolidation.

For more information about our segments, refer to “Financial Statements-Note 13-Segment Reporting” in this Annual Report on Form 10-K.

Regulation

General

The properties in our portfolio are subject to various laws, ordinances and regulations, including regulations relating to common areas. We believe each of the existing properties has the necessary permits and approvals to operate its business.

Americans with Disabilities Act

Our properties must comply with Title III of the Americans with Disabilities Act, or (“ADA”), to the extent that such properties are “public accommodations” as defined by the ADA. The ADA may require removal of structural barriers to access by persons with disabilities in certain public areas of our properties where such removal is readily achievable. We believe the existing properties are in substantial compliance with the ADA and that we will not be required to make substantial capital

expenditures to address the requirements of the ADA. However, noncompliance with the ADA could result in imposition of fines or an award of damages to private litigants. The obligation to make readily achievable accommodations is an ongoing one, and we will continue to assess our properties and to make alterations as appropriate in this respect.

Environmental Matters

Under various federal, state and/or local laws, ordinances and regulations, as a current or former owner or operator of real property, we may be liable for costs and damages resulting from the presence or release of hazardous substances, waste, or petroleum products at, on, in, under or from such property, including costs for investigation or remediation, natural resource damages, or third party liability for personal injury or property damage. These laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the presence or release of such materials, and the liability may be joint and several. Some of our properties have been or may be impacted by contamination arising from current or prior uses of the property or adjacent properties for commercial, industrial or other purposes. Such contamination may arise from spills of petroleum or hazardous substances or releases from tanks used to store such materials. We also may be liable for the costs of remediating contamination at off-site disposal or treatment facilities when we arrange for disposal or treatment of hazardous substances at such facilities, without regard to whether we comply with environmental laws in doing so. The presence of contamination or the failure to remediate contamination on our properties may adversely affect our ability to attract and/or retain tenants, and our ability to develop or sell or borrow against those properties. In addition to potential liability for cleanup costs, private plaintiffs may bring claims for personal injury, property damage or for similar reasons. Environmental laws also may create liens on contaminated sites in favor of the government for damages and costs it incurs to address such contamination. Moreover, if contamination is discovered on our properties, environmental laws may impose restrictions on the manner in which that property may be used or how businesses may be operated on that property.

Some of our properties are adjacent to or near other properties which are used for industrial or commercial purposes or have contained or currently contain underground storage tanks used to store petroleum products or other hazardous or toxic substances. Releases from these properties could impact our properties. In addition, some of our properties have previously been used by former owners or tenants for commercial or industrial activities, e.g., gas stations and dry cleaners, and a portion of the Metro Tower site is currently used for automobile parking and fueling, that may release petroleum products or other hazardous or toxic substances at such properties or to surrounding properties. While certain properties contain or contained uses that could have or have impacted our properties, we are not aware of any liabilities related to environmental contamination that we believe will have a material adverse effect on our operations.

Soil contamination has been identified at 69-97 Main Street in Westport, Connecticut. The affected soils are more than four feet below the ground surface. An Environmental Land Use Restriction has been imposed on this site to ensure the soil is not exposed, excavated or disturbed such that it could create a risk of migration of pollutants or a potential hazard to human health or the environment. While the contamination is currently contained, the potential resale value of this property and our ability to finance or refinance this property in the future may be adversely affected as a result of such contamination. In addition, pursuant to the Environmental Land Use Restriction, plans for the redevelopment of the property would be subject to the review of the Town of Westport, Connecticut among other conditions.

The property situated at 500 Mamaroneck Avenue in Harrison, New York was the subject of a voluntary remedial action work cleanup plan performed by the former owner following its conveyance of title to the present owners under an agreement with the New York State Department of Environmental Conservation, or ("NYDEC"). As a condition to the issuance of a "no further action" letter, NYDEC required that certain restrictive and affirmative covenants be recorded against the subject property. In substantial part, these include prohibition against construction that would disturb the soil cap isolating certain contaminated subsurface soil, limiting the use of such property to commercial uses, implementing engineering controls to assure that improvements be kept in good condition, not using ground water at the site for potable purposes without treatment, implementing safety procedures for workers to follow excavating at the site to protect their health and safety and filing an annual certification that the controls implemented in accordance with the voluntary remedial action work cleanup plan remain in place. Furthermore, a substantial portion of the site that had been substantially unimproved prior to acquisition may not be further developed.

In addition, our properties are subject to various federal, state and local environmental and health and safety laws and regulations. Noncompliance with these environmental and health and safety laws and regulations could subject us or our tenants to liability. These liabilities could affect a tenant's ability to make rental payments to us. Moreover, changes in laws could increase the potential costs of compliance with such laws and regulations or increase liability for noncompliance. This may result in significant unanticipated expenditures or may otherwise materially and adversely affect our operations, or those of our tenants, which could in turn have a material adverse effect on us. We sometimes require our tenants to comply with environmental and health and safety laws and regulations and to indemnify us for any related liabilities in our leases with them.

But in the event of the bankruptcy or inability of any of our tenants to satisfy such obligations, we may be required to satisfy such obligations. We are not presently aware of any instances of material non-compliance with environmental or health and safety laws or regulations at our properties, and we believe that we and/or our tenants have all material permits and approvals necessary under current laws and regulations to operate our properties.

As the owner or operator of real property, we may also incur liability based on various building conditions. For example, buildings and other structures on properties that we currently own or operate or those we acquire or operate in the future contain, may contain, or may have contained, asbestos-containing material, or ACM. Environmental and health and safety laws require that ACM be properly managed and maintained and may impose fines or penalties on owners, operators or employers for non-compliance with those requirements. These requirements include special precautions, such as removal, abatement or air monitoring, if ACM would be disturbed during maintenance, redevelopment or demolition of a building, potentially resulting in substantial costs. In addition, we may be subject to liability for personal injury or property damage sustained as a result of releases of ACM into the environment. We are not presently aware of any material liabilities related to building conditions, including any instances of material non-compliance with asbestos requirements or any material liabilities related to asbestos.

Our properties may contain or develop harmful mold or suffer from other indoor air quality issues, which could lead to liability for adverse health effects or property damage or costs for remediation. When excessive moisture accumulates in buildings or on building materials, mold growth may occur, particularly if the moisture problem remains undiscovered or is not addressed over a period of time. Some molds may produce airborne toxins or irritants. Indoor air quality issues can also stem from inadequate ventilation, chemical contamination from indoor or outdoor sources, and other biological contaminants such as pollen, viruses and bacteria. Indoor exposure to airborne toxins or irritants above certain levels can be alleged to cause a variety of adverse health effects and symptoms, including allergic or other reactions. As a result, the presence of significant mold or other airborne contaminants at any of our properties could require us to undertake a costly remediation program to contain or remove the mold or other airborne contaminants from the affected property or increase indoor ventilation. In addition, the presence of significant mold or other airborne contaminants could expose us to liability from our tenants, employees of our tenants or others if property damage or personal injury occurs. We are not presently aware of any material adverse indoor air quality issues at our properties.

In addition, we may become subject to new compliance requirements and/or new costs or taxes associated with natural resource or energy usage and related emissions (such as a carbon tax), which could increase our operating costs. In particular, as the owner of large commercial buildings in New York City, we are subject to Local Law 97 passed by the New York City Council in April 2019, which for each such building establishes annual limits for greenhouse gas emissions, requires yearly emissions reports beginning in May 2025, and imposes penalties for emissions above such limits. Based upon our present understanding of the law and calculations related thereto, we expect to pay no fine on any building in our portfolio in the 2024-2030 first period of enforcement.

Affordable Housing

Certain units in our multifamily properties are designated for lower income households and are therefore subject to supervision and regulation by state and federal governmental authorities regulate affordable housing rental activities. See Risk Factors - Government housing regulations may limit opportunities at the multifamily properties in which we invest, and failure to comply with resident qualification requirements may result in financial penalties or loss of benefits – for more information.

Insurance

We carry comprehensive liability, fire, extended coverage, earthquake, terrorism and rental loss insurance covering all of our Manhattan properties and our greater New York metropolitan area properties under a blanket policy. We carry additional all-risk property and business insurance, which includes terrorism insurance, on the Empire State Building through ESRT Captive Insurance Company L.L.C., or ESRT Captive Insurance, our wholly owned captive insurance company. ESRT Captive Insurance covers terrorism insurance for \$1.2 billion in losses in excess of \$800 million per occurrence suffered by the Empire State Building, providing us with aggregate terrorism coverage of \$2 billion at that property. ESRT Captive Insurance fully reinsures the 20% coinsurance under the Terrorism Risk Insurance Program Reauthorization Act of 2015 ("TRIPRA") and the difference between the TRIPRA captive deductible and policy deductible of \$100,000 for non-Nuclear, Biological, Chemical and Radiological exposures. We purchased a \$50 million limit of Nuclear, Biological, Chemical and Radiological ("NBCR") insurance in excess of a \$1.0 million deductible in the commercial insurance market. ESRT Captive Insurance provides NBCR insurance with a limit of \$1.95 billion in excess of the \$50 million policy. As a result, we remain only liable for the 20% coinsurance under TRIPRA for NBCR exposures within ESRT Captive Insurance, as well as a deductible equal to 20% of ESRT Captive Insurance's prior year's premium. As long as we own ESRT Captive Insurance, we are responsible for ESRT

Captive Insurance's liquidity and capital resources, and ESRT Captive Insurance's accounts are part of our consolidated financial statements. If we experience a loss and ESRT Captive Insurance is required to pay under its insurance policy, we would ultimately record the loss to the extent of its required payment. The policies described above cover certified terrorism losses as defined under the Terrorism Risk Insurance Act of 2002 (TRIA) and subsequent extensions. On December 20, 2019, the President of the United States signed into law TRIPRA act of 2019, which extended TRIA through December 31, 2027. TRIA provides for a system of shared public and private compensation for insured losses resulting from acts of terrorism. As a result, the certified terrorism coverage provided by ESRT Captive Insurance is eligible for 80% coinsurance provided by the United States Treasury in excess of a statutorily calculated deductible. ESRT Captive Insurance reinsures 100% of its 20% coinsurance for non-NBCR exposures. The 20% coinsurance on NBCR exposures is retained by ESRT Captive Insurance.

Reinsurance contracts do not relieve ESRT Captive Insurance from its primary obligations to its policyholders. Additionally, failure of the various reinsurers to honor their obligations could result in significant losses to ESRT Captive Insurance. The reinsurance has been ceded to reinsurers approved by the State of Vermont. ESRT Captive Insurance continually evaluates the reinsurers' financial condition by considering published financial stability ratings of the reinsurers and other factors. There can be no assurance that reinsurance will continue to be available to ESRT Captive Insurance to the same extent and at the same cost. ESRT Captive Insurance may choose in the future to reevaluate the use of reinsurance to increase or decrease the amounts of risk it cedes.

In addition to insurance held through ESRT Captive Insurance described above, we carry terrorism insurance on all of our properties in an amount and with deductibles which we believe are commercially reasonable.

Our insurance policies include substantial self-insurance portions and significant deductibles and co-payments for certain events, and hurricanes in the United States have affected the availability and price of such insurance. We may discontinue certain insurance coverage on some or all of our properties in the future if the cost of premiums for any of these policies in our judgment exceeds the value of the coverage discounted for the risk of loss.

Additionally, we do not carry insurance for certain losses, including, but not limited to, losses caused by war. Furthermore, business interruption insurance due to pandemic level or other public health events may not be readily available at commercially acceptable rates. In addition, while our title insurance policies insure for the current aggregate market value of our portfolio, we may decide to not increase our title insurance policies as the market value of our portfolio increases.

Competition

The leasing of real estate is highly competitive in Manhattan and the greater New York metropolitan market in which we operate. We compete with numerous acquirers, developers, owners and operators of commercial real estate, many of which own or may seek to acquire or develop properties similar to ours in the same markets in which our properties are located. The principal means of competition are rent charged, location, services provided and the nature and condition of the facility to be leased. In addition, we face competition from other real estate companies, including other REITs, private real estate funds, domestic and foreign financial institutions, life insurance companies, pension trusts, partnerships, individual investors and others, that may have greater financial resources or access to capital than we do or that are willing to acquire properties in transactions which are more highly leveraged or are less attractive from a financial viewpoint than we are willing to pursue. In addition, competition from new and existing observatories and/or broadcasting operations could have a negative impact on revenues from our observatory operations and/or broadcasting revenues. Adverse impacts on domestic and international travel and changes in foreign currency exchange rates may also decrease demand in the future, which could have a material adverse effect on our results of operations, financial condition and ability to make distributions to our securityholders. If our competitors offer space at rental rates below current market rates, below the rental rates we currently charge our tenants, in better locations within our markets or in higher quality facilities, we may lose potential tenants and we may be pressured to reduce our rental rates below those we currently charge in order to retain tenants when our tenants' leases expire.

Our Tax Status

We elected to be taxed as a REIT and have operated in a manner that we believe allows us to qualify as a REIT for U.S. federal income tax purposes commencing with our taxable year ended December 31, 2013. We believe we have been organized in conformity with the requirements for qualification and taxation as a REIT under the Internal Revenue Code of 1986, as amended, the ("Code"), and that our intended manner of operation will enable us to meet the requirements for qualification and taxation as a REIT. So long as we qualify as a REIT, we generally will not be subject to U.S. federal income tax on our net taxable income that we distribute to our securityholders. If we fail to qualify as a REIT in any taxable year and do not qualify for certain statutory relief provisions, we will be subject to U.S. federal income tax at regular corporate rates and may be precluded from qualifying as a REIT for the subsequent four taxable years following the year during which we lost our

REIT qualification. Even if we qualify for taxation as a REIT, we may be subject to certain U.S. federal, state and local taxes on our income or property.

In order to qualify as a REIT, we must distribute to our securityholders, on an annual basis, at least 90% of our REIT taxable income, determined without regard to the deduction for distributions paid and excluding net capital gains. In addition, we will be subject to U.S. federal income tax at the generally applicable corporate tax rate to the extent that we distribute less than 100% of our net taxable income (including net capital gains) and will be subject to a 4% nondeductible excise tax on the amount by which our distributions in any calendar year are less than a minimum amount specified under U.S. federal income tax laws.

In addition, to qualify as a REIT, we must ensure that we meet the REIT gross income tests annually and that at the end of each calendar quarter, at least 75% of the value of our total assets consists of cash, cash items, government securities and qualified REIT real estate assets, including certain mortgage loans and certain kinds of mortgage-backed securities. The remainder of our investment in securities (other than government securities, securities of corporations that are treated as Taxable REIT Subsidiaries ("TRSs") and qualified REIT real estate assets) generally cannot include more than 10% of the outstanding voting securities of any one issuer or more than 10% of the total value of the outstanding securities of any one issuer. In addition, in general, no more than 5% of the value of our assets (other than government securities and qualified real estate assets) can consist of the securities of any one issuer, and no more than 20% of the value of our total securities can be represented by securities of one or more TRSs.

Rents from real property are generally not qualifying income for purposes of the REIT gross income tests if the rent is treated as "related party rent." Related party rent generally includes (i) any rent paid by a corporation if the REIT (or any person who owns 10% or more of the stock of the REIT by value) directly or indirectly owns 10% or more of the stock of the corporation by vote or value and (ii) rent paid by a partnership if the REIT (or any person who owns 10% or more of the stock of the REIT by value) directly or indirectly owns an interest of 10% or more in the assets or net profits of the partnership. Under an exception to this rule, related party rent is treated as qualifying income for purposes of the REIT gross income tests if it is paid by a TRS of the REIT and (i) at least 90% of the leased space in the relevant property is rented to persons other than either TRSs or other related parties of the REIT, and (ii) the amounts paid to the REIT as rent from real property are substantially comparable to the rents paid by unrelated tenants of the REIT for comparable space.

Income from admissions to the Empire State Building observatory, and certain other income generated by the observatory, would not likely be qualifying income for purposes of the REIT gross income tests. We jointly elected with Observatory TRS, which is the current lessee and operator of the observatory and which is wholly owned by our operating partnership, for observatory TRS to be treated as a TRS of ours for U.S. federal income tax purposes. Observatory TRS leases the Empire State Building observatory from the operating partnership pursuant to a lease that provides for fixed base rental payments and variable rental payments equal to certain percentages of Observatory TRS's gross receipts from the operation of the observatory. Given the unique nature of the real estate comprising the observatory, as of the date of such lease, we did not believe that there is any space in the Empire State Building or in the same geographic area as the Empire State Building that is likely to be considered sufficiently comparable to the observatory for the purpose of applying the exception to related party rent described above. We have received from the IRS a private letter ruling that the rent that our operating partnership receives from Observatory TRS pursuant to the lease of the Empire State Building observatory is qualifying income for purposes of the REIT gross income tests so long as such rent reflects the fair market rental value of the Empire State Building observatory as determined by an appraisal rendered by a qualified third party appraiser.

In addition, our operating partnership has acquired various license agreements (i) granting certain third party broadcasters the right to use space on the tower on the top of the Empire State Building for certain broadcasting and other communication purposes and (ii) granting certain third party vendors the right to operate concession stands in the observatory. We have received from the IRS a private letter ruling that the license fees that our operating partnership receives under the license agreements described above constitute qualifying income for purposes of the REIT gross income tests.

Inflation

Substantially all of our leases provide for separate real estate tax and operating expense escalations. In addition, many of the leases provide for fixed base rent increases. We believe inflationary increases may be at least partially offset by the contractual rent increases and expense escalations described above. We do not believe inflation has had a material impact on our historical financial position or results of operations.

Seasonality

Our observatory business is subject to tourism trends and weather, and therefore does experience some seasonality. Historically, prior to the outbreak of COVID-19, approximately 16.0% to 18.0% of our annual observatory revenue was

realized in the first quarter, 26.0% to 28.0% was realized in the second quarter, 31.0% to 33.0% was realized in the third quarter, and 23.0% to 25.0% was realized in the fourth quarter. We do not consider the balance of our business to be subject to material seasonal fluctuations.

Human Capital Management

As of December 31, 2021, the company employed 693 people, of whom approximately 484 are covered by collective bargaining agreements. We recognize that our success is realized through the attraction, retention, development, engagement and empowerment of the highly valued employees amongst our diverse pool of talent, and we endeavor to set our policies and practices accordingly.

Diversity and Inclusion

We believe diverse perspectives and experiences enhance effective decision making and innovation. We strive to create a diverse, inclusive workplace where people can be authentic in their roles. We are proud of the strides we have made in the past two years in terms of enhancing the gender and ethnic diversity of our board and management team through the appointment of new directors and a new Chief Financial Officer. We were selected for the 2022 Bloomberg Gender-Equality Index in our first year of participation.

Talent Acquisition and Retention

We offer what we believe to be generally competitive compensation and benefits. To reward and reinforce participation in the company's outcomes, we also make equity grants to employees. For senior management, we grant such equity annually, with vesting contingent upon (a) the individual's continuing service at the company and/or (b) the company's performance against total shareholder return results. Other employees may receive shares of stock in the company on multi-year employment anniversaries.

We regularly collect employee feedback to understand and improve the employee experience at our company.

Training and Development

We believe continuous learning by our employees supports productivity, innovation and retention, as well as personal and professional growth for the individual employee. We invest in training, including certain programs which are mandatory for all employees and other programs which are voluntary and self-directed on platforms provided by the company.

Health, Safety and Wellness

We have been recognized for leadership in indoor environmental quality, healthy buildings, retrofit energy efficiency, and sustainability in the built environment.

During the ongoing COVID-19 pandemic, we established protocols for building re-occupancy, including online screening for our staff, no-touch temperature checks for all entry to our buildings, and tests of indoor air quality and water systems. We have allowed working remotely where needed to accommodate health or childcare circumstances and to enhance social distancing in the workplace. We have provided and required personal protective equipment during the pandemic.

Offices

Our principal executive offices are located at 111 West 33rd Street, 12th floor, New York, New York 10120. In addition, we have five additional regional leasing and property management offices in Manhattan and the greater New York metropolitan area. Our current facilities are adequate for our present and future operations, although we may add regional offices, depending upon our future operations.

Available Information

Our website address is <http://www.esrtreit.com>. The information found on, or otherwise accessible through, our website is not incorporated by reference into, and does not form a part of, this Annual Report on Form 10-K or any other report or document we file with or furnish to the SEC. We make available, free of charge, on or through the SEC Filings section of our website, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and any

amendments to such reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. We have also posted on our website the Audit Committee Charter, Compensation and Human Capital Committee Charter, Finance Committee Charter, Nominating and Corporate Governance Committee Charter, Corporate Governance Guidelines and Code of Business Conduct and Ethics, which govern our directors, officers and employees. Within the time period required by the SEC, we will post on our website any amendment to our Code of Business Conduct and Ethics and any waiver applicable to our senior financial officers and our executive officers or directors. The SEC maintains an Internet site (<http://www.sec.gov>) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC.

ITEM 1A. RISK FACTORS

You should carefully consider the following risks, together with all other information in this Annual Report on Form 10-K, before you decide to retain or make an investment in our securities. These are not the only risks we face. Additional risks currently unknown or deemed immaterial could have a material adverse effect on us and our REIT qualification, which could reduce our share price and cause loss of all or part of your investment. Some items below are forward-looking statements. See “Forward-Looking Statements.”

Risks Related to Our Business and Properties

Risks Related to the COVID-19 Pandemic

The current COVID-19 pandemic has had, and any future public health crisis could have, serious adverse effects on our and our tenants’ businesses, operations and financial condition, and on local, national, and global economic activity, including by creating volatility and negative pressure in the financial markets.

The COVID-19 pandemic has impacted the entire U.S., including New York and Connecticut where our properties are located. Measures taken by authorities to limit its impact, including quarantines, social distancing, and restrictions on travel, business operations and construction, have affected, and continue to affect, adversely our and our tenants’ businesses, operations and financial condition. Certain tenants have made, and may continue to make, requests for rent deferral, rent abatement or lease termination, and/or have taken actions to challenge lease enforceability, defaulted on lease obligations or invoked insolvency protection, all of which have reduced, and may continue to reduce, our revenue. Additionally, measures taken by our tenants to limit COVID’s impact, including internal policies on work from home, social distancing, and delays in return to office dates have impacted office building utilization levels. The scope and duration of the foregoing events are uncertain and unpredictable.

In addition, as a result of such restrictions, we had to close the observatory to the public from March 16, 2020 to July 20, 2020, and during such closure substantially all observatory revenue was discontinued. Since then, due to continued travel restrictions, especially for international travel, visitor volume has lagged our historical results and we cannot predict when we may achieve visitor volume comparable to 2019 when approximately two-thirds of our visitors were international. During 2020 and 2021, visitor volume was 0.5 million and 0.8 million, respectively, compared to 3.5 million in 2019. Additionally, observatory revenue for 2020 and 2021 was \$29.1 million and \$41.5 million respectively, compared to \$128.8 million in 2019.

Moreover, real estate companies like us may be subject to claims from employees, tenants, vendors, visitors or the public that they were exposed to COVID-19 by our inadequate protective measures or were unnecessarily inconvenienced or damaged by our excessive protective measures.

The COVID-19 pandemic has had, and any future public health crisis could have, a material adverse effect on our operations, cash flows and financial condition due to, among other factors:

- adverse effect on our human capital management, as our employees, including senior management, remain subject to risk of illness, and their remote work sometimes strains efficiencies and management oversight, cybersecurity, and morale;
- downturn in national and/or local economies decreases prospects, demand, occupancy and rental rates for our office, multifamily and retail space, all with an adverse impact on the value or price of our assets;
- delays, cost increases and/or cancellations of planned capital projects;
- potential impairment of our ability to comply with existing debt agreements, to pay down, refinance, or extend maturing debt, , and to incur new debt;
- volatility and downward pressure on the market price of our Class A common stock and publicly traded partnership units, which may also reduce our access to capital and/or our equity currency for new acquisitions; and
- reduction of our cash flows and our ability to pay dividends, with potential impairment of REIT qualification, and business continuity.

While the U.S. economy has shown signs of improvement compared to 2020 and the use of vaccines has alleviated some COVID-19 restrictions, the persistence of the pandemic and spread of new virus strains reinforces the risks described herein.

Risks Relating to Portfolio Concentration

Our properties are geographically concentrated in New York and Connecticut, and adverse state or local economic or regulatory developments could have a material adverse effect on our operations, cash flow and financial condition.

Our portfolio is comprised of properties primarily in Manhattan as well as in Fairfield County, Connecticut and Westchester County, New York. As a result, our business is dependent on the New York City economy in general and the market for office, retail and multifamily space in Manhattan in particular, which exposes us to greater economic and regulatory risks than if we owned a more geographically diverse portfolio. These risks include business layoffs, downsizing, industry slowdowns, and relocations of businesses as well as increases in real estate and other local taxes, and regulatory compliance costs. The current federal tax limits on the deductibility of state and local taxes as well as higher individual tax rate proposals may negatively impact demographic trends in high tax states like New York and Connecticut. Additionally, our concentration in dense urban communities where social distancing is more difficult may cause us to experience longer periods of economic disruption from COVID-19.

The threat or occurrence of a terrorist event, particularly in New York City, may materially and adversely affect the value of our properties and our ability to generate cash flow.

The threat or occurrence of a terrorist event may cause people to relocate from Manhattan and the greater New York metropolitan area to less populated, lower-profile areas. This could trigger a decrease in the demand, occupancy and rental rates for, and materially affect the value of, our properties and their cash flow. Such negative consequences may be even more likely in a high-profile property like the Empire State Building and its observatory. Additionally, a terrorist event could cause insurance premiums at certain of our properties to increase significantly.

We rely on six properties, in particular the Empire State Building and its Observatory, for a significant portion of our revenue.

For the year ended December 31, 2021, six of our properties together accounted for approximately 75.5% of our portfolio's rental revenues, with the Empire State Building individually accounting for approximately 31.7%. Our revenue and cash available for distribution would be materially and adversely affected if any of these six properties were materially damaged or a significant number of their tenants experienced financial strain leading to lease default or bankruptcy filing. Additionally, for fiscal years ending December 31, 2019, 2020 and 2021, we derived approximately \$128.8 million, \$29.1 million and \$41.5 million, respectively from the Empire State Building's observatory operations. Loss of revenue from the observatory, as we have experienced in 2020 through 2021 as a result of the COVID-19 pandemic, has had and can in the future have a material adverse impact on our total revenue and financial condition.

Our five largest tenants represented approximately 13.2% of our total portfolio's annualized rent as of December 31, 2021.

As of December 31, 2021, our five largest tenants together represented 13.2% of our total portfolio's annualized rent, with our largest tenant leasing an aggregate of 0.4 million rentable square feet of office space at one of our office properties, representing approximately 4.1% of our total portfolio rentable square feet and approximately 5.1% of our total portfolio annualized rent. Our significant tenants may experience financial strain leading to lease default or bankruptcy filing, as we experienced in July 2021 with the bankruptcy of one of our then largest tenants. See Leasing section of ITEM 7. Management's Discussion and Analysis for more information. In such cases, we may not recover our upfront investments in tenant improvement allowances, concessions, and transaction costs like professional fees and commissions. Upon tenant default, we may experience delays and substantial costs in enforcing our rights and protecting our investment. Our financial condition could be materially adversely affected if any of our significant tenants were to suffer a downturn in their business, become insolvent, default under their leases, and/or fail to renew on favorable terms or at all.

Risks Relating to the Real Estate Market

A sustained shift away from in-person work environments to remote work, increased use of a hoteling desk layout or a move towards a city hub and suburban spoke geographic model could have an adverse effect on the overall demand for our office and multifamily apartment units.

Limitations on in-person work environments caused by the COVID-19 pandemic have temporarily shifted employers and employees away from fully in-person work environments, and a more permanent shift of this type could have an adverse effect on the overall demand for our office space. Additionally, with increased employer flexibility to work from home, current and prospective residents may be less likely to live in dense urban centers or multifamily housing like the Company owns. These trends and the related effects may continue after the COVID-19 pandemic, which could impair demand and value at our properties.

Adverse economic and geopolitical conditions impacting the industries of our tenants, in particular the retail industry, could cause reduced demand, rental rates and occupancy for our retail and office space.

As of December 31, 2021, approximately 17.1% of our portfolio's annualized rent was comprised of retail tenants. In recent years, the retail industry has faced reductions in sales revenues and increase in bankruptcies throughout the United States, due to a consumer shift to online shopping, all exacerbated by the COVID-19 pandemic. This has reduced demand for physical retail space especially at street level, which typically commanded the highest rental rates per square foot in office properties.

The bankruptcy or insolvency of any tenant could result in the termination of such tenant's lease and material losses to us.

As we experienced in July 2021 with the bankruptcy of one of our largest tenants at the time, the occurrence of a tenant bankruptcy or insolvency could diminish or terminate the income we receive from that tenant. The COVID-19 pandemic has increased the number of tenant bankruptcies, where federal law may prohibit us from timely eviction and/or authorize the tenant to terminate its lease(s), with statutory limitations on our recovery of rent due for the remaining lease term. Additionally, a large number of our tenants (measured by number of tenants as opposed to aggregate square footage) are smaller businesses that generally do not have the financial strength of larger corporate tenants. Smaller businesses generally experience a higher rate of failure than large businesses, and their insolvency could have a material adverse effect on our operations, cash flow and financial condition.

Competition may impede our ability to attract or retain tenants or re-lease space.

The leasing of real estate in the greater New York City and its surrounding metropolitan area is highly competitive in rental rates, location, services and property condition. We have seen increased competition from lessors in offering concessions, short term, amenities, indoor environmental quality and sustainability certifications. Increased competition challenges our ability to lease space and maximize our effective rents.

We may be unable to renew leases or re-lease vacant space on favorable terms or at all as leases expire.

As of December 31, 2021, we had approximately 1.4 million rentable square feet of vacant space (excluding leases signed but not yet commenced) in our office and retail properties. In addition, leases representing 5.7% and 6.3% of the square footage of the office and retail properties in our portfolio will expire in 2022 and 2023, respectively (including month-to-month leases). We cannot be assured that expiring leases will be renewed or that our properties will be re-leased at net effective rental rates at or above the current average.

We may be required to make rent or other concessions and/or significant capital expenditures to improve our properties in order to retain and attract tenants.

Upon expiration of leases at our properties and with respect to our current vacant space, we may be required to make rent or other concessions to tenants, accommodate increased requests for renovations, build-to-suit remodeling and other improvements or provide additional services to our tenants. In addition, eight of our existing properties are pre-war office properties, which may require more frequent and costly maintenance to retain existing tenants or attract new tenants than newer properties. As a result, we may have to make significant capital or other expenditures in order to retain tenants whose leases expire and to attract new tenants. Additionally, our multifamily properties face competition for residents as a result of technology innovation. If we are unable to match the competition for lack of capital or other reasons, we may fail to attract new tenants or to renew existing tenants.

The short-term nature of multifamily leases exposes us more quickly to the effects of declining market rents, potentially making our revenue more volatile.

Generally, our multifamily leases are for twelve months or less. If the terms of the renewal or reletting are less favorable than current terms, our results of operations and financial condition will be negatively affected. Given their short-term lease structure, our multifamily rental revenues are more sensitive to market declines.

Risks Relating to Our Properties

We face various risks related to our ground leases, including those arising from breach, expiration and eminent domain proceedings, and we have no permanent economic interest in the land or improvements at such properties.

Our interests in three of our commercial office properties, 1350 Broadway, 111 West 33rd Street and 1400 Broadway, are ground leases (i.e., long-term leaseholds of the land and the improvements), rather than a fee interest in the land and the improvements. Pursuant to these ground leases, we, as tenant, perform the functions traditionally performed by owners: collect rent from our subtenants, maintain the properties and pay related expenses. We do not have a right to acquire the fee interests in these properties. The ground leases, including unilateral extension rights available to us, expire on July 31, 2050 for 1350 Broadway, December 31, 2063 for 1400 Broadway and June 10, 2077 for 111 West 33rd Street.

If we are found to be in breach of any of these ground leases, the fee owner may terminate such lease, and we could lose the right to use the properties. In addition, unless we purchase the underlying fee interest in these properties or extend the terms of the ground leases on the current terms, we will lose our right to operate these properties, or continue to operate them at lower profitability.

Additionally, we will not share in any increase in value of the land or improvements and will not receive any revenue from the property beyond the term of our ground leases. If the government acquires the properties under its eminent domain power, we would only be entitled to a portion of any compensation awarded. It may be more expensive for us to renew our ground leases, to the extent renewal is available at all.

We are exposed to risks associated with property development.

We have engaged, and continue to engage, in development activities with respect to our properties. We own entitled land at the Transportation Center in Stamford, Connecticut that can support the development of an approximately 0.4 million rentable square foot office building and garage. Development subjects us to risks beyond our control, which could have a material adverse effect on our financial condition, including, without limitation, the availability and pricing of financing; availability and timing of zoning and other approvals; occupancy rates and rents; construction costs and delays (whether due to weather, labor conditions, material shortages or otherwise), and timely lease-up. We will fail to recover expenses and management time already incurred if we abandon any then pending development.

We may not be able to control our operating costs, or our expenses may remain constant or increase even if income from our properties decreases.

Certain costs associated with real estate investment, such as real estate taxes, insurance and maintenance costs, generally are not reduced when a property is not fully occupied, rental rates decrease or other circumstances cause a reduction in income. The terms of our leases may also limit our ability to charge our tenants for all or a portion of these expenses. Additionally, inflation has impacted and will continue to impact property operating expenses and construction costs.

We are exposed to risks from third party property management services.

While we perform property management services for the majority of our properties, we use a third party property management company to service certain of our multifamily properties. If such third party property management company does not perform in accordance with our contractual agreements and desired standards, we could be exposed to additional risks, such as costs and reputational harm.

Risks Related to Our Non-Real Estate Operations

The observatory operations at the Empire State Building are not traditional real estate operations, and may be negatively impacted by competition, adverse weather, and changes in tourist trends caused by public health crises, including COVID-19 pandemic, among other factors.

For fiscal years ending December 31, 2019, 2020 and 2021, we derived approximately \$128.8 million, \$29.1 million and \$41.5 million from our observatory operations. Our revenues declined significantly in 2020 and 2021, as a result of the pandemic and government mandated closures and a slow ramp-up in visitor volume after reopening in July 2020, in large part due to travel restrictions. We cannot predict when, if at all, our observatory revenues will return to pre-COVID-19 levels. Any future health or other economic crisis could negatively impact tourist trends and visitor demand for our observatory, which could have a material adverse effect on our business. We are also susceptible to reductions in visitor demand due to adverse weather. We compete against existing observatories in New York City at the World Trade Center, Rockefeller Center, Hudson Yards, and One Vanderbilt, all of which may divert visitors and negatively impact our revenue.

The broadcasting operations at the Empire State Building are not traditional real estate operations, and competition and changes in the broadcasting of signals over air may subject us to additional risks.

The Empire State Building and its broadcasting mast provide radio and data communications services and support delivery of broadcasting signals to cable and satellite systems and television and radio receivers. We license the use of the broadcasting mast to third party television and radio broadcasters. During the year ended December 31, 2021, we derived approximately \$13.5 million of revenue (excluding tenant reimbursement income) from such broadcasting licenses and related leases, as compared with about \$21 million at its peak a few years ago. Competition from other broadcasting operations has had a negative impact on revenues from our broadcasting operations, and lease renewals have yielded reduced revenue, and higher operating expenses and capital expenditures. Our broadcast licensees also face a range of competition from advances in technologies and alternative methods of content delivery in their respective industries, as well as changes in consumer behavior, which may reduce the demand for over-the-air broadcast licenses. Recent government regulations may materially and adversely affect our broadcast revenue by reducing the demand for broadcast licenses through making more spectrum available for wireless broadband service providers.

The impairment of a significant portion of goodwill could negatively affect our reported financial condition.

Our balance sheet includes goodwill of approximately \$491.5 million at December 31, 2021, consisting primarily of goodwill associated with our acquisition of the controlling interest in Empire State Building Company L.L.C. and 501 Seventh Avenue Associates L.L.C. On an annual basis and whenever circumstances indicate the carrying value or goodwill may be impaired, we are required to assess any such impairment and charge to operating earnings the resulting non-cash impairment. The closure of our observatory due to the pandemic and continued uncertainty around tourism amid COVID caused us to perform such an assessment each quarter since the second quarter of 2020 using a third-party valuation consulting firm. Though we determined no impairment has been necessary, we will continue such assessments when appropriate. See “Financial Statements – Note 4 – Deferred Costs, Acquired Lease Intangibles and Goodwill.” An impairment could have a material adverse effect on our reported earnings.

Risks Relating to Acquisitions and Dispositions

We may be unable to identify and successfully complete acquisitions, and even if acquisitions are identified and completed, they may expose us to additional risks.

We plan to acquire new properties as we are presented with attractive opportunities, but we may face significant competition from other investors, particularly private investors who can incur more leverage. We may incur significant costs and divert management attention in connection with potential acquisitions, including ones that we are unable to complete. If we successfully identify an acquisition target and close the transaction, we may spend more than budgeted to make necessary improvements to the relevant properties and be exposed to unknown liabilities, such as environmental contamination or claims from former tenants, vendors or employees.

We may acquire properties through tax deferred contribution transactions, which could result in securityholder dilution and limit our ability to sell such assets.

In the future we may acquire properties through tax deferred contribution transactions in exchange for partnership interests in our operating partnership, which may result in dilution to securityholders, reduction of tax depreciation we could deduct over the tax life of the acquired properties (as compared with an acquisition paid in cash), and requirements to protect the contributors’ tax deferral through restrictions on our disposition of the acquired properties and/or allocation of partnership debt to the contributors to maintain their tax bases. These restrictions could limit our ability to sell an asset at a time, or on terms, that would be favorable absent such restrictions.

If we are unable to sell, dispose of or refinance one or more properties in the future, we may be unable to realize our investment objectives.

Real estate investments are relatively difficult to sell quickly. Return of capital and realization of gains from an investment generally will occur upon disposition or refinancing. In addition, the Internal Revenue Code of 1986, as amended (the "Code"), imposes restrictions on the ability of a REIT to dispose of properties that are not applicable to other types of real estate companies. We may be unable to realize our investment objectives by sale, other disposition or refinancing at attractive prices within any given period of time.

Risks Relating to Our Indebtedness and Liquidity

The phase-out, replacement or unavailability of LIBOR could affect interest rates under our revolving credit facility, as well as our ability to obtain future debt financing on favorable terms.

We are subject to interest rate risk under our revolving credit facility and related term loan, which use U.S. Dollar (“USD”) LIBOR to establish the interest rate. In July 2017, the Financial Conduct Authority (the regulatory authority over LIBOR) stated that it would phase out LIBOR as a benchmark. In November 2020, the Federal Reserve Board announced that banks must stop writing new USD LIBOR contracts by the end of 2021 and that, no later than June 30, 2023, when USD LIBOR will no longer be published, market participants should amend legacy contracts to use the Secured Overnight Financing Rate (“SOFR”) or another alternative reference rate. Our debt facilities provide a mechanism to set an alternative rate of interest, but no such amendment has yet been made. While we do not expect the discontinuation of USD LIBOR and related transition to affect our ability to borrow or maintain already outstanding borrowings, it could result in higher interest rates and/or payments under our debt agreements. Additionally, the phase-out of USD LIBOR and transition to SOFR may result in disruption to financial markets, which could have a material adverse effect on our financial condition and adversely affect our ability to obtain future debt on favorable terms.

Our debt and related limitations in our loan documents could adversely affect us.

As of December 31, 2021, we had total debt outstanding of approximately \$2.3 billion and total mortgages of approximately \$968.8 million with no maturity before November 2024. See “Financial Statements – Note 5 – Debt” for required payments of our indebtedness. Our organizational documents do not limit the debt we may incur, and we may incur significant additional debt to finance future acquisition and development activities. Our current and potential levels of debt, and the related limitations in our loan documents could have significant adverse consequences to our cash flow and our ability to service and refinance our debt. We may be forced to dispose of one or more of our properties, possibly on disadvantageous terms. We may default on our debt obligations, in which case the lenders may accelerate our debt obligations and foreclose on any mortgaged properties. Our default on one debt with cross-default provisions could result in a default on other debt. We may fail to hedge interest rates effectively. If any one of these events were to occur, our operations, cash flow, financial condition, and ability to service debt and to make distributions could be adversely affected.

Our debt includes restrictions on our financial and operational flexibility and distributions.

Our debt instruments may restrict our financial and operational flexibility. For example, our lockbox and cash management agreements require income from our properties to be deposited directly into lockbox accounts controlled by our lenders from which we receive cash after funding of defined operating and capital costs. As a result, we may be forced to borrow additional funds in order to make distributions.

Additionally, many of our debt instruments contain financial covenants that impact how we run our business, including required ratios for debt-to-assets, adjusted EBITDA to consolidated fixed charges or debt service. The partnership agreement of our operating partnership may restrict our ability to pay dividends if we fail to pay the cumulative distributions on preferred units. See Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources” and “Private Perpetual Preferred Units.”

Mortgages expose us to foreclosure and loss of our investment in a mortgaged property.

Mortgage and other secured debt increases our risk of property losses because defaults may result in foreclosure. For tax purposes, a foreclosure generally is treated as a sale of the property for a purchase price equal to the outstanding debt. If such debt exceeds our tax basis in the property, we will recognize taxable income on foreclosure, but not receive any cash. Foreclosures could also trigger our obligations under tax protection agreements with certain legacy investors to indemnify them for certain taxes upon sale of specific properties where they had embedded phantom taxable income (or the failure to maintain certain levels of indebtedness available for them to guarantee). See “Financial Statements – Note 11 – Related Party Transactions – Tax Protection Agreements.”

High mortgage rates and/or unavailability of mortgage debt may make it difficult for us to finance or refinance properties, which could reduce the number of properties we can acquire, our net income and the amount of cash distributions we can make.

If mortgage debt is unavailable at reasonable rates, we may not be able to finance the purchase of properties. If we place mortgage debt on properties, we may be unable to refinance the properties when the loans become due comparable terms. This may result in reduced cash flows and hinder our ability to make distributions, and to raise more capital by issuing more stock or by borrowing more money. In addition, to the extent we are unable to refinance loans, we will have fewer debt guarantee opportunities available to offer under our tax protection agreements, which could trigger our related indemnification obligation.

Our growth depends on external sources of capital that are outside of our control.

Because of the distribution requirements to maintain our status as a REIT (See Part I, Item 1, “Business - Our Tax Status”), we may not be able to fund future capital needs, including any acquisition financing, from operating cash flow and may need to rely on third-party sources. Our access to third-party sources of capital depends, in part, on general economic and market conditions, including the cost and availability of credit, government action or inaction and its effect on the state of the capital markets, the market’s perception of our growth potential, as well as our then current financial condition. Absent needed capital, we may not be able to acquire or develop properties when opportunities exist, satisfy our debt obligations or make cash distributions to our securityholders necessary to maintain our qualification as a REIT.

Risks Relating to Disaster Recovery and Business Continuity

Natural disasters and climate change could adversely impact our area and business.

Our properties are concentrated in the New York metropolitan area. Natural disasters, including earthquakes, storms, storm surges, tornados, floods and hurricanes, could cause significant damage to our properties and the surrounding area. Climate change, including rising sea levels and extreme temperature fluctuations, could adversely impact the coastal metropolitan areas in which we operate. These conditions could result in declining demand for our commercial and multifamily properties, compromise our ability to operate the buildings, make insurance less affordable or available, and increase the cost of energy at our properties. Also, certain of our properties could not be rebuilt to their existing height or size under current land-use laws. In that event, we may have to upgrade such property to meet code requirements. Our disaster recovery and business continuity plans may not be adequate to address these risks.

Some of our potential losses may not be covered by insurance.

Our insurance may not be adequate to cover all losses to which we are subject. Business interruption insurance generally does not include coverage for damages from a pandemic, although certain third parties have claimed such coverage in litigation, which we continue to monitor. In addition, our insurance policies include substantial self-insurance and deductibles and co-payments for certain events. See Part I, Item 1, “Business – Insurance.” If we experience a loss that is uninsured or exceeds our policy limits, we could incur significant costs and loss of capital or property. If the damaged property is subject to recourse debt, we would continue to be liable for the debt, regardless of the property condition. Our debt instruments contain customary covenants to maintain insurance, including terrorism insurance. While we do not believe it is likely, our lenders or ground lessors could take the position that a total or partial exclusion for losses due to terrorist acts is a breach that would accelerate debt repayment or recapture ground lease positions. In addition, if they were to prevail in requiring additional coverage, it could result in substantially higher premiums. In the future, we may be unable to obtain insurance with insurers that satisfy the rating requirements in our agreements, which could give rise to a default under such agreements and/or impair our ability to refinance.

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 properties are subject to various laws and regulations concerning protection of the environment, including air and water quality, hazardous substances, and health and safety. Some of our properties, or adjacent properties, have previously been used by former owners or tenants for commercial or industrial activities (e.g., gas stations, underground storage tanks, and dry cleaners), and a portion of the Metro Tower site is currently used for automobile parking and fueling, which may release hazardous substances. The presence of contamination or the failure to remediate contamination at any of our properties may subject us to fines and impair our ability to sell, lease or finance them.

If contamination is discovered on our properties, environmental laws may restrict use or operations. For example, our property at 69-97 Main Street in Westport, Connecticut is subject to restrictions on the use, occupancy and development of the property, which may impair our ability to sell, lease or finance this property. Additionally, we have restrictions imposed on site work done at our 500 Mamaroneck property required by the New York State Department of Environmental Control. Other laws and regulations govern indoor and outdoor air and water quality including abatement or removal of asbestos-containing materials, lead paint, and electrical equipment containing polychlorinated biphenyls (PCBs). We are also subject to risks associated with human exposure to chemical or biological contaminants such as molds, pollens, viruses and bacteria, which may cause adverse health effects. Our predecessors may be subject to similar liabilities for past activities. We could incur fines and be liable for the costs of remedial action with respect to the foregoing. We sometimes require our tenants to comply with environmental and health and safety laws and regulations and to indemnify us for any related liabilities in our leases with them. But in the event of the bankruptcy or inability of any of our tenants to satisfy such obligations, we may be required to satisfy such obligations.

We may incur significant costs to comply with environmental laws, in particular New York City’s Local Law 97.

We may become subject to new compliance requirements and/or new costs or taxes associated with natural resource or energy usage and related emissions (such as a “carbon tax”), which could increase our operating costs. In particular, as the owner of large commercial buildings in New York City, we are subject to Local Law 97 passed by the New York City Council in April 2019, which for each such building establishes annual limits for greenhouse gas emissions, requires yearly emissions reports beginning in May 2025, and imposes penalties for emissions above such limits. While we are actively working to reduce our carbon emissions, there can be no assurance that we will be able to operate within the limits of Local Law 97, or that the costs of compliance and/or penalties will not be material. Based upon our present understanding of the law and calculations related thereto, we expect to pay no fine on any building in our portfolio in the 2024-2030 first period of enforcement.

Risks Relating to Human Capital Management

The departure of any of our key personnel could materially and adversely affect us.

Our success depends on the efforts of key personnel, particularly Anthony E. Malkin, our Chairman, President and Chief Executive Officer, whose leadership and national industry reputation benefits us in many ways. He has led the acquisition, operation and repositioning of our assets for more than two decades. Other members of our senior management team also have strong industry reputations and experience, which aid us in attracting, identifying and taking advantage of opportunities. The loss of the services of one or more members of our senior management team could materially and adversely affect us.

Our Chairman, President and Chief Executive Officer has outside business interests that take his time and attention away from us, which could materially and adversely affect us.

Under his employment agreement, Mr. Malkin has agreed to (a) devote a majority of his business time and attention to our business and (b) during, and for a time after, his employment with us to refrain from competition with us. Mr. Malkin is also permitted to devote time to his other investments to the extent such activities do not materially interfere with the performance of his duties to us. He owns interests in properties and businesses that were not contributed to us in the formation transactions, some of which are now managed by our company. See “Financial Statements – Note 11 – Related Party Transactions – Excluded Properties and Businesses.” In some cases, Mr. Malkin or his affiliates may have management and fiduciary obligations that could conflict with his responsibilities to our company. We may choose to moderate or omit enforcement of our rights under this agreement to maintain our relationship with him given his knowledge of our business, relationships with our customers, and significant equity ownership in us, and this could have a material adverse effect on our business.

Our failure to maintain satisfactory labor relations could materially and adversely affect us.

As of December 31, 2021, we have collective bargaining agreements that cover 484 employees, or 70% of our workforce, that service all of our office properties. Our inability to negotiate acceptable renewals as existing agreements expire could result in strikes or work stoppages and disrupt our operations. In any such event for any extended period of time, we would likely engage temporary replacement workers, which would result in increased operating costs.

Risks Relating to Legal Compliance and Cybersecurity

We face risks associated with our tenants being designated “Prohibited Persons” by OFAC and similar requirements.

The Office of Foreign Assets Control of the U. S. Department of the Treasury (“OFAC”) maintains a list of persons designated as terrorists or who are otherwise blocked or banned (“Prohibited Persons”) from conducting business or engaging in transactions in the U. S. and thereby restricts our doing business with such persons. In addition, our leases, loans and other agreements may require us to comply with OFAC and related requirements, and any failure to do so may result in a breach of such agreements. If a tenant or other party with whom we conduct business is designated a Prohibited Person, we may be required to terminate the arrangement or face penalties. Any such termination could result in a loss of revenue or otherwise negatively affect our business.

We may incur significant costs complying with the ADA and similar laws.

Under the Americans with Disabilities Act of 1990 (the “ADA”), all public accommodations must meet federal requirements related to access and use by disabled persons. We would be required to incur costs to bring any non-compliant property into compliance and could be required to make modifications to our properties upon any renovation, all of which could involve substantial costs and material adverse effect on our financial conditions.

We may become subject to litigation, which could have a material adverse effect on our financial condition.

In the past we have been, and in the future we may become, subject to litigation, including claims relating to our operations, offerings, and otherwise in the ordinary course of business. Some of these claims may result in significant defense costs and potentially significant judgments against us, some of which are not, or cannot be, insured against. We generally intend to defend ourselves vigorously; however, we cannot be certain of the ultimate outcomes of any claims that may arise in the future. Certain litigation or its resolution may affect the availability or cost of our insurance coverage, which could adversely impact our financial condition, expose us to increased uninsured risks, and/or adversely impact our ability to attract officers and directors. See “Financial Statements – Note 9 – Commitments and Contingencies.”

Cyberattacks and any failure to comply with related laws could negatively impact us.

We rely extensively on technology, both internal and outsourced, to process transactions and manage our business, so our business is increasingly at risk from cyberattacks that continue to increase in number, intensity and sophistication. These have included and could in the future include internal and external attempts to gain unauthorized access to our data and computer systems to, disrupt operations, or steal confidential information. We employ a number of controls to prevent and mitigate these threats; but there is no guarantee such measures will be successful. A cyberattack could compromise the confidential information of our employees, tenants, customers and vendors, and disrupt our business operations and relationships.

Any compromise of our security could also result in a violation of applicable privacy (e.g., observatory customer data, company employee data, or residential data at multifamily properties) and other laws, with significant damage to our legal and financial condition, our reputation, our business, our records, and confidence of our business relationships. New laws and regulations on these subjects pose increasingly complex compliance challenges and costs across multiple jurisdictions.

The adoption of, or changes, in rent control or rent stabilization regulations and eviction regulations in our markets could have an adverse effect on our operations and property values.

A growing number of state and local governments have enacted and may continue to consider enacting and/or expanding rent control or rent stabilization regulations, which have limited and could continue to limit in broadening ways our ability to raise rents or charge certain fees, either of which could have a retroactive effect. We continue to see increases in governments considering or being urged by advocacy groups to consider rent forgiveness, rent control or rent stabilization regulations or expand coverage of existing regulations in our markets. These regulations may also make changes to and/or expand eviction and other tenants’ rights regulations that may limit our ability to enforce residents’ or tenants’ contractual rental obligations (such as eviction moratoriums), pursue collections or charge certain fees, which could have an adverse impact on our operations and property values.

Government housing regulations may limit opportunities at the multifamily properties in which we invest, and failure to comply with resident qualification requirements may result in financial penalties or loss of benefits.

We own, and may acquire additional equity interests in properties that benefit from governmental programs intended to provide housing to individuals with low or moderate incomes. These governmental programs typically provide mortgage insurance, favorable financing terms, tax credits or rental assistance payments to property owners. As a condition of the receipt of assistance under these programs, the properties must comply with various requirements, which typically limit rents to pre-approved amounts and impose restrictions on resident incomes. Failure to comply with these requirements and restrictions may result in financial penalties or loss of benefits. In addition, we will typically need to obtain the approval of the applicable government agency in order to acquire or dispose of a significant interest in or manage such property. We may not always receive such approval.

Risks Related to Our Organization and Structure

If our board revokes our REIT election or we fail to remain qualified as a REIT, we may be required to pay U.S. federal income taxes at corporate rates, which may cause adverse consequences to our securityholders.

Although we believe that we will remain organized and will continue to operate so as to qualify as a REIT for U.S. federal income tax purposes, our board may revoke our REIT election, without stockholder approval, if the board determines that it is no longer in our best interest to continue to qualify as a REIT or we may fail to remain so qualified. Qualifications are governed by highly technical and complex provisions of the Code for which there are only limited judicial or administrative interpretations and depend on various facts and circumstances that are not entirely within our control. In addition, legislation, new regulations, administrative interpretations or court decisions may significantly change the relevant tax laws and/or the U.S. federal income tax consequences of qualifying as a REIT. If, with respect to any taxable year, we fail to maintain our

qualification as a REIT and do not qualify under statutory relief provisions, we could not deduct distributions to shareholders in computing our taxable income and would have to pay U.S. federal income tax on our taxable income at regular corporate rates and thus reduce funds available for distribution and debt service, and we would not be required to make distributions until we re-qualified as a REIT which would not be permitted for the four taxable years following our disqualification, unless we gained relief under relevant statutory provisions. Refer to Part I, Item 1, "Business – Our Tax Status" for more information.

Failure to qualify as a domestically controlled REIT could subject our non-U.S. securityholders to adverse U.S. federal income tax consequences.

While we intend to continue to qualify as a "domestically controlled" REIT for purposes of the Foreign Investment in Real Property Tax Act of 1980, we cannot assure that result, as our Class A common stock is publicly traded, QIA (a non-U.S. holder) owns approximately 17.67% of our common stock and other non-U.S. holders may now or in the future hold additional shares. If we were to fail to qualify, gain realized by a foreign investor (other than a "qualified shareholder", a "qualified foreign pension fund" or a "qualified controlled entity") on a sale of our common stock would be subject to FIRPTA unless (a) our common stock was traded on an established securities market and the foreign investor did not at any time during a specific testing period directly or indirectly own more than 10% of the value of our outstanding common stock, or (b) another exemption from FIRPTA were applicable.

Complying with the REIT requirements may cause us to forego and/or liquidate otherwise attractive investments.

If we fail to comply with the income and asset requirements for a REIT at the end of any calendar quarter, we must correct the failure within 30 days after the end of the calendar quarter or qualify for certain other statutory relief provisions to avoid losing our REIT qualification and suffering adverse tax consequences. Refer to Part I, Item 1, "Business – Our Tax Status" for more information. In order to satisfy the gross income or asset tests applicable to REITs under the Code, we may be required to forego investments that we otherwise would make or liquidate otherwise attractive investments. This could have the effect of reducing our income and amounts available for distribution.

The REIT distribution requirements could require us to borrow funds during unfavorable market conditions or subject us to tax, which would reduce the cash available for distribution to our securityholders.

We intend to distribute our taxable net income to our securityholders in a manner intended to satisfy the REIT 90% distribution requirement and to avoid U.S. federal income tax and the 4% nondeductible excise tax. Refer to Part I, Item 1, "Business – Our Tax Status" for more information. Any failure to do so will incur substantial entity level tax and/or disqualification as a REIT with the adverse tax consequences and limits on re-qualification described above in this Risk Factors section.

In addition, our taxable income may exceed our net income as determined by GAAP. As a result of the foregoing, we may generate less cash flow than taxable income in a particular year, and we may incur U.S. federal income tax and the 4% nondeductible excise tax on that income if we do not distribute such income to securityholders in that year. In that event, we may be required to use cash reserves, incur debt or liquidate assets at rates or times that we regard as unfavorable or make a taxable distribution of our shares in order to satisfy such REIT requirements and avoid such taxes.

If our operating partnership is treated as a corporation for U.S. federal income tax purposes, we will cease to qualify as a REIT.

In order for our publicly traded operating partnership to be treated and taxed as a partnership for U.S. federal income tax purposes, 90% or more of its gross income must consist of certain passive type income such as rent, interest, dividends, etc. If our operating partnership were to fail to meet the gross income requirement for treating a publicly traded partnership as a partnership or the IRS were to successfully challenge our operating partnership's status as a partnership, we would fail to meet the gross income tests and certain of the asset tests applicable to REITs and, therefore, cease to qualify as a REIT and our operating partnership would become subject to U.S. federal, state and local income tax. The payment by our operating partnership of income tax would reduce significantly the amount of cash available to our operating partnership to satisfy obligations to make principal and interest payments on its debt and to make distributions to its partners, including us.

If we are unable to continue to lease the Empire State Building observatory to a TRS or to maintain our broadcast licenses, in each case in a manner consistent with the IRS ruling that we have received, we would be required to restructure our operations in a manner that could adversely affect the value of our stock.

We rely upon private letter rulings from the IRS that income from our observatory and broadcast facilities is qualifying rent for our REIT qualification. See Part I, Item 1, "Business – Our Tax Status". We are entitled to rely upon these private letter rulings only to the extent that we did not misstate or omit a material fact in the ruling request and that we continue to

operate in accordance with the material facts described in such request, and no assurance can be given that we will always be able to do so. If we were not able to treat the rent that our operating partnership receives from observatory TRS as qualifying income for purposes of the REIT gross income tests, we would be required to restructure the manner in which we operate the observatory, which would likely require us to cede operating control of the observatory by leasing the observatory to an affiliate or third party operator. If we were not able to treat the license fees that our operating partnership will receive from the license agreements described above as qualifying income for purposes of the REIT gross income tests, we would be required to enter into the license agreements described above through a TRS, which would cause the license fees to be subject to U.S. federal income tax and accordingly reduce the amount of our cash flow available to be distributed to our securityholders. In either case, if we are not able to appropriately restructure our operations in a timely manner, we would likely realize significant income that does not qualify for the REIT gross income tests, which could cause us to fail to qualify as a REIT.

Although our use of TRSs may partially mitigate the impact of meeting certain requirements necessary to maintain our qualification as a REIT, there are limits on our ability to own TRSs, and a failure to comply with the limits would jeopardize our REIT qualification and may result in the application of a 100% excise tax.

A REIT may own up to 100% of the stock of one or more TRSs. A TRS may hold assets and earn income that would not be qualifying assets or income if held or earned directly by a REIT. A corporation of which a TRS directly or indirectly owns more than 35% of the voting power or value of the stock will automatically be treated as a TRS. Overall, no more than 20% of the value of a REIT's assets may consist of securities of one or more TRSs. The rules also impose a 100% excise tax on certain transactions between a TRS and its parent REIT that are not conducted on an arm's-length basis.

We have jointly elected with each of observatory TRS and Holding TRS, for each of observatory TRS and Holding TRS to be treated as a TRS under the Code for U.S. federal income tax purposes in 2013. observatory TRS, Holding TRS, and any other TRSs that we form pay U.S. federal, state and local income tax on their taxable income, and their after-tax net income is available for distribution to us but is not required to be distributed to us unless necessary to maintain our REIT qualification. Although we monitor the aggregate value of the securities of such TRSs and intend to conduct our affairs so that such securities will represent less than 20% of the value of our total assets at the end of each calendar quarter, there can be no assurance that we will be able to comply with the TRS limitation in all market conditions.

There remains uncertainty as to how partnership tax audits will be applied.

In the case of an audit for taxable years beginning after December 31, 2017, our operating partnership and any subsidiary partnership may be required to pay the hypothetical increase in partner-level taxes (including interest and penalties) resulting from an adjustment of partnership tax items on audit or in other tax proceedings, unless the partnership elects an alternative method under which the taxes resulting from the adjustment (and interest and penalties) are assessed at the partner level. In addition, Treasury Regulations provide that a partner that is a REIT may be able to use deficiency dividend procedures with respect to such adjustments. Many uncertainties remain as to the application of these rules, and the impact they will have on us. However, it is possible, that partnerships in which we invest may be subject to U.S. federal income tax, interest and penalties in the event of a U.S. federal income tax audit as a result of these law changes.

Our state and local taxes could increase due to property tax rate changes, reassessment and/or changes in state and local tax laws, which could materially and adversely affect us.

We are required to pay state and local taxes on our properties. From time to time changes in state and local tax laws or regulations are enacted, which may result in an increase in our tax liability. A shortfall in tax revenues for states and municipalities in which we operate may lead to an increase in the frequency and size of such changes. In particular, the federal government has recently limited the ability of individuals to deduct state and local taxes on their federal tax returns, potentially leading many high-tax states to make significant changes to their own state and local tax laws. In addition, the COVID-19 pandemic has left many state and local governments with reduced tax revenue, which may lead such governments to increase taxes or otherwise make significant changes to their state and local tax laws. If such changes occur, we may be required to pay additional taxes on our assets or income. The real property taxes on our properties may increase as property tax rates change or as our properties are assessed or reassessed by taxing authorities. Therefore, the amount of property taxes we pay in the future may increase substantially from what we have paid in the past. If the property taxes we pay increase, our financial condition could be materially and adversely affected.

U.S. federal tax reform legislation now and in the future could affect REITs generally and the geographic markets in which we operate both positively and negatively, in ways that are difficult to anticipate.

The rules dealing with U.S. federal, state and local income taxation are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Treasury Department. Changes to tax laws (which changes may have

retroactive application) could adversely affect our securityholders or us. In recent years, many such changes have been made and changes are likely to continue to occur in the future.

Pursuant to the formation transactions, Malkin Properties of Connecticut, Inc., a Connecticut corporation, or Malkin Properties CT, and Malkin Construction Corp., a Connecticut corporation, or Malkin Construction merged with and into a subsidiary of ours, with the subsidiary surviving, in a transaction that was intended to be treated as a reorganization under the Code. Each of Malkin Properties CT and Malkin Construction had previously elected to be treated as an S Corporation for U.S. federal income tax purposes under Section 1361 of the Code with respect to periods preceding our formation transactions. If either of Malkin Properties CT or Malkin Construction had failed to qualify as an S corporation with respect to periods preceding our formation transactions, we could have assumed material U.S. federal income tax liabilities in connection with the formation transactions and/or may be subject to certain other adverse tax consequences. In addition, to qualify as a REIT under these circumstances, we would be required to distribute, prior to the close of our first taxable year in which we elect to be taxed as a REIT under the Code, any earnings and profits of these entities to which we were deemed to succeed. No rulings from the IRS were requested and no opinions of counsel were rendered regarding the U.S. federal income tax treatment of any of Malkin Properties CT or Malkin Construction with respect to periods preceding our formation transactions. Accordingly, no assurance can be given that Malkin Properties CT or Malkin Construction qualified as an S corporation for U.S. federal income tax purposes during such periods, or that these entities did not have any other tax liabilities. In addition, Malkin Holdings LLC merged with a subsidiary of our operating partnership in the formation transactions, and as a result, we may have inherited any liabilities, including any tax liabilities, of Malkin Holdings LLC.

Our tax protection agreements could limit our ability either to sell certain properties or to engage in a strategic transaction, or to reduce our level of indebtedness, which could materially and adversely affect us.

In connection with the formation transactions, we entered into a tax protection agreement with certain Malkin family members, including Anthony E. Malkin and Peter L. Malkin, pursuant to which we have agreed to indemnify the Malkin Group and one additional third party investor in Metro Center, and in connection with our sale of a 9.9% fully diluted interest in our company to QIA in 2016, we agreed, subject to certain minimum thresholds and conditions, to indemnify QIA, in each case, against certain tax liabilities that may arise from certain property transactions. See “Financial Statements – Note 11 – Related Party Transactions – Excluded Properties and Businesses.” If we were to trigger such tax indemnification obligations, we would be required to pay the resulting tax consequences to the Malkin Group, the additional third party investor in Metro Center and/or QIA, as applicable. These obligations may restrict our ability to engage in a strategic transaction, require us to maintain more or different debt, and/or inhibit our disposing of a property that we might judge to be otherwise be in the best interest of the securityholders.

Holders of our Class B common stock have a significant vote in matters submitted to a vote of our securityholders.

As part of our formation, we sought to give each contributing investor an option to hold equity interests which would allow such investor to vote on company matters in proportion to such investor’s economic ownership in the consolidated entity, whether such investor elected taxable Class A common stock or tax-deferred operating partnership units. Thus, the original investors were offered the opportunity to contribute their interests to us in exchange for a mix of one share of Class B common stock and 49 operating partnership units for each 50 operating partnership units to which an investor was otherwise entitled. Each outstanding share of Class B common stock, when accompanied by 49 operating partnership units, entitles the holder thereof to 50 votes on all matters on which Class A common securityholders are entitled to vote, including the election of directors.

Holders of our Class B common stock may have interests that differ from holders of our Class A common stock and may accordingly vote in ways that may not be consistent with the interests of holders of our Class A common stock. This significant voting influence over certain matters may have the effect of delaying, preventing or deterring a change of control of our company, or could deprive holders of our Class A common stock of an opportunity to receive a premium for their Class A common stock as part of a sale of our company.

The concentration of our voting power may adversely affect the ability of new investors to influence our policies.

As of December 31, 2021, our Chairman, President and Chief Executive Officer, Anthony E. Malkin, together with the Malkin Group, has the right to vote 40,859,706 shares of our common stock, which represents approximately 18.7% of the voting power of our outstanding common stock. Consequently, Mr. Malkin has the ability to influence the outcome of matters presented to our securityholders, including the election of our board and approval of significant corporate transactions, including business combinations, consolidations and mergers and the determination of our day-to-day corporate and management policies.

As of December 31, 2021, QIA had a 10.63% fully diluted interest in us, which represented 17.67% of the outstanding Class A common stock. Pursuant to the terms of our stockholders agreement with QIA, QIA generally has the right (but not the obligation) to maintain its fully diluted economic interest in us by purchasing additional shares of our Class A common stock when we or our operating partnership issue additional common equity securities from time to time. While QIA has agreed to limit its voting power on all matters presented to our securityholders to no more than 9.9% of total number of votes entitled to be cast, QIA has also agreed to vote its shares in favor of the election of all director nominees recommended by our board. The interests of Mr. Malkin and QIA could conflict with or differ from your interests as a holder of our common stock, and these large securityholders may exercise their right as securityholders to restrict our ability to take certain actions that may otherwise be in the best interests of our securityholders. This concentration of voting power might also have the effect of delaying or preventing a change of control that our securityholders may view as beneficial.

Tax consequences to holders of operating partnership units upon a sale or refinancing of our properties may cause the interests of certain members of our senior management team to differ from your own.

As a result of the unrealized built-in gain attributable to a property at the time of contribution, some holders of operating partnership units, including our Chairman, President and Chief Executive Officer, Anthony E. Malkin, and our Chairman Emeritus, Peter L. Malkin, may suffer different and more adverse tax consequences than holders of our Class A common stock upon the sale or refinancing of the properties owned by our operating partnership, including disproportionately greater allocations of items of taxable income and gain upon a realization event. As those holders will not receive a correspondingly greater distribution of cash proceeds, they may have different objectives regarding the appropriate pricing, timing and other material terms of any sale or refinancing of certain properties, or whether to sell or refinance such properties at all. As a result, the effect of certain transactions on Messrs. Malkin may influence their decisions affecting these properties and may cause such members of our senior management team to attempt to delay, defer or prevent a transaction that might otherwise be in the best interests of our other securityholders. Additionally, in connection with the formation transactions, we entered into a tax protection agreement with Messrs. Malkin pursuant to which we have agreed to indemnify the Malkin Group and one additional third party investor in Metro Center against certain tax liabilities if those tax liabilities arise from a transaction involving one of four properties. Refer to “Financial Statements – Note 11 – Related Party Transactions – Excluded Properties and Businesses” for more information. As a result of entering into the tax protection agreement, Messrs. Malkin may have an incentive to cause us to enter into transactions from which they may personally benefit.

Conflicts of interest exist or could arise in the future between the interests of our securityholders and OP unit holders.

Conflicts of interest exist or could arise in the future as a result of the relationships between us and our affiliates, on the one hand, and our operating partnership or any partner thereof, on the other. For example, a potential acquisition or disposition opportunity could be opportunistic to the REIT while tax disadvantageous to certain OP holders. Our directors and officers have duties to our company and its shareholders under applicable Maryland law in connection with their management of our company. At the same time, we, as the general partner in our operating partnership, have fiduciary duties and obligations to our operating partnership and its limited partners under Delaware law and the partnership agreement of our operating partnership in connection with the management of our operating partnership. If there is a conflict between the interests of such stockholders and the interests of such limited partners, such operating agreement provides that our company will fulfill its fiduciary duties as general partner to such limited partners by acting in the best interest of such stockholders.

Our rights and the rights of our securityholders to take action against our directors and officers are limited, which could limit your recourse in the event of actions not in your best interest.

Our charter limits the liability of our present and former directors and officers to us and our securityholders for money damages to the maximum extent permitted under Maryland law. Under current Maryland law, our present and former directors and officers will not have any liability to us or our securityholders for money damages other than liability resulting from (1) actual receipt of an improper benefit or profit in money, property or services or (2) active and deliberate dishonesty by the director or officer that was established by a final judgment and is material to the cause of action. Additionally, the partnership agreement of our operating partnership provides for certain limitations on liability and indemnification obligations for us and our directors and officers and certain present and former members, managers, shareholders, directors, limited partners, general partners, officers or controlling persons of our predecessor. As a result, we and our securityholders may have limited rights against all such persons, which could limit your recourse in the event of actions not in your best interest.

Limits on changes in control may discourage takeover attempts beneficial to securityholders.

Provisions in our charter and the partnership agreement of our operating partnership, may delay or prevent a change of control over the company or a tender offer, even if such action might be beneficial to the company’s stockholders. Additionally, our board could establish a class or series of preferred stock that could, depending on the terms of such series, delay, defer or prevent a transaction or a change of control.

To facilitate maintenance of the company's qualification as a REIT and to otherwise address concerns relating to concentration of stock ownership, our charter generally prohibits any person from directly or indirectly owning more than 9.8% in value or number of shares, whichever is more restrictive, of the outstanding shares of our capital stock or more than 9.8% in value or number of shares, whichever is more restrictive, of the outstanding shares of our common stock. Our charter also provides that no person can directly or indirectly own shares of our capital stock to the extent such ownership would result in us owning (directly or indirectly) an interest in one of our tenants if the income derived by us from such tenant would reasonably be expected to equal or exceed the lesser of 1% of our gross income or an amount that would cause us to fail to satisfy any of the REIT gross income tests. Shares owned in violation of the ownership limit will be subject to the loss of rights to distributions and voting and other penalties. These ownership limitations could have the effect of discouraging a takeover or other transaction in which holders of our common stock might receive a premium for their shares over the then prevailing market price or which holders might believe to be otherwise in their best interests.

Our board may waive, in its sole discretion, or modify the ownership limit with respect to one or more persons if it is satisfied that ownership in excess of this limit will not jeopardize the company's status as a REIT for U.S. federal income tax purposes. For example, we have entered into such a waiver with QIA, which permits QIA to own up to 15% of the outstanding shares of our Class A common stock and an aggregate amount of Class A common stock equal to a 9.9% fully diluted economic interest in the company (inclusive of all outstanding common OP units and LTIP units), which currently equals approximately 17.67% of our outstanding Class A common stock, all subject to a supplementary waiver which may adjust the foregoing limits to the extent QIA's ownership percentage increases solely as a result the Company's share buybacks.

Certain provisions in the partnership agreement of our operating partnership may also delay or make more difficult unsolicited acquisitions of us or changes of our control, including, among others: redemption rights of qualifying parties; transfer restrictions on operating partnership units; our ability, as general partner, in some cases, to amend the partnership agreement and to cause the operating partnership to issue units with terms that could delay, defer or prevent a merger or other change of control of us or our operating partnership without the consent of the limited partners; the right of the limited partners to consent to transfers of the general partnership interest and mergers or other transactions involving us under specified circumstances; and a redemption premium payable to the holders of our operating partnership's preferred units if our operating partnership decides, at its option, to redeem preferred units for cash upon the occurrence of certain fundamental transactions, such as a change of control.

Risks Related to our Common Stock and Traded OP Units

Our cash available for distribution may not be sufficient to make distributions at expected levels, and the market price of shares of our Class A common stock and traded OP units could be adversely affected by our level of cash distributions.

We intend to make distributions to holders of shares of our common stock and holders of operating partnership units. All dividends and distributions will be made at the discretion of our board and will depend on our earnings, financial condition, maintenance of REIT qualification and other factors as our board may deem relevant from time to time. If sufficient cash is not available for distribution from our operations, we may have to fund distributions from working capital or to borrow to provide funds for such distribution, or to reduce the amount of such distribution. We cannot assure you that our distributions will be made or sustained. Our failure to meet the market's expectations with regard to future earnings and cash distributions likely would adversely affect the market price of our Class A common stock and traded OP units.

The future exercise of registration rights may adversely affect the market price of our common stock.

In August 2016, we entered into a registration rights agreement with QIA in connection with its purchase of our Class A common stock, which requires us, subject to certain conditions, to maintain an effective shelf registration statement with the SEC providing for the resale of QIA's shares. The current registration statement filed on July 31, 2020 registers up to 29,894,869 shares. If QIA decides to sell all or a substantial portion of its shares, or there is market perception that it may intend to do so, it could have a material adverse impact on the market price of our Class A common stock.

Future issuances of debt or equity securities or preferred units may be dilutive to current securityholders and may materially adversely affect the market price of our traded securities.

In the future, we may issue debt or equity securities or make other borrowings. Our board, without stockholder approval, has the power under our charter to cause the company to issue additional shares of capital stock or debt securities, and our operating partnership may also issue additional operating partnership units without the consent of our securityholders. Upon liquidation, holders of our debt securities, preferred units and other loans and preferred shares will receive a distribution of our available assets before holders of shares of our common stock. We are not required to offer any such additional debt or equity securities to existing securityholders on a preemptive basis. Therefore, additional shares of our common stock issuances,

directly or through convertible or exchangeable securities (including operating partnership units), warrants or options, will dilute the holdings of our existing common securityholders and such issuances or the perception of such issuances may reduce the market price of shares of our common stock. Additionally, our preferred units or shares, if issued, would likely have a preference on distribution payments, periodically or upon liquidation, which could limit our ability to make distributions to holders of shares of our common stock.

ITEM 1B. UNRESOLVED STAFF COMMENTS

As of December 31, 2021, we did not have any unresolved comments from the staff of the SEC.

ITEM 2. PROPERTIES

Our Portfolio Summary

As of December 31, 2021, our office and retail portfolio consisted of 14 office properties and six standalone retail properties totaling approximately 10.1 million rentable square feet and was approximately 82.4% occupied, yielding approximately \$523.8 million of annualized rent. Our retail properties are comprised of retail space at the base of our Manhattan office properties, four standalone retail properties in Manhattan and two contiguous standalone retail properties in Westport, Connecticut. All of the Manhattan properties are located dynamic retail corridors with convenient access to mass transportation, a diverse tenant base and high pedestrian traffic. Giving effect to leases signed but not yet commenced, our portfolio was approximately 85.7% leased as of December 31, 2021. Additionally, at December 31, 2021, our portfolio included two multifamily properties located in Manhattan totaling 625 units. In addition, we owned entitled land that will support the development of an approximately 0.4 million rentable square foot office building and garage ("Metro Tower") at the Stamford Transportation Center in Stamford, Connecticut, adjacent to one of our office properties.

Office and Retail Portfolio

The table below presents an overview of our office and retail portfolio as of December 31, 2021.

Property Name	Location or Sub-Market	Rentable Square Feet ⁽¹⁾	Percent Occupied ⁽²⁾	Annualized Rent ⁽³⁾	Annualized Rent per Occupied Square Foot ⁽⁴⁾	Number of Leases ⁽⁵⁾
<i>Manhattan Office Properties - Office</i>						
The Empire State Building ⁽⁶⁾	Penn Station -Times Sq. South	2,715,148	82.0 %	\$ 138,571,093	\$ 62.22	153
One Grand Central Place	Grand Central	1,245,679	87.5 %	65,514,506	60.11	162
1400 Broadway ⁽⁷⁾	Penn Station -Times Sq. South	917,716	89.9 %	46,174,199	55.98	24
111 West 33rd Street ⁽⁸⁾	Penn Station -Times Sq. South	641,036	97.5 %	40,477,718	64.79	23
250 West 57th Street	Columbus Circle - West Side	466,143	81.7 %	23,693,696	62.24	33
501 Seventh Avenue	Penn Station -Times Sq. South	461,367	78.0 %	17,527,866	48.68	23
1359 Broadway	Penn Station -Times Sq. South	456,129	70.8 %	19,041,630	58.98	26
1350 Broadway ⁽⁹⁾	Penn Station -Times Sq. South	372,060	79.4 %	17,504,941	59.26	54
1333 Broadway	Penn Station -Times Sq. South	295,635	77.0 %	13,430,296	59.01	12
<i>Manhattan Office Properties - Office</i>		7,570,913	83.9 %	381,935,945	60.12	510
<i>Manhattan Office Properties - Retail</i>						
The Empire State Building	Penn Station -Times Sq. South	100,196	46.1 %	5,530,491	119.80	11
One Grand Central Place	Grand Central	68,733	98.9 %	8,615,690	126.80	12
1400 Broadway ⁽⁷⁾	Penn Station -Times Sq. South	20,176	77.2 %	1,731,713	111.21	7
112 West 34th Street ⁽⁸⁾	Penn Station -Times Sq. South	91,280	100.0 %	23,742,322	260.10	4
250 West 57th Street	Columbus Circle - West Side	67,927	86.3 %	8,732,706	148.90	6
501 Seventh Avenue	Penn Station -Times Sq. South	33,632	81.3 %	1,969,358	72.04	7
1359 Broadway	Penn Station -Times Sq. South	27,624	88.5 %	1,554,701	63.62	5
1350 Broadway	Penn Station -Times Sq. South	30,707	73.3 %	5,697,920	253.30	4
1333 Broadway	Penn Station -Times Sq. South	67,001	100.0 %	9,812,303	146.45	4
<i>Manhattan Office Properties - Retail</i>		507,276	83.0 %	67,387,204	160.11	60

Sub-Total/Weighted Average Manhattan Office Properties - Office and Retail		8,078,189	83.9 %	449,323,149	66.33	570
Greater New York Metropolitan Area Office Properties						
First Stamford Place ⁽¹⁰⁾	Stamford, CT	777,174	77.4 %	26,604,240	44.24	40
Metro Center	Stamford, CT	286,384	84.3 %	13,774,751	57.05	19
383 Main Street	Norwalk, CT	260,081	46.0 %	3,601,000	30.08	18
500 Mamaroneck Avenue	Harrison, NY	286,161	87.3 %	7,604,809	30.46	30
10 Bank Street	White Plains, NY	234,985	85.3 %	7,420,613	37.01	30
Sub-Total/Weighted Average Greater New York Metropolitan Office Properties		1,844,785	76.6 %	59,005,413	41.77	137
Standalone Retail Properties						
10 Union Square	Union Square	57,857	30.4 %	4,160,690	236.40	9
1542 Third Avenue	Upper East Side	56,250	100.0 %	3,343,039	59.43	4
1010 Third Avenue	Upper East Side	44,662	100.0 %	3,658,188	81.91	2
77 West 55th Street	Midtown	25,388	100.0 %	1,968,830	77.55	3
69-97 Main Street	Westport, CT	16,874	82.9 %	1,591,181	113.70	4
103-107 Main Street	Westport, CT	4,330	100.0 %	703,176	162.40	1
Sub-Total/Weighted Average Standalone Retail Properties		205,361	79.0 %	15,425,104	95.08	23
Portfolio Total		10,128,335	82.4 %	\$ 523,753,666	\$ 62.73	730
Total/Weighted Average Office Properties						
		9,415,698	82.5 %	\$ 440,941,358	\$ 56.78	647
Total/Weighted Average Retail Properties ⁽¹¹⁾						
		712,637	81.8 %	82,812,308	142.02	83
Portfolio Total ⁽¹²⁾						
		10,128,335	82.4 %	\$ 523,753,666	\$ 62.73	730

- (1) Excludes (i) 204,168 square feet of space across our portfolio attributable to building management use and tenant amenities and (ii) 79,613 square feet of space attributable to our observatory.
- (2) Based on leases signed and commenced as of December 31, 2021 and calculated as (i) rentable square feet less available square feet divided by (ii) rentable square feet.
- (3) Represents annualized base rent and current reimbursement for operating expenses and real estate taxes.
- (4) Represents annualized rent under leases commenced as of December 31, 2021 divided by occupied square feet.
- (5) Represents the number of leases at each property or on a portfolio basis. If a tenant has more than one lease, whether or not at the same property, but with different expirations, the number of leases is calculated equal to the number of leases with different expirations.
- (6) Includes 37,110 rentable square feet of space leased by our broadcasting tenants.
- (7) Denotes a ground leasehold interest in the property with a remaining term, including unilateral extension rights available to the Company, of approximately 42 years (expiring December 31, 2063).
- (8) Denotes a ground leasehold interest in the property with a remaining term, including unilateral extension rights available to the Company, of approximately 56 years (expiring May 31, 2077).
- (9) Denotes a ground leasehold interest in the property with a remaining term, including unilateral extension rights available to us, of approximately 29 years (expiring July 31, 2050).
- (10) First Stamford Place consists of three buildings.
- (11) Includes 507,276 rentable square feet of retail space in our Manhattan office properties.
- (12) Excludes 16,175 square feet of retail rentable space at two multifamily properties.

Tenant Diversification

As of December 31, 2021, our office and retail portfolios were leased to a diverse tenant base consisting of approximately 730 leases. Our tenants represent a broad array of industries as follows:

Diversification by Industry	Percent ⁽¹⁾
Arts and entertainment	3.1 %
Broadcast	1.1 %
Consumer goods	15.2 %
Finance, insurance, real estate	17.0 %
Government entity	2.1 %
Healthcare	2.0 %
Legal services	5.3 %
Media and advertising	4.6 %
Non-profit	4.6 %
Professional services (not including legal services)	10.0 %
Retail	17.1 %
Technology	13.1 %
Others	4.8 %
Total	100.0 %

⁽¹⁾ Based on annualized rent.

The following table sets forth information regarding the 20 largest tenants in our portfolio based on annualized rent as of December 31, 2021.

Tenant	Property	Lease Expiration ⁽¹⁾	Weighted Average Remaining Lease Term ⁽²⁾	Total Occupied Square Feet ⁽³⁾	Percent of Portfolio Rentable Square Feet ⁽⁴⁾	Annualized Rent ⁽⁵⁾	Percent of Portfolio Annualized Rent ⁽⁶⁾
LinkedIn	Empire State Building	Aug. 2036	14.7 years	418,552	4.1 %	\$ 26,656,726	5.1 %
PVH Corp.	501 Seventh Avenue	Oct. 2028	6.8 years	237,281	2.3 %	11,343,800	2.2 %
Centric Brands Inc.	Empire State Building	Oct. 2028	6.8 years	215,819	2.1 %	11,006,769	2.1 %
Sephora	112 West 34th Street	Jan. 2029	7.1 years	11,334	0.1 %	10,528,487	2.0 %
Li & Fung	1359 Broadway, ESB	Oct. 2023 -Oct. 2028	5.8 years	173,273	1.7 %	9,283,476	1.8 %
Macy's	111 West 33rd Street	May 2030	8.4 years	131,117	1.3 %	8,185,511	1.6 %
Coty Inc.	Empire State Building	Jan. 2030	8.1 years	156,187	1.5 %	7,943,754	1.5 %
Urban Outfitters	1333 Broadway	Sept. 2029	7.8 years	56,730	0.6 %	7,791,801	1.5 %
Federal Deposit Insurance Corp.	Empire State Building	Dec. 2024	3.0 years	119,226	1.2 %	7,584,532	1.4 %
Signature Bank	1333 & 1400 Broadway	Jul. 2030 - Apr. 2035	12.8 years	124,884	1.2 %	7,540,459	1.4 %
The Interpublic Group of Co's, Inc.	111 West 33rd Street & 1400 B'way	Feb. 2025	2.4 years	128,296	1.3 %	7,221,237	1.4 %
Foot Locker	112 West 34th Street	Sept. 2031	9.8 years	34,192	0.3 %	7,046,880	1.3 %
HNTB Corporation	Empire State Building	Feb. 2029	7.2 years	105,143	1.0 %	6,982,283	1.3 %
Franklin Templeton	First Stamford Place	Sept. 2024	2.8 years	137,583	1.4 %	6,426,634	1.2 %
Shutterstock	Empire State Building	Apr. 2029	7.3 years	104,386	1.0 %	5,974,821	1.1 %
Fragoman	1400 Broadway	Feb. 2035	13.2 years	107,680	1.1 %	5,922,400	1.1 %
The Michael J. Fox Foundation	111 West 33rd Street	Nov. 2029	7.9 years	86,492	0.9 %	5,649,928	1.1 %
ASCAP	250 West 57th Street	Aug. 2034	12.7 years	87,943	0.9 %	5,465,025	1.0 %
On Deck Capital, Inc.	1400 Broadway	Dec. 2026	5.0 years	83,266	0.8 %	5,004,365	1.0 %
Duane Reade	ESB, 1350 Broadway	May 2025 - Sept. 2027	4.5 years	39,142	0.4 %	4,830,412	0.9 %
Total				\$ 2,558,526	25.2 %	\$ 168,389,300	32.0 %

- (1) Expiration dates are per lease and do not assume exercise of renewal or extension options. For tenants with more than two leases, the lease expiration is shown as a range.
- (2) Represents the weighted average remaining lease term, based on annualized rent.
- (3) Based on leases signed and commenced as of December 31, 2021.
- (4) Represents the percentage of rentable square feet of our office and retail portfolios in the aggregate.
- (5) Represents annualized base rent and current reimbursement for operating expenses and real estate taxes.
- (6) Represents the percentage of annualized rent of our office and retail portfolios in the aggregate.

Lease Expirations

During 2019, we generally obtained higher base rents on new and renewed leases at our Manhattan office properties. 2021 and 2020 were not representative due to COVID-19. These increased rents are partly due to an increase in the total rentable square footage of such space as a result of remeasurement and application of market loss factors to our space.

The following table sets forth new and renewal leases entered into at our Manhattan office properties (excluding the retail component of these properties), the weighted average annualized cash rent per square foot for new and renewal leases executed during the year, the previous weighted average annualized cash rent prior to the renewal or re-leasing of these leases and the percent increase in mark-to-market rent.

	Year Ended December 31,		
	2021	2020	2019
New and renewal leases entered into during the year (square feet)	1,005,630	923,379	970,443
Weighted average annualized cash rent per square foot for new and renewal leases executed during the year	\$ 57.55	\$ 57.45	\$ 65.91
Weighted average annualized cash rent per square foot for previous leases	\$ 58.04	\$ 61.18	\$ 54.72
Increase (decrease) in mark-to-market rent	(0.8)%	(6.1)%	20.4 %

The following tables set forth a summary schedule of expirations for leases in place as of December 31, 2021 plus available space for each of the ten calendar years beginning with the year ended December 31, 2021 at the office and retail properties in our portfolio. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights. The table excludes 16,175 of retail rentable square feet at two multifamily properties.

All Office and Retail Properties

Year of Lease Expiration	Number of Leases Expiring ⁽¹⁾	Rentable Square Feet Expiring ⁽²⁾	Percent of Portfolio Rentable Square Feet Expiring	Annualized Rent ⁽³⁾	Percent of Annualized Rent	Annualized Rent Per Rentable Square Foot
Available	—	1,448,024	14.3 %	\$ —	— %	\$ —
Signed leases not commenced	30	331,510	3.3 %	—	— %	—
Fourth quarter 2021	16	62,128	0.6 %	3,029,820	0.6 %	48.77
2022	105	575,796	5.7 %	32,670,890	6.2 %	56.74
2023	94	634,713	6.3 %	39,622,216	7.6 %	62.43
2024	94	838,787	8.3 %	48,675,426	9.3 %	58.03
2025	88	548,091	5.4 %	33,535,725	6.4 %	61.19
2026	71	791,371	7.8 %	42,960,506	8.2 %	54.29
2027	73	611,080	6.0 %	38,944,131	7.4 %	63.73
2028	40	918,804	9.1 %	48,951,154	9.3 %	53.28
2029	41	903,943	8.9 %	65,438,879	12.5 %	72.39
2030	36	717,208	7.1 %	47,398,789	9.0 %	66.09
2031	19	159,145	1.6 %	19,493,200	3.7 %	122.49
Thereafter	53	1,587,735	15.6 %	103,032,930	19.8 %	64.89
Total	760	10,128,335	100.0 %	\$523,753,666	100.0 %	\$ 62.73

Manhattan Office Properties ⁽⁴⁾

Year of Lease Expiration	Number of Leases Expiring ⁽¹⁾	Rentable Square Feet Expiring ⁽²⁾	Percent of Portfolio Rentable Square Feet Expiring	Annualized Rent ⁽³⁾	Percent of Annualized Rent	Annualized Rent Per Rentable Square Foot
Available	—	981,727	13.0 %	\$ —	— %	\$ —
Signed leases not commenced	18	236,152	3.1 %	—	— %	—
Fourth quarter 2021	11	48,900	0.6 %	2,799,183	0.7 %	57.24
2022	73	354,592	4.7 %	20,349,570	5.3 %	57.39
2023	74	474,339	6.3 %	29,082,557	7.6 %	61.31
2024	73	621,040	8.2 %	37,606,241	9.8 %	60.55
2025	54	354,559	4.7 %	22,963,843	6.0 %	64.77
2026	51	571,774	7.6 %	32,924,790	8.6 %	57.58
2027	51	440,876	5.8 %	26,386,783	6.9 %	59.85
2028	26	799,889	10.6 %	43,248,632	11.3 %	54.07
2029	27	647,901	8.6 %	38,825,165	10.2 %	59.92
2030	21	607,354	8.0 %	36,909,918	9.7 %	60.77
2031	10	79,806	1.1 %	5,650,883	1.5 %	70.81
Thereafter	39	1,352,004	17.7 %	85,188,380	22.4 %	63.01
Total	528	7,570,913	100.0 %	\$381,935,945	100.0 %	\$ 60.12

Greater New York Metropolitan Area Office Properties

Year of Lease Expiration	Number of Leases Expiring ⁽¹⁾	Rentable Square Feet Expiring ⁽²⁾	Percent of Portfolio Rentable Square Feet Expiring	Annualized Rent ⁽³⁾	Percent of Annualized Rent	Annualized Rent Per Rentable Square Foot
Available	—	403,698	21.9 %	\$ —	— %	\$ —
Signed leases not commenced	7	28,427	1.5 %	—	— %	—
Fourth quarter 2021	3	1,836	0.1 %	51,622	0.1 %	28.12
2022	24	176,698	9.6 %	7,191,472	12.2 %	40.70
2023	15	152,874	8.3 %	7,159,068	12.1 %	46.83
2024	13	191,633	10.4 %	8,502,782	14.4 %	44.37
2025	31	173,068	9.4 %	6,329,977	10.7 %	36.58
2026	14	152,836	8.3 %	5,943,591	10.1 %	38.89
2027	15	114,165	6.2 %	4,394,893	7.4 %	38.50
2028	9	107,564	5.8 %	3,867,238	6.6 %	35.95
2029	6	149,116	8.1 %	6,507,235	11.0 %	43.64
2030	5	41,116	2.2 %	1,962,709	3.3 %	47.74
2031	—	—	— %	—	— %	—
Thereafter	2	151,754	8.2 %	7,094,826	12.1 %	46.75
Total	144	1,844,785	100.0 %	\$ 59,005,413	100.0 %	\$ 41.77

Retail ⁽⁵⁾

Year of Lease Expiration	Number of Leases Expiring ⁽¹⁾	Rentable Square Feet Expiring ⁽²⁾	Percent of Portfolio Rentable Square Feet Expiring	Annualized Rent ⁽³⁾	Percent of Annualized Rent	Annualized Rent Per Rentable Square Foot
Available	—	62,599	8.8 %	\$ —	— %	\$ —
Signed leases not commenced	5	66,931	9.4 %	—	— %	—
Fourth quarter 2021	2	11,392	1.6 %	179,015	0.2 %	15.71
2022	8	44,506	6.2 %	5,129,848	6.2 %	115.26
2023	5	7,500	1.1 %	3,380,591	4.1 %	450.75
2024	8	26,114	3.7 %	2,566,403	3.1 %	98.28
2025	3	20,464	2.9 %	4,241,905	5.1 %	207.29
2026	6	66,761	9.4 %	4,092,125	4.9 %	61.30
2027	7	56,039	7.9 %	8,162,455	9.9 %	145.66
2028	5	11,351	1.6 %	1,835,284	2.2 %	161.68
2029	8	106,926	15.0 %	20,106,479	24.3 %	188.04
2030	10	68,738	9.6 %	8,526,162	10.3 %	124.04
2031	9	79,339	11.1 %	13,842,317	16.7 %	174.47
Thereafter	12	83,977	11.7 %	10,749,723	13.0 %	128.01
Total	88	712,637	100.0 %	\$ 82,812,307	100.0 %	\$ 142.02

The Empire State Building ⁽⁶⁾

Year of Lease Expiration	Number of Leases Expiring ⁽¹⁾	Rentable Square Feet Expiring ⁽²⁾	Percent of Portfolio Rentable Square Feet Expiring	Annualized Rent ^{(3) (7)}	Percent of Annualized Rent	Annualized Rent Per Rentable Square Foot
Available	—	430,014	15.8 %	\$ —	— %	\$ —
Signed leases not commenced	2	58,120	2.1 %	—	— %	—
Fourth quarter 2021	2	6,971	0.3 %	333,750	0.2 %	47.88
2022	21	120,124	4.4 %	6,881,935	5.0 %	57.29
2023	24	99,464	3.7 %	6,783,696	4.9 %	68.20
2024	23	271,661	10.0 %	18,074,834	13.0 %	66.53
2025	14	110,331	4.1 %	7,400,687	5.3 %	67.08
2026	12	132,831	4.9 %	8,224,278	5.9 %	61.92
2027	18	57,581	2.1 %	3,818,249	2.8 %	66.31
2028	7	371,238	13.7 %	19,810,835	14.3 %	53.36
2029	7	282,020	10.4 %	17,571,549	12.7 %	62.31
2030	6	210,800	7.8 %	11,468,411	8.3 %	54.40
2031	5	23,038	0.8 %	1,918,571	1.4 %	83.28
Thereafter	14	540,955	19.9 %	36,284,298	26.2 %	67.07
Total	155	2,715,148	100.0 %	\$ 138,571,093	100.0 %	\$ 62.22

The Empire State Building Broadcasting Licenses and Leases

Year of Lease Expiration	Annualized Base Rent ⁽⁸⁾	Annualized Expense Reimbursements	Annualized Rent ⁽³⁾	Percent of Annualized Rent
Fourth quarter 2021	\$ 31,710	\$ 14,903	\$ 46,613	0.3 %
2022	—	—	—	— %
2023	285,588	69,728	355,316	2.4 %
2024	68,958	39,416	108,374	0.7 %
2025	—	—	—	— %
2026	848,556	103,900	952,456	6.4 %
2027	2,613,626	600,207	3,213,833	21.7 %
2028	261,200	9,633	270,833	1.8 %
2029	—	—	—	— %
2030	2,082,250	326,484	2,408,734	16.3 %
2031	1,855,250	272,818	2,128,068	14.4 %
Thereafter	4,703,059	635,565	5,338,624	36.0 %
Total	\$ 12,750,197	\$ 2,072,654	\$ 14,822,851	100.0 %

- (1) If a lease has two different expiration dates, it is considered to be two leases (for the purposes of lease count and square footage).
- (2) Excludes (i) 204,168 rentable square feet across our portfolio attributable to building management use and tenant amenities and (ii) 79,613 square feet of space attributable to our observatory.
- (3) Represents annualized base rent and current reimbursement for operating expenses and real estate taxes.
- (4) Excludes (i) retail space in our Manhattan office properties and (ii) the Empire State Building broadcasting licenses and observatory operations.
- (5) Includes an aggregate of 507,276 rentable square feet of retail space in our Manhattan office properties. Excludes the Empire State Building broadcasting licenses and observatory operations.
- (6) Excludes retail space, broadcasting licenses and observatory operations.
- (7) Includes approximately \$4.3 million of annualized rent related to physical space occupied by broadcasting tenants for their broadcasting operations. Does not include license fees charges to broadcast tenants.
- (8) Represents license fees for the use of the Empire State Building mast and base rent for the physical space occupied by broadcasting tenants.

Investments in Real Estate

On December 22, 2021, we closed on the acquisition of two multifamily assets, the Victory (561 10th Avenue) and 345 East 94th Street, previously owned by a joint venture of Fetner Properties and an institutional owner. The total transaction value was \$307 million, inclusive of \$186 million of assumed debt. Fetner Properties retained a 10% equity stake and continues to manage onsite operations. We will asset manage the properties, make all decisions, and have the right to assume day-to-day management for no additional consideration. The two properties have a total of 625 units and were 96.4% occupied as of December 31, 2021.

Redevelopment and Repositioning

We have been undertaking a comprehensive redevelopment and repositioning strategy of our Manhattan office properties that has included the physical improvement through upgrades and modernization of, and tenant upgrades in, such properties. Since we assumed full control of the day-to-day management of our Manhattan office properties beginning with One Grand Central Place in 2002, and through December 31, 2021, we have invested a total of approximately \$966.7 million (excluding tenant improvement costs and leasing commissions) in our Manhattan office properties pursuant to this program. We intend to fund capital improvements through a combination of operating cash flow, cash on hand and borrowings.

The improvements, within our redevelopment and repositioning program, include restored, renovated and upgraded or new lobbies, elevator modernization, renovated public areas and bathrooms, refurbished or new windows, upgrade and standardization of retail storefront and signage, façade restorations, modernization of building-wide systems, with a focus on energy efficiency and indoor environmental quality, and enhanced tenant amenities. These improvements are designed to improve the overall value and attractiveness of our properties and have contributed significantly to our tenant repositioning efforts, which seek to increase our occupancy, raise our rental rates, increase our rentable square feet, increase our aggregate rental revenue, lengthen our average lease term, increase our average lease size, and improve our tenant credit quality. We have also aggregated smaller spaces in order to offer larger blocks of office space, including multiple floors, that are attractive to

larger, higher credit-quality tenants, as well as to offer new, pre-built suites with improved layouts. This strategy has shown what we believe to be attractive results to date, and we believe has the potential to improve our operating margins and cash flows in the future. We believe we will continue to enhance our tenant base and improve rents as our pre-redevelopment leases continue to expire and be re-leased.

We believe the high quality of our buildings, services and amenities, their desirable locations and commuter access to mass transportation represent a value proposition with rents at a substantially lower price point than new construction and offering a premium product when compared to similar-vintage unrenovated buildings. Management believes the replacement cost of these properties substantially exceeds their implied value by our current stock price.

The greater New York metropolitan area office market is soft, and we compete with properties that have been redeveloped recently or have planned redevelopment. We have spent approximately \$41 million over 2018 through 2021 on our well-maintained and well-located properties' common areas and amenities to ensure competitiveness and protect our market position.

ITEM 3. LEGAL PROCEEDINGS

Refer to "Financial Statements-Note 9-Commitments and Contingencies" in this Annual Report on Form 10-K for a description of any pending legal proceedings.

ITEM 4. MINE SAFETY DISCLOSURE

Not applicable.

PART II

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

Market Information

Our Class A common stock is listed on the New York Stock Exchange (the "NYSE"), under the symbol "ESRT." Our Class B common stock is not listed on any exchange and is not traded. Each share of Class B common stock may be converted to one share of Class A common stock at any time.

Our operating partnership has four series of partnership units ("OP Units") - Series PR OP Units, Series ES OP Units, Series 60 OP Units and Series 250 OP Units. The Series ES OP Units, Series 60 OP Units and Series 250 OP Units (together, the "traded OP units") are listed on the NYSE Arca, Inc. exchange ("NYSE Arca") under the symbols "ESBA," "OGCP," and "FISK," respectively. The Series PR OP Units are not listed on any exchange and are not traded.

On February 18, 2022, the last sales price for our Class A common stock on the NYSE was \$9.47 per share.

Holders

As of February 18, 2022, we had 576 registered holders of our Class A common stock and 578 registered holders of our Class B common stock. As of February 18, 2022, we had approximately 603 registered holders of Series PR OP Units, 1,343 registered holders of Series ES OP Units, 406 registered holders of Series 60 OP Units and 288 registered holders of Series 250 OP Units. Certain shares of common stock and OP Units are held in "street" name and accordingly, the number of beneficial owners of such shares of common stock and OP Units is not known or included in the foregoing totals.

Dividends

We intend to pay regular quarterly dividends to holders of our Class A common stock and Class B common stock, at least to the extent of our taxable income or as required to maintain our qualification as a REIT. Any distributions we pay in the future will depend upon our taxable income, actual results of operations, economic conditions and other factors that could differ materially from our current expectations. Our actual results of operations will be affected by a number of factors, including the revenue we receive from our properties, our operating expenses, interest expense, the ability of our tenants to meet their obligations and unanticipated expenditures.

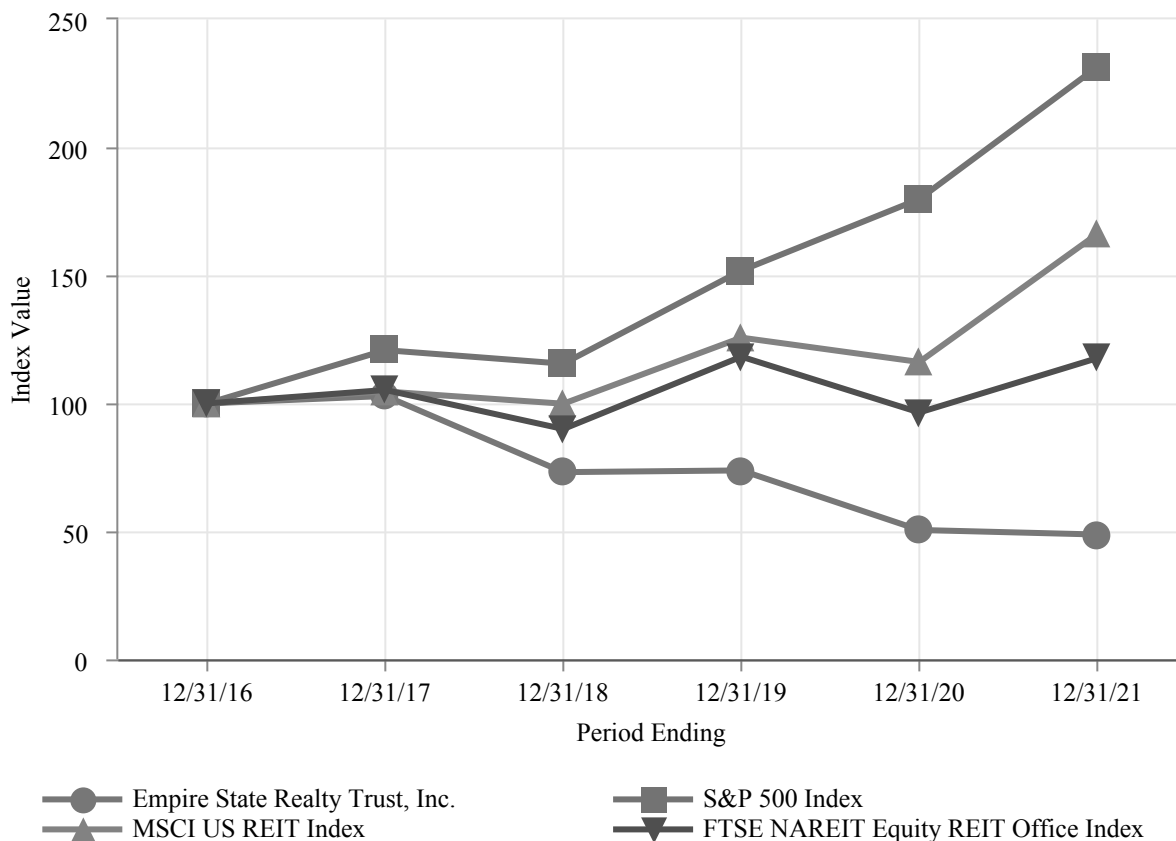
During May 2021, we announced our decision to reinstate the quarterly dividend, one quarter earlier than previously announced, driven by confidence in the New York City recovery and improvement in our operating results and liquidity. We declared dividends of \$0.035 per share for the second, third and fourth quarters of 2021, which equates to an annualized rate of \$0.14 per share.

Our board will continue our regular review of dividend and capital allocation policies. Distributions declared by us will be authorized by our board in its sole discretion out of funds legally available therefore and will be dependent upon a number of factors, including restrictions under applicable law, our capital requirements and the distribution requirements necessary to maintain our qualification as a REIT. See Item 1A, "Risk Factors," and Item 7, "Management's Discussion and Analysis of Financial Conditions and Results of Operations," of this Annual Report on Form 10-K, for information regarding the sources of funds used for dividends and for a discussion of factors, if any, which may adversely affect our ability to make distributions to our securityholders.

Earnings and profits, which determine the tax treatment of distributions to securityholders, will differ from income reported for financial reporting purposes due to the differences for federal income tax purposes, including, but not limited to, treatment of loss on extinguishment of debt, revenue recognition, compensation expense, and basis of depreciable assets and estimated useful lives used to compute depreciation. Dividends paid in the second, third and fourth quarters of 2021 of \$0.105 per share are classified for income tax purposes 16.2% as taxable ordinary dividends eligible for the Section 199A deduction and 83.8% as a return of capital.

Stockholder Return Performance

The following graph is a comparison of the cumulative total stockholder return on our Class A common stock, the Standard & Poor's 500 Index (the "S&P 500 Index"), the FTSE NAREIT All Equity Index (the "FTSE NAREIT All Equity Index") and the FTSE NAREIT Equity REIT Office Index ("FTSE NAREIT Equity REIT Office Index"). The graph assumes that \$100.00 was invested on December 31, 2016 and dividends were reinvested without the payment of any commissions. There can be no assurance that the performance of our Class A common stock will continue in line with the same or similar trends depicted in the graph below.



	December 31, 2016	December 31, 2017	December 31, 2018	December 31, 2019	December 31, 2020	December 31, 2021
Empire State Realty Trust, Inc.	\$ 100.00	\$ 102.90	\$ 73.15	\$ 73.82	\$ 50.56	\$ 48.78
S&P 500 Index	\$ 100.00	\$ 120.80	\$ 115.51	\$ 151.88	\$ 179.82	\$ 231.44
MSCI US REIT Index	\$ 100.00	\$ 104.66	\$ 99.88	\$ 125.69	\$ 116.17	\$ 166.20
FTSE NAREIT Equity REIT Office Index	\$ 100.00	\$ 105.25	\$ 89.99	\$ 118.26	\$ 96.46	\$ 117.68

The graph is not deemed incorporated by reference into any filing made under the Securities Act of 1933, as amended (the "Securities Act"), or the Exchange Act regardless of any general statement regarding incorporation by reference in any such filing, and is not otherwise deemed filed under the Securities Act or the Exchange Act.

Securities Authorized For Issuance Under Equity Compensation Plans

On May 16, 2019, our shareholders approved the Empire State Realty Trust, Inc. Empire State Realty OP, L.P. 2019 Equity Incentive Plan (the "2019 Plan"). The 2019 Plan provides for grants to directors, employees and consultants of our company and operating partnership, including options, restricted stock, restricted stock units, stock appreciation rights, performance awards, dividend equivalents and other equity-based awards, including LTIP units. An aggregate of approximately 11.0 million shares of our common stock are authorized for issuance under awards granted pursuant to the 2019 Plan. Following adoption by our shareholders of the 2019 Plan, we agreed not to issue any new equity awards under the First

Amended and Restated Empire State Realty Trust, Inc. and Empire State Realty OP, L.P. 2013 Equity Incentive Plan ("2013 Plan", and collectively with the 2019 Plan, "the Plans"), which we adopted upon our IPO in 2013. The shares of Class A common stock underlying any awards under the 2019 Plan and the 2013 Plan that are forfeited, canceled or otherwise terminated, other than by exercise, will be added back to the shares of Class A common stock available for issuance under the 2019 Plan. For a further discussion of the Plans, see Note 10 to the consolidated financial statements included under Item 8 "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.

The following table presents certain information about our equity compensation plans as of December 31, 2021:

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in the first column of this table)
Equity compensation plans approved by securityholders ⁽¹⁾	N/A	N/A	7,694,642 ⁽²⁾
Equity compensation plans not approved by securityholders	—	—	—
Total	N/A	N/A	7,694,642

- (1) These consist of the Empire State Realty Trust, Inc. Empire State Realty OP, L.P. 2019 Equity Incentive Plan and the First Amended and Restated Empire State Realty Trust, Inc. and Empire State Realty OP, L.P. 2013 Equity Incentive Plan.
- (2) The number of securities remaining available for future issuance consists of shares remaining available for issuance under the Empire State Realty Trust, Inc. Empire State Realty OP, L.P. 2019 Equity Incentive Plan adjusted for awards that have been forfeited, canceled or otherwise terminated, other than by exercise under the Empire State Realty Trust, Inc. Empire State Realty OP, L.P. 2019 Equity Incentive Plan and the First Amended and Restated Empire State Realty Trust, Inc. and Empire State Realty OP, L.P. 2013 Equity Incentive Plan.

As of December 31, 2021, we have issued 572,451 shares of restricted stock and 12,094,605 LTIP units under the Plans since 2013.

Recent Sales of Unregistered Securities Use of Proceeds from Registered Securities;

Not applicable.

Repurchases of Equity Securities Stock and Publicly Traded Operating Partnership Unit Repurchase Program

Our Board of Directors authorized the repurchase of up to \$500 million of our Class A common stock and the Operating Partnership's Series ES, Series 250 and Series 60 operating partnership units from January 1, 2021 through December 31, 2021 and reauthorized a new \$500 million from January 1, 2022 through December 31, 2023. Under the program, we may purchase our Class A common stock and the Operating Partnership's Series ES, Series 250 and Series 60 operating partnership units in accordance with applicable securities laws from time to time in the open market or in privately negotiated transactions. The timing, manner, price and amount of any repurchases will be determined by us at our discretion and will be subject to stock price, availability, trading volume and general market conditions. The authorization does not obligate us to acquire any particular amount of securities, and the program may be suspended or discontinued at our discretion without prior notice.

The following table summarizes our purchases of equity securities in each of the three months of the fourth quarter 2021 under the 2021 Repurchase Program:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plan	Maximum Approximate Dollar Value Available for Future Purchase (in thousands)
October 2021	—	\$ —	—	\$ —
November 2021	1,452,168	\$ 10.06	1,452,168	\$ 475,343
December 2021	2,426,091	\$ 9.09	2,426,091	\$ 453,296

ITEM 6. [RESERVED]

Not applicable.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act. We intend these forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and are including this statement for purposes of complying with those safe harbor provisions. You can identify forward-looking statements by the use of forward-looking terminology such as "believes," "expects," "may," "will," "should," "seeks," "approximately," "intends," "plans," "estimates," "contemplates," "aims," "continues," "would" or "anticipates" or the negative of these words and phrases or similar words or phrases. In particular, statements pertaining to our capital resources, portfolio performance, dividend policy and results of operations contain forward-looking statements. Likewise, all of our statements regarding anticipated growth in our portfolio from operations, acquisitions and anticipated market conditions, demographics and results of operations are forward-looking statements.

Forward-looking statements are subject to substantial risks and uncertainties, many of which are difficult to predict and are generally beyond our control, and you should not rely on them as predictions of future events. Forward-looking statements depend on assumptions, data or methods which may be incorrect or imprecise, and we may not be able to realize them. We do not guarantee that the transactions and events described will happen as described (or that they will happen at all).

The following factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements: (i) economic, political and social impact of, and uncertainty relating to, the COVID-19 pandemic; (ii) a failure of conditions or performance regarding any event or transaction described herein, (iii) resolution of legal proceedings involving the Company; (iv) reduced demand for office, multifamily or retail space, including as a result of the COVID-19 pandemic; (v) changes in our business strategy; (vi) changes in technology and market competition that affect utilization of our office, retail, broadcast or other facilities; (vii) changes in domestic or international tourism, including due to health crises such as the COVID-19 pandemic, geopolitical events and/or currency exchange rates, which may cause a decline in Observatory visitors; (viii) defaults on, early terminations of, or non-renewal of, leases by tenants; (ix) increases in the Company's borrowing costs as a result of changes in interest rates and other factors, including the potential phasing out of LIBOR after 2021; (x) declining real estate valuations and impairment charges; (xi) termination of our ground leases; (xii) changes in our ability to pay down, refinance, restructure or extend our indebtedness as it becomes due and potential limitations on our ability to borrow additional funds in compliance with drawdown conditions and financial covenants; (xiii) decreased rental rates or increased vacancy rates; (xiv) our failure to execute any newly planned capital project successfully or on the anticipated timeline or at the anticipated costs; (xv) difficulties in identifying and completing acquisitions; (xvi) risks related to our development projects (including our Metro Tower development site); (xvii) impact of changes in governmental regulations, tax laws and rates and similar matters; (xviii) our failure to qualify as a REIT; (xix) environmental uncertainties and risks related to climate change, adverse weather conditions, rising sea levels and natural disasters; and (xx) accuracy of our methodologies and estimates regarding ESG metrics and goals, tenant willingness and ability to collaborate in reporting ESG metrics and meeting ESG goals, and impact of governmental regulation on our ESG efforts. For a further discussion of these and other factors that could impact the company's future results, performance or transactions, see the section entitled "Risk Factors" of this Annual Report on Form 10-K.

While forward-looking statements reflect the company's good faith beliefs, they are not guarantees of future performance. The company disclaims any obligation to update or revise publicly any forward-looking statement to reflect changes in underlying assumptions or factors, new information, data or methods, future events, or other changes after the date of this Annual Report on Form 10-K, except as required by applicable law. Prospective investors should not place undue reliance on any forward-looking statements, which are based only on information currently available to the company.

Overview

Unless the context otherwise requires or indicates, references in this section to "we," "our" and "us" refer to our company and its consolidated subsidiaries.

The following discussion and analysis should be read in conjunction with our consolidated financial statements as of December 31, 2021 and 2020 and for the years ended December 31, 2021, 2020 and 2019 and the notes related thereto which are included in this Annual Report on Form 10-K.

2021 Highlights

- Net loss attributable to the company of \$10.7 million.
- Core FFO of \$194.9 million.
- Signed 129 leases, new, renewal, and expansion leases, representing 1,005,630 rentable square feet. This included 87 leases representing 801,254 rentable square feet for the Manhattan office portfolio.
- On December 22, 2021, we completed the acquisition of 625 units in two Manhattan multifamily assets with a total transaction value of \$307 million, inclusive of \$186 million of assumed debt. We now own a 90% interest, and a Fetner Properties affiliate retained a 10% interest.

Impact of COVID-19

In March 2020, the outbreak of COVID-19 was recognized as a pandemic by the World Health Organization. The spread of COVID-19 has created a global public health crisis that has resulted in unprecedented economic, social and political uncertainty, volatility and disruption in the United States and globally. The following sections discuss specific COVID-19 impacts on our business operations.

Liquidity

We currently hold \$423.7 million in cash and cash equivalents on our balance sheet and have \$850 million undrawn capacity under our unsecured revolving credit facility. Our \$850 million unsecured revolving credit facility matures in March 2025 and has two six-month extension options, subject to certain conditions.

Property Operations

All of our office buildings have remained open during the COVID-19 pandemic. We have scaled back certain building operations in cleaning, security, lobby concierge and recurring maintenance, which reduced costs until buildings are repopulated. A portion of the reduction in operating expenses was offset by a reduction in tenant expense recoveries.

Our operations team worked diligently to develop and implement plans for tenants' reoccupation of our buildings to ensure a safe, clean and healthy work environment. These plans involved staff reassigned to screen tenants and visitors, changes to cleaning and maintenance standards, and changes to building operations for access by tenants and their guests.

Despite the challenge of the uncertain near-term environment, we continue to believe in the long-term demand for office space. We believe many tenants have acknowledged the challenges, inequities, and worries about divided workplaces between home and office work, the challenges with onboarding new employees and miss the connectivity and productivity that an office environment provides.

Leasing

The economic uncertainty and concerns over health and safety relating to the COVID-19 pandemic has slowed the pace of our leasing activity and could result in higher vacancy than we otherwise would have experienced, a longer amount of time to fill vacancies, increased concessions and potentially lower rental rates. In addition, the potential for continued remote work or hybrid remote/in-person work arrangements could negatively impact the office leasing market. As of December 31, 2021, our portfolio was 85.7% leased, including signed leases not yet commenced, with 5.7% subject to leases scheduled to expire in 2022 and 6.3% subject to leases scheduled to expire in 2023.

New leasing activity was impacted during 2020 by the COVID-19 pandemic and shelter-in-place rules that were in effect for much of the period. On June 15, 2021, New York State ended pandemic-linked restrictions given the broad-based distribution of the COVID-19 vaccine. During the second quarter 2021, we experienced a sustained increase in leasing tour volume in our Manhattan office portfolio which led to our improved leasing performance in the third and fourth quarters of 2021.

Our smaller food and service type retailers have been hit particularly hard. They provide critical amenities and services to our office tenants. In many instances, we have converted some of their fixed rent to a percentage rent structure. We intend to support our food and service retailers so that they can service our office tenants as they continue to re-occupy.

Retailers, in general, have been hardest hit by the pandemic. Our retail-orientated tenants are no exception. As with all landlords, we are working with some of our tenants that are financially challenged. Some of these tenants may end up in bankruptcy or default in their leases in the near term.

On July 29, 2021, GBG USA Inc., an indirect wholly-owned subsidiary of Global Brands Group Holding Limited, announced that its North America wholesale business and certain subsidiaries and affiliates (collectively, "GBG USA") filed for bankruptcy under Chapter 11 (the "GBG Bankruptcy"). At the time of the filing, GBG USA leased 353,325 square feet of office space at 1333 Broadway and the Empire State Building, or 3.5%, of our total portfolio rentable square feet, representing approximately 3.6% of total portfolio annualized rent. Of that total, all but 191,000 square feet, or 1.9% of our total portfolio rentable square feet, has been sublet to tenants, where both GBG USA and the subtenant are liable for the rent, and we have the right to require the subtenant to pay directly to us. The sublets are for GBG USA's entire premises at 1333 Broadway and have been in effect for several years. We have current discussions to convert the subtenants to direct tenants. Subsequently, GBG USA filed to reject their leases and both lease rejections were approved by the bankruptcy court during the third quarter.

In the third quarter we recorded a \$1.6 million non-cash write-off of the straight-line receivables related to GBG USA's 1333 Broadway lease.

We collected rent from GBG USA through June 2021 and have converted the full balance of its \$17.0 million letter of credit to cash, which was applied as follows:

- \$5.2 million was applied against GBG USA's straight-line rent receivable balance related to their lease at the Empire State Building,
- \$1.7 million was recognized as GAAP rental revenue for the partial period in the third quarter when their lease remained in place, and
- \$10.1 million was recognized as lease termination income.

Observatory Operations

On March 16, 2020, we complied with governmental mandates regarding the closing of non-essential businesses in response to the COVID-19 pandemic and closed the Empire State Building observatory. The 86th floor observatory deck reopened on July 20, 2020 and the 102nd floor observation deck reopened on August 24, 2020.

Due to the lifting of New York State COVID-19 restrictions, on June 16, 2021, the observatory fully reopened with interactive exhibits. We continue to operate with reduced hours, staffing, services, operating costs, credit card fees and marketing expenses. We have seen a higher local visitor mix, followed by a ramp up of nationally sourced travel. We anticipate this pattern will then be followed by a restoration of our typical visitor mix that is approximately two-thirds international which we do not expect to achieve until the broad resumption of international air travel some time in 2022.

The closure and gradual ramp-up of our observatory operations caused us during each quarter of 2020 and throughout each quarter of 2021 to choose to perform an impairment test related to goodwill. We engaged a third-party valuation consulting firm to perform the valuation process. Based upon the results of the most recent goodwill impairment test of the stand-alone observatory reporting unit, which is after the intercompany rent expense paid to the Real Estate reporting unit, we determined that the fair value of the observatory reporting unit exceeded its carrying value by less than 15.0%. Many of the factors employed in determining whether or not we would need to record a non-cash goodwill impairment charge are outside of our control and it is reasonably likely that assumptions and estimates will change in future periods. We will continue to assess the impairment of the observatory reporting unit goodwill going forward and that continued assessment may again utilize a third-party valuation consulting firm. Goodwill allocated to the observatory reporting unit was \$227.5 million at December 31, 2021.

Results of Operations

Overview

The discussion below relates to the financial condition and results of operations for the years ended December 31, 2021 and 2020.

Year Ended December 31, 2021 Compared to the Year Ended December 31, 2020

The following table summarizes the historical results of operations for the years ended December 31, 2021 and 2020 (amounts in thousands):

	Years Ended December 31,		Change	%
	2021	2020		
Revenues:				
Rental revenue	\$ 559,690	\$ 563,071	\$ (3,381)	(0.6)%
Observatory revenue	41,474	29,057	12,417	42.7 %
Lease termination fees	16,230	9,416	6,814	72.4 %
Third-party management and other fees	1,219	1,225	(6)	(0.5)%
Other revenues and fees	5,481	6,459	(978)	(15.1)%
Total revenues	624,094	609,228	14,866	2.4 %
Operating expenses:				
Property operating expenses	126,986	136,141	9,155	6.7 %
Ground rent expenses	9,326	9,326	—	— %
General and administrative expenses	55,947	62,244	6,297	10.1 %
Observatory expenses	23,206	23,723	517	2.2 %
Real estate taxes	119,967	121,923	1,956	1.6 %
Impairment charges	7,723	6,204	(1,519)	(24.5)%
Depreciation and amortization	201,806	191,006	(10,800)	(5.7)%
Total operating expenses	544,961	550,567	5,606	1.0 %
Operating income	79,133	58,661	20,472	34.9 %
Other income (expense):				
Interest income	704	2,637	(1,933)	(73.3)%
Interest expense	(94,394)	(89,907)	(4,487)	(5.0)%
Loss on early extinguishment of debt	(214)	(86)	(128)	(148.8)%
IPO litigation expense	—	(1,165)	1,165	100.0 %
Loss before income taxes	(14,771)	(29,860)	15,089	(50.5)%
Income tax benefit	1,734	6,971	(5,237)	(75.1)%
Net loss	(13,037)	(22,889)	9,852	(43.0)%
Private perpetual preferred unit distributions	(4,201)	(4,197)	(4)	(0.1)%
Net loss attributable to non-controlling interests	6,527	10,374	(3,847)	37.1 %
Net loss attributable to common shareholders	\$ (10,711)	\$ (16,712)	\$ 6,001	(35.9)%

Rental Revenue and Tenant Expense Reimbursement

The decrease in rental revenue was attributable to lower occupancy, straight-line rent write-offs and lower tenant expense reimbursements, consistent with lower property operating expenses.

Observatory Revenue

Observatory revenues were higher driven by increased visitation due to a reduction in COVID-19 restrictions in 2021.

Lease Termination Fees

Higher termination fees were earned in the year ended December 31, 2021 compared to the year ended December 31, 2020.

Property Operating Expenses

The decrease in property operating expenses was primarily due to lower payroll costs, lower repair and maintenance costs, and other lower operating expenses. The lower costs are primarily driven by lower tenant utilization in our buildings.

General and Administrative Expenses

The decrease in general and administrative expenses was primarily due to lower equity compensation expense, lower severance costs and lower legal costs than the year ended December 31, 2020.

Observatory Expenses

The modest decline in observatory expenses was driven by cost controls and reduced hours of operation instituted in response to reduced visitors due to COVID-19 travel restrictions for the vast majority of 2021.

Real Estate Taxes

Lower real estate taxes in the year ended December 31, 2021 were attributable to the overall reduction in property assessment values due to the impact of COVID-19.

Depreciation and Amortization

The increase in depreciation and amortization reflects tenant improvement write-offs primarily related to GBG USA.

Interest Income

The decrease in interest income reflects higher cash investments in the year ended December 31, 2020 compared to the year ended December 31, 2021 and lower interest rates in the year ended December 31, 2021.

Interest Expense

Interest expense increased due to higher debt balances and higher deferred financing cost amortization reflecting higher deferred financing cost balances associated with new debt.

Income Taxes

The decrease in income tax benefit was attributable to lower net operating loss for the observatory segment.

Net Loss Attributable to Non-controlling Interests

The decrease represents lower net loss for the year ended December 31, 2021 compared to the year ended December 31, 2020.

Liquidity and Capital Resources

Liquidity is a measure of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain our assets and operations, including lease-up costs, fund our redevelopment and repositioning programs, acquire properties, make distributions to our securityholders and other general business needs. Based on the historical experience of our management and our business strategy, in the foreseeable future we anticipate we will generate positive cash flows from operations.

While we may be able to anticipate and plan for certain liquidity needs, there may be unexpected increases in uses of cash that are beyond our control and which would affect our financial condition and results of operations. For example, we may be required to comply with new laws or regulations that cause us to incur unanticipated capital expenditures for our properties, thereby increasing our liquidity needs. Even if there are no material changes to our anticipated liquidity requirements, our sources of liquidity may be fewer than, and the funds available from such sources may be less than, anticipated or needed. Our primary sources of liquidity will generally consist of cash on hand, short term investments, cash generated from our operating activities, debt issuances and unused borrowing capacity under our unsecured revolving credit and term loan facility. We expect to meet our short-term liquidity requirements, including distributions, operating expenses, working capital, debt service, and capital expenditures from cash flows from operations, cash on hand, debt issuances, and available borrowing capacity under our unsecured revolving credit and term loan facility. The availability of these borrowings

is subject to the conditions set forth in the applicable loan agreements. We expect to meet our long-term capital requirements, including acquisitions, redevelopments and capital expenditures through our cash flows from operations, cash on hand, our unsecured revolving credit and term loan facility, mortgage financings, debt issuances, common and/or preferred equity issuances and asset sales. Our properties require periodic investments of capital for individual lease related tenant improvements allowances, general capital improvements and costs associated with capital expenditures. Our overall leverage will depend on our mix of investments and the cost of leverage. Our charter does not restrict the amount of leverage that we may use.

At December 31, 2021, we had approximately \$423.7 million available in cash and cash equivalents and there was \$850 million available under our unsecured revolving credit facility.

At December 31, 2021, we had approximately \$2.3 billion of total consolidated indebtedness outstanding, with a weighted average interest rate of 3.89% and a weighted average maturity of 7.5 years. As of December 31, 2021, excluding debt amortization, we have no outstanding debt maturing until November 2024 when principal repayments would amount to \$77.7 million in 2024, \$315.0 million in 2025 and \$1.8 billion thereafter. As of December 31, 2021, interest expense obligations from 2022 through 2026 and thereafter amount to \$612.9 million while debt amortization amount to \$85.8 million. Our net debt to total market capitalization was 42.4% as of December 31, 2021.

In connection with our three ground leases (i.e. long-term leaseholds of the land and the improvements) at 1350 Broadway, 111 West 33rd Street and 1400 Broadway), we also have contractual rent obligations totaling \$71.3 million as of December 31, 2021 of which \$7.6 million is due within the next five years.

Investments in Real Estate

On December 22, 2021, we closed on the acquisition of 90% of two multifamily assets located in Manhattan, the Victory (561 10th Avenue) and 345 East 94th Street, previously owned by a joint venture of Fetner Properties and an institutional owner. The total transaction value was \$307 million, inclusive of \$186 million of assumed debt. Fetner Properties retained a 10% equity stake and continues to manage onsite operations. We will asset manage the properties, make all decisions, and have the right to assume day-to-day management at any time and for any reason for no additional consideration.

Unsecured Revolving Credit and Term Loan Facilities

On March 31, 2021, through the Operating Partnership, we entered into a second amendment to an existing credit agreement dated August 29, 2017 ("Amended Credit Agreement") that will govern an amended senior unsecured credit facility (the "Credit Facility") with Bank of America, N.A., as administrative agent, and Bank of America, Wells Fargo Bank, National Association, Capital One, National Association and JPMorgan Chase Bank, N.A., as co-syndication agents, and the lenders and the letter of credit issuers party thereto.

The Credit Facility is in the initial maximum principal amount of up to \$1.065 billion, which consists of a \$850.0 million revolving credit facility and a \$215.0 million term loan facility. We borrowed the term loan facility in full in August 2017. We may request the Credit Facility be increased through one or more increases in the revolving credit facility or one or more increases in the term loan facility or the addition of new pari passu term loan tranches, for a maximum aggregate principal amount not to exceed \$1.50 billion. The Credit Facility will be used for our working capital needs and for other general corporate purposes. As of December 31, 2021, we had no borrowings under the revolving credit facility and \$215.0 million under the term loan facility.

The revolving credit facility matures on March 31, 2025. We have the option to extend the initial term for up to two additional 6-month periods, subject to certain conditions, including the payment of an extension fee equal to 0.0625% and 0.075% of the then outstanding commitments under the revolving credit facility on the first and the second extensions, respectively. The term loan facility matures on March 19, 2025. We may prepay the loans under the Credit Facility at any time in whole or in part, subject to reimbursement of the lenders' breakage and redeployment costs in the case of prepayment of Eurodollar Rate borrowings.

On March 19, 2020, we entered into a senior unsecured term loan facility (the "Term Loan Facility") with Wells Fargo Bank, National Association, as administrative agent, Wells Fargo Securities, LLC as sole bookrunner, Wells Fargo Securities, LLC, Capital One, National Association, U.S. Bank National Association and SunTrust Robinson Humphrey, Inc. as Joint Lead Arrangers, Capital One, National Association, as syndication agent, U.S. Bank National Association and Truist Bank, as documentation agents, and the lenders party thereto.

The Term Loan Facility is in the original principal amount of \$175 million which we borrowed in full at closing. We may request the Term Loan Facility be increased through one or more increases or the addition of new pari passu term loan tranches, for a maximum aggregate principal amount not to exceed \$225 million. As of December 31, 2021, our borrowings amounted to \$175.0 million under the Term Loan Facility.

The Term Loan Facility matures on December 31, 2026. We may prepay loans under the Term Loan Facility at any time in whole or in part, subject to reimbursement of the lenders' breakage and redeployment costs in the case of prepayment of Eurodollar rate borrowings and, if the prepayment occurs on or before December 31, 2021, a prepayment fee.

The terms of both the Credit Facility and the Term Loan Facility include customary covenants, including limitations on liens, investment, distributions, debt, fundamental changes, and transactions with affiliates and require certain customary financial reports. It also requires compliance with financial ratios including a maximum leverage ratio, a maximum secured leverage ratio, a minimum fixed charge coverage ratio, a minimum unencumbered interest coverage ratio, and a maximum unsecured leverage ratio. The agreements also contain customary events of default (subject in certain cases to specified cure periods), including but not limited to non-payment, breach of covenants, representations or warranties, cross defaults, bankruptcy or other insolvency events, judgments, ERISA events, invalidity of loan documents, loss of real estate investment trust qualification, and occurrence of a change of control.

As of December 31, 2021, we were in compliance with the covenants, as described below:

Financial Covenant	Required	December 31, 2021	In Compliance
Maximum total leverage	< 60%	43.5 %	Yes
Maximum secured debt	< 40%	17.9 %	Yes
Minimum fixed charge coverage	> 1.50x	2.4x	Yes
Minimum unencumbered interest coverage	> 1.75x	4.4x	Yes
Maximum unsecured leverage	< 60%	34.7 %	Yes

Mortgage Debt

On December 22, 2021, we acquired 90% of two multifamily assets, the Victory (561 10th Avenue) and 345 East 94th Street. In connection with this acquisition, we assumed \$134.0 million of principal balance of debt on the Victory, which matures in November 2033 and has an effective interest rate of 3.85%, and \$52 million of principal balance of debt on 345 East 94th Street, which matures in November 2030 and has an effective interest rate of 3.56%.

As of December 31, 2021, mortgage notes payable, net, amounted to \$948.8 million. The first maturity is in 2024. See Note 5 - Debt for more information on mortgage debt.

Senior Unsecured Notes

Series A, B, C, D, E, F, G and H Senior Notes (collectively, "Senior Unsecured Notes") are senior unsecured obligations with an aggregate principal amount of \$975.0 million maturing on various dates from 2025 to 2035. These Senior Unsecured Notes are unconditionally guaranteed by each of our subsidiaries that guarantees indebtedness under the unsecured revolving credit and term loan facility. Interest on the Senior Unsecured Notes is payable quarterly.

The terms of the Senior Unsecured Notes include customary covenants, including limitations on liens, investment, debt, fundamental changes, and transactions with affiliates and require certain customary financial reports. These terms also require compliance with financial ratios including a maximum leverage ratio, a maximum secured leverage ratio, a minimum fixed charge coverage ratio, a minimum unencumbered interest coverage ratio, and a maximum unsecured leverage ratio. The agreement also contains customary events of default (subject in certain cases to specified cure periods), including but not limited to non-payment, breach of covenants, representations or warranties, cross defaults, bankruptcy or other insolvency events, judgments, ERISA events, the occurrence of certain change of control transactions and loss of real estate investment trust qualification. As of December 31, 2021, we were in compliance with the covenants under the outstanding Senior Unsecured Notes.

Leverage Policies

We expect to employ leverage in our capital structure in amounts determined from time to time by our board. Although our board has not adopted a policy that limits the total amount of indebtedness that we may incur, we anticipate that our board will consider a number of factors in evaluating our level of indebtedness from time to time, as well as the amount of such indebtedness that will be either fixed or floating rate. Our charter and bylaws do not limit the amount or percentage of indebtedness that we may incur nor do they restrict the form in which our indebtedness will be taken (including, but not limited to, recourse or non-recourse debt and cross-collateralized debt). Our overall leverage will depend on our mix of investments and the cost of leverage, however, we initially intend to maintain a level of indebtedness consistent with our plan to seek an investment grade credit rating. Our board may from time to time modify our leverage policies in light of the then-current economic conditions, relative costs of debt and equity capital, market values of our properties, general market conditions for debt and equity securities, fluctuations in the market price of our common stock, growth and acquisition opportunities and other factors.

Capital Expenditures

The following tables summarize our tenant improvement costs, leasing commission costs and our capital expenditures for each of the periods presented (dollars in thousands, except per square foot amounts).

Office Properties⁽¹⁾

Total New Leases, Expansions, and Renewals	Years Ended December 31,		
	2021	2020	2019
Number of leases signed ⁽²⁾	118	90	152
Total square feet	983,182	854,068	1,216,037
Leasing commission costs ⁽³⁾	\$ 19,802	\$ 9,969	\$ 21,227
Tenant improvement costs ⁽³⁾	65,133	32,896	70,643
Total leasing commissions and tenant improvement costs ⁽³⁾	\$ 84,935	\$ 42,865	\$ 91,870
Leasing commission costs per square foot ⁽³⁾	\$ 20.14	\$ 11.67	\$ 17.46
Tenant improvement costs per square foot ⁽³⁾	66.25	38.52	58.09
Total leasing commissions and tenant improvement costs per square foot ⁽³⁾	\$ 86.39	\$ 50.19	\$ 75.55

Retail Properties⁽⁴⁾

Total New Leases, Expansions, and Renewals	Years Ended December 31,		
	2021	2020	2019
Number of leases signed ⁽²⁾	11	14	9
Total Square Feet	22,448	69,311	87,538
Leasing commission costs ⁽³⁾	\$ 1,286	\$ 2,239	\$ 3,557
Tenant improvement costs ⁽³⁾	1,386	7,575	3,337
Total leasing commissions and tenant improvement costs ⁽³⁾	\$ 2,672	\$ 9,814	\$ 6,894
Leasing commission costs per square foot ⁽³⁾	\$ 57.27	\$ 32.31	\$ 40.71
Tenant improvement costs per square foot ⁽³⁾	61.75	109.29	38.20
Total leasing commissions and tenant improvement costs per square foot ⁽³⁾	\$ 119.02	\$ 141.60	\$ 78.91

- (1) Excludes an aggregate of 507,276, 504,284 and 511,984 rentable square feet of retail space in our Manhattan office properties in 2021, 2020 and 2019, respectively. Includes the Empire State Building broadcasting licenses and observatory operations.
- (2) Presents a renewed and expansion lease as one lease signed.
- (3) Presents all tenant improvement and leasing commission costs as if they were incurred in the period in which the lease was signed, which may be different than the period in which they were actually paid.
- (4) Includes an aggregate of 507,276, 504,284 and 511,984 rentable square feet of retail space in our Manhattan office properties in 2021, 2020 and 2019, respectively. Excludes the Empire State Building broadcasting licenses and observatory operations.
- (5) The tables above exclude two multifamily properties.

Years Ended December 31,

2021 2020 2019

Total Portfolio

Capital expenditures ⁽¹⁾	\$ 24,279	\$ 43,022	\$ 138,560
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(1) Includes all capital expenditures, excluding tenant improvements and leasing commission costs, which are primarily attributable to the redevelopment and repositioning program conducted at our Manhattan office properties.

As of December 31, 2021, we expect to incur additional costs relating to obligations under signed new leases of approximately \$109.6 million for tenant improvements and leasing commissions. We intend to fund the tenant improvements and leasing commission costs through a combination of operating cash flow, cash on hand, short term investments and borrowings under the unsecured revolving credit and term loan facilities.

Capital expenditures are considered part of both our short-term and long-term liquidity requirements. We intend to fund the capital improvements to complete the redevelopment and repositioning program through a combination of operating cash flow, cash on hand, short term investments and borrowings under the unsecured revolving credit and term loan facilities.

Distribution Policy

We intend to distribute our net taxable income to our security holders in a manner intended to satisfy REIT distribution requirements and to avoid U.S. federal income tax liability on our income.

Before we pay any distribution, whether for U.S. federal income tax purposes or otherwise, we must first meet both our operating requirements and obligations to make payments of principal and interest, if any. However, under some circumstances, we may be required to use cash reserves, incur debt or liquidate assets at rates or times that we regard as unfavorable or make a taxable distribution of our shares in order to satisfy REIT distribution requirements.

We and our board continue to prioritize balance sheet flexibility and the maximization of our operating runway amidst an uncertain environment. During August 2020, we announced the suspension of our third and fourth quarter 2020 dividends to holders of our Class A common stock and Class B common stock and to holders of Empire State Realty OP, L.P.’s Series ES, Series 250 and Series 60 operating partnership units and Series PR operating partnership units. During May 2021, we announced our decision to reinstate the quarterly dividend, one quarter earlier than previously announced, driven by confidence in the New York City recovery and improvement in our results and liquidity. We declared a dividend of \$0.035 per share for the second, third and fourth quarters of 2021, which equates to an annualized rate of \$0.14 per share. The Board of Directors will continue its regular review of its dividend and capital allocation policies at each Board meeting.

Distribution to Equity Holders

Distributions and dividends have been made to equity holders in 2019, 2020 and 2021 as follows (amounts in thousands):

Year ended December 31, 2019	127,761
Year ended December 31, 2020	65,047
Year ended December 31, 2021	32,764

Stock and Publicly Traded Operating Partnership Unit Repurchase Program

Our Board of Directors authorized the repurchase of up to \$500 million of our Class A common stock and the Operating Partnership’s Series ES, Series 250 and Series 60 operating partnership units from January 1, 2021 through December 31, 2021 and reauthorized a new \$500 million from January 1, 2022 through December 31, 2023. Under the program, we may purchase our Class A common stock and the Operating Partnership’s Series ES, Series 250 and Series 60 operating partnership units in accordance with applicable securities laws from time to time in the open market or in privately negotiated transactions. The timing, manner, price and amount of any repurchases will be determined by us at our discretion and will be subject to stock price, availability, trading volume and general market conditions. The authorization does not

obligate us to acquire any particular amount of securities, and the program may be suspended or discontinued at our discretion without prior notice.

The following table summarizes our purchases of equity securities for the year ended December 31, 2021:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plan	Maximum Approximate Dollar Value Available for Future Purchase (in thousands)
Year ended December 31, 2021	4,886,932	\$ 9.56	4,886,932	\$ 453,296

Cash Flows

Comparison of Year Ended December 31, 2021 to the Year Ended December 31, 2020

Net cash. Cash and cash equivalents and restricted cash were \$474.6 million and \$567.9 million as of December 31, 2021 and 2020, respectively. The decrease was primarily due to the acquisition of real estate property, partially offset by lower spending for capital expenditures, lower dividends paid and lower repurchases of common shares in 2021.

Operating activities. Net cash provided by operating activities increased by \$30.2 million to \$212.5 million primarily due to the settlement of a derivative contract in the year ended December 31, 2020.

Investing activities. Net cash from investing activities increased by \$69.6 million to \$212.7 million used in investing activities due to the acquisition of real estate property in the year ended December 31, 2021 and lower spending on building and improvements due to COVID-19.

Financing activities. Net cash from financing activities decreased by \$350.2 million to \$93.0 million used in financing activities primarily due to the net proceeds from issuance of debt in the year ended December 31, 2020.

Net Operating Income

Our financial reports include a discussion of property net operating income, or NOI. NOI is a non-GAAP financial measure of performance. NOI is used by our management to evaluate and compare the performance of our properties and to determine trends in earnings and to compute the fair value of our properties as it is not affected by: (i) the cost of funds of the property owner, (ii) the impact of depreciation and amortization expenses as well as gains or losses from the sale of operating real estate assets that are included in net income computed in accordance with GAAP, (iii) acquisition expenses, loss on early extinguishment of debt and loss from derivative financial instruments, or (iv) general and administrative expenses and other gains and losses that are specific to the property owner. The cost of funds is eliminated from NOI because it is specific to the particular financing capabilities and constraints of the owner and because it is dependent on historical interest rates and other costs of capital as well as past decisions made by us regarding the appropriate mix of capital which may have changed or may change in the future. Depreciation and amortization expenses as well as gains or losses from the sale of operating real estate assets are eliminated because they may not accurately represent the actual change in value in our office or retail properties that result from use of the properties or changes in market conditions. While certain aspects of real property do decline in value over time in a manner that is reasonably captured by depreciation and amortization, the value of the properties as a whole have historically increased or decreased as a result of changes in overall economic conditions instead of from actual use of the property or the passage of time. Gains and losses from the sale of real property vary from property to property and are affected by market conditions at the time of sale which will usually change from period to period. These gains and losses can create distortions when comparing one period to another or when comparing our operating results to the operating results of other real estate companies that have not made similarly-timed purchases or sales. We believe that eliminating these costs from net income is useful because the resulting measure captures the actual revenue, generated and actual expenses incurred in operating our properties as well as trends in occupancy rates, rental rates and operating costs.

However, the usefulness of NOI is limited because it excludes general and administrative costs, interest expense, depreciation and amortization expense and gains or losses from the sale of properties, and other gains and losses as stipulated by GAAP, the level of capital expenditures and leasing costs necessary to maintain the operating performance of our properties, all of which are significant economic costs. NOI may fail to capture significant trends in these components of net income which further limits its usefulness.

NOI is a measure of the operating performance of our properties but does not measure our performance as a whole. NOI is therefore not a substitute for net income as computed in accordance with GAAP. This measure should be analyzed in conjunction with net income computed in accordance with GAAP and discussions elsewhere in this Management's Discussion and Analysis of Financial Condition and Results of Operations regarding the components of net income that are eliminated in the calculation of NOI. Other companies may use different methods for calculating NOI or similarly titled measures and, accordingly, our NOI may not be comparable to similarly titled measures reported by other companies that do not define the measure exactly as we do.

The following table presents a reconciliation of our net income, the most directly comparable GAAP measure, to NOI for the periods presented (amounts in thousands):

	Years Ended December 31,		
	2021	2020	2019
Net income (loss)	\$ (13,037)	\$ (22,889)	\$ 84,290
Add:			
General and administrative expenses	55,947	62,244	61,063
Depreciation and amortization	201,806	191,006	181,588
Interest expense	94,394	89,907	79,246
Loss on early extinguishment of debt	214	86	—
Income tax expense (benefit)	(1,734)	(6,971)	2,429
Impairment charges	7,723	5,360	—
IPO litigation expense	—	1,165	—
Less:			
Interest income	(704)	(2,637)	(11,259)
Third-party management and other fees	(1,219)	(1,225)	(1,254)
Net operating income	\$ 343,390	\$ 316,046	\$ 396,103

Other Net Operating Income Data

Straight line rental revenue	\$ 21,078	\$ 5,238	\$ 20,057
Net increase in rental revenue from the amortization of above and below-market lease assets and liabilities	\$ 5,895	\$ 3,627	\$ 7,311
Amortization of acquired below-market ground leases	\$ 7,831	\$ 7,831	\$ 7,831

Funds from Operations ("FFO")

We present below a discussion of FFO. We compute FFO in accordance with the "White Paper" on FFO published by the National Association of Real Estate Investment Trusts, or NAREIT, which defines FFO as net income (loss) (determined in accordance with GAAP), excluding impairment writedowns of investments in depreciable real estate and investments in in-substance real estate investments, gains or losses from debt restructurings and sales of depreciable operating properties, plus real estate-related depreciation and amortization (excluding amortization of deferred financing costs), less distributions to non-controlling interests and gains/losses from discontinued operations and after adjustments for unconsolidated partnerships and joint ventures. FFO is a widely recognized non-GAAP financial measure for REITs that we believe, when considered with financial statements determined in accordance with GAAP, is useful to investors in understanding financial performance and providing a relevant basis for comparison among REITs. In addition, FFO is useful to investors as it captures features particular to real estate performance by recognizing that real estate has generally appreciated over time or maintains residual value to a much greater extent than do other depreciable assets. Investors should review FFO, along with GAAP net income, when trying to understand an equity REIT's operating performance. We present FFO because we consider it an important supplemental measure of our operating performance and believe that it is frequently used by securities analysts, investors and other interested parties in the evaluation of REITs. However, because FFO excludes depreciation and amortization and captures neither the changes in the value of our properties that result from use or market conditions nor the level of capital expenditures and leasing commissions necessary to maintain the operating performance of our properties, all of which have real economic effect and could materially impact our results of operations, the utility of FFO as a measure of performance is limited. There can be no assurance that FFO presented by us is comparable to similarly titled measures of other REITs. FFO does not represent cash generated from operating activities and should not be considered as an alternative to net income (loss) determined in accordance with GAAP or to cash flow from operating activities determined in

accordance with GAAP. FFO is not indicative of cash available to fund ongoing cash needs, including the ability to make cash distributions. Although FFO is a measure used for comparability in assessing the performance of REITs, as the NAREIT White Paper only provides guidelines for computing FFO, the computation of FFO may vary from one company to another.

Modified Funds From Operations ("Modified FFO")

Modified FFO adds back an adjustment for any above or below-market ground lease amortization to traditionally defined FFO. We consider this a useful supplemental measure in evaluating our operating performance due to the non-cash accounting treatment under GAAP, which stems from the third quarter 2014 acquisition of two option properties following our formation transactions as they carry significantly below market ground leases, the amortization of which is material to our overall results. We present Modified FFO because we consider it an important supplemental measure of our operating performance in that it adds back the non-cash amortization of below-market ground leases. There can be no assurance that Modified FFO presented by us is comparable to similarly titled measures of other REITs. Modified FFO does not represent cash generated from operating activities and should not be considered as an alternative to net income (loss) determined in accordance with GAAP or to cash flow from operating activities determined in accordance with GAAP. Modified FFO is not indicative of cash available to fund ongoing cash needs, including the ability to make cash distributions.

Core Funds From Operations ("Core FFO")

Core FFO adds back to Modified FFO the following items: IPO litigation expense, severance expenses and loss on early extinguishment of debt. The company presents Core FFO because it considers it an important supplemental measure of its operating performance in that it excludes items associated with its IPO and formation transactions and other non-recurring items. There can be no assurance that Core FFO presented by the company is comparable to similarly titled measures of other REITs. Core FFO does not represent cash generated from operating activities and should not be considered as an alternative to net income (loss) determined in accordance with GAAP or to cash flow from operating activities determined in accordance with GAAP. Core FFO is not indicative of cash available to fund ongoing cash needs, including the ability to make cash distributions. In future periods, we may also exclude other items from Core FFO that we believe may help investors compare our results.

The following table presents a reconciliation of net income, the most directly comparable GAAP measure, to FFO, Modified FFO and Core FFO for the periods presented (amounts in thousands):

	Years Ended December 31,		
	2021	2020	2019
Net income (loss)	\$ (13,037)	\$ (22,889)	\$ 84,290
Private perpetual preferred unit distributions	(4,201)	(4,197)	(1,743)
Real estate depreciation and amortization	196,360	184,245	177,515
Impairment charges	7,723	5,360	—
Funds from operations attributable to common stockholders and non-controlled interests	186,845	162,519	260,062
Amortization of below-market ground leases	7,831	7,831	7,831
Modified funds from operations attributable to common stockholders and non-controlled interests	194,676	170,350	267,893
Loss on early extinguishment of debt	214	86	—
Severance expenses	—	3,813	—
IPO litigation expense	—	1,165	—
Core funds from operations attributable to common stockholders and non-controlled interests	\$ 194,890	\$ 175,414	\$ 267,893
Weighted average shares and Operating Partnership units			
Basic	277,420	283,826	297,798
Diluted	277,420	283,837	297,798

Factors That May Influence Future Results of Operations

Impact of COVID-19

See "Overview" section.

Rental Revenue

We derive revenues primarily from rents, rent escalations, expense reimbursements and other income received from tenants under existing leases at each of our properties. "Escalations and expense reimbursements" consist of payments made by tenants to us under contractual lease obligations to reimburse a portion of the property operating expenses and real estate taxes incurred at each property.

We believe that the average rental rates for in-place leases at our properties are generally below the current market rates, although individual leases at particular properties presently may be leased above, at or below the current market rates within its particular submarket.

The amount of net rental income and reimbursements that we receive depends principally on our ability to lease currently available space, re-lease space to new tenants upon the scheduled or unscheduled termination of leases or renew expiring leases and to maintain or increase our rental rates. Factors that could affect our rental incomes include, but are not limited to: local, regional or national economic conditions; an oversupply of, or a reduction in demand for, office or retail space; changes in market rental rates; our ability to provide adequate services and maintenance at our properties; and fluctuations in interest rates, all of which could adversely affect our rental income in future periods. Future economic or regional downturns affecting our submarkets, or downturns in our tenants' industries, could impair our ability to lease vacant space and renew or re-lease space as well as the ability of our tenants to fulfill their lease commitments, and could adversely affect our ability to maintain or increase the occupancy at our properties.

Tenant Credit Risk

The economic condition of our tenants may also deteriorate, which could negatively impact their ability to fulfill their lease commitments and in turn adversely affect our ability to maintain or increase the occupancy level and/or rental rates of our properties. Potential tenants may look to consolidate, reduce overhead and preserve operating capital and may also defer strategic decisions, including entering into new, long-term leases at properties.

Leasing

We signed 1.0 million, 0.9 million, and 1.3 million rentable square feet of new leases, expansions and lease renewals, for the years ended December 31, 2021, 2020, and 2019, respectively.

Due to the relatively small number of leases that are signed in any particular quarter, one or more larger leases may have a disproportionately positive or negative impact on average rent, tenant improvement and leasing commission costs for that period. As a result, we believe it is more appropriate when analyzing trends in average rent and tenant improvement and leasing commission costs to review activity over multiple quarters or years. Tenant improvement costs include expenditures for general improvements occurring concurrently with, but that are not directly related to, the cost of installing a new tenant. Leasing commission costs are similarly subject to significant fluctuations depending upon the length of leases being signed and the mix of tenants from quarter to quarter.

As of December 31, 2021, there were approximately 1.4 million rentable square feet of space in our portfolio available to lease (excluding leases signed but not yet commenced) representing 14.3% of the net rentable square footage of the properties in our portfolio. In addition, leases representing 5.7% and 6.3% of net rentable square footage of the properties in our portfolio will expire in 2022 and in 2023, respectively. These leases are expected to represent approximately 6.2% and 7.6%, respectively, of our annualized rent for such periods. Our revenues and results of operations can be impacted by expiring leases that are not renewed or re-leased or that are renewed or re-leased at base rental rates equal to, above or below the current average base rental rates. Further, our revenues and results of operations can also be affected by the costs we incur to re-lease available space, including payment of leasing commissions, redevelopments and build-to-suit remodeling that may not be borne by the tenant.

Market Conditions

The properties in our portfolio are located in Manhattan and the greater New York metropolitan area, which includes Fairfield County, Connecticut and Westchester County, New York. Positive or negative changes in conditions in these markets,

such as business hirings or layoffs or downsizing, industry growth or slowdowns, relocations of businesses, increases or decreases in real estate and other taxes, costs of complying with governmental regulations or changed regulation, can impact our overall performance.

Observatory and Broadcasting Operations

For the year ended December 31, 2021, the observatory hosted 827,000 visitors, compared to 507,000 visitors for the same period in 2020, an increase of 63.1%. Our return of attendance to pre-COVID-19 levels is closely tied to national and international travel trends and these remain adversely impacted by developments around the COVID-19 pandemic.

Observatory revenue for the year ended December 31, 2021 was \$41.5 million, a 42.6% increase from \$29.1 million for the year ended December 31, 2020. The observatory revenue increase was driven by higher visitation levels in 2021 given the closing of the observatory during 2020 due to COVID-19.

Observatory revenue and admissions are dependent upon the following: (i) the number of tourists (domestic and international) that come to New York City and visit the observatory, as well as any related tourism trends; (ii) the prices per admission that can be charged; (iii) seasonal trends affecting the number of visitors to the observatory; (iv) competition, in particular from other new and existing observatories; and (v) weather trends.

We license the use of the Empire State Building mast to third party television and radio broadcasters and providers of data communications. We also lease space in the upper floors of the building to such licensees to house their transmission equipment and related facilities. During the year ended December 31, 2021, we derived \$13.5 million of revenue and \$5.6 million of expense reimbursements from the Empire State Building's broadcasting licenses and related leases.

Operating Expenses

Our operating expenses generally consist of depreciation and amortization, real estate taxes, ground lease expenses, repairs and maintenance, security, utilities, property-related payroll, and insurance. Factors that may affect our ability to control these operating costs include: increases in insurance premiums, tax rates, the cost of periodic repair, redevelopment costs and the cost of re-leasing space, the cost of compliance with governmental regulation, including zoning and tax laws, the potential for liability under applicable laws and interest rate levels. If our operating costs increase as a result of any of the foregoing factors, our future cash flow and results of operations may be adversely affected.

The expenses of owning and operating a property are not necessarily reduced when circumstances, such as market factors and competition, cause a reduction in income from the property. If revenues drop, we may not be able to reduce our expenses accordingly. Costs associated with real estate investments, such as real estate taxes and maintenance generally, will not be materially reduced even if a property is not fully occupied or other circumstances cause our revenues to decrease. As a result, if revenues decrease in the future, static operating costs may adversely affect our future cash flow and results of operations. If similar economic conditions exist in the future, we may experience future losses.

Cost of Funds and Interest Rates

As of December 31, 2021, our variable rate debt was \$125.0 million which represented 5.4% of our total indebtedness and 2.5% of our total enterprise value. Our variable rate debt may increase to the extent we use available borrowing capacity from our unsecured credit facility to fund capital improvements.

Competition

The leasing of real estate is highly competitive in Manhattan and the greater New York metropolitan market in which we operate. We compete with numerous acquirers, developers, owners and operators of commercial real estate, many of which own or may seek to acquire or develop properties similar to ours in the same markets in which our properties are located. The principal means of competition are rent charged, location, services provided and the nature and condition of the facility to be leased. In addition, we face competition from other real estate companies including other REITs, private real estate funds, domestic and foreign financial institutions, life insurance companies, pension trusts, partnerships, individual investors and others that may have greater financial resources or access to capital than we do or that are willing to acquire properties in transactions which are more highly leveraged or are less attractive from a financial viewpoint than we are willing to pursue. In addition, competition from new and existing observatories and/or broadcasting operations could have a negative impact on revenues from our observatory and/or broadcasting operations. Adverse impacts on domestic travel and changes in foreign currency exchange rates may also decrease demand in the future, which could have a material adverse effect on our results of operations. If our competitors offer space at rental rates below current market rates, below the rental rates we currently charge

our tenants, in better locations within our markets or in higher quality facilities, we may lose potential tenants and may be pressured to reduce our rental rates below those we currently charge in order to retain tenants when our tenants' leases expire.

Reference is made to ITEM 1A. Risk Factors in this Annual Report on Form 10-K for additional factors that may influence future results of operations.

Critical Accounting Estimates

Basis of Presentation and Principles of Consolidation

The accompanying consolidated financial statements have been prepared in conformity with GAAP and with the rules and regulations of the SEC represent our assets and liabilities and operating results. The consolidated financial statements include our accounts and our wholly owned subsidiaries as well as our operating partnership and its subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

We consolidate entities in which we have a controlling financial interest. In determining whether we have a controlling financial interest in a partially owned entity and the requirement to consolidate the accounts of that entity, we consider factors such as ownership interest, board representation, management representation, authority to make decisions, and contractual and substantive participating rights of the partners/members as well as whether the entity is a variable interest entity ("VIE") and we are the primary beneficiary. The primary beneficiary of a VIE 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. The primary beneficiary is required to consolidate the VIE.

We will assess the accounting treatment for each investment we may have in the future. This assessment will include a review of each entity's organizational agreement to determine which party has what rights and whether those rights are protective or participating. For all VIEs, we will 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 and benefit. In situations where we or our partner could approve, among other things, the annual budget, or leases that cover more than a nominal amount of space relative to the total rentable space at each property, we would not consolidate the investment as we consider these to be substantive participation rights that result in shared power of the activities that would most significantly impact the performance and benefit of such joint venture investment.

A non-controlling interest in a consolidated subsidiary is defined as the portion of the equity (net assets) in a subsidiary not attributable, directly or indirectly, to a parent. Non-controlling interests are required to be presented as a separate component of equity in the consolidated balance sheets and in the consolidated statements of income by requiring earnings and other comprehensive income to be attributed to controlling and non-controlling interests.

Goodwill

Goodwill is tested annually for impairment and is tested for impairment more frequently if events and circumstances indicate that the asset might be impaired. An impairment loss is recognized to the extent that the carrying amount, including goodwill, exceeds the reporting unit's fair value and the implied fair value of goodwill is less than the carrying amount of that goodwill. Non-amortizing intangible assets, such as trade names and trademarks, are subject to an annual impairment test based on fair value and amortizing intangible assets are tested whenever events or changes in circumstances indicate that the carrying amount may not be recoverable.

The closure of our observatory and subsequent reopening under international, national, and local travel restrictions and quarantines caused us during the second quarter of 2020 to choose to perform an impairment test related to goodwill. We engaged a third-party valuation consulting firm to perform the valuation process. The analysis used a combination of the discounted cash flow method (a form of the income approach) utilizing Level 3 unobservable inputs and the guideline company method (a form of the market approach). Significant assumptions under the former included revenue and cost projections, weighted average cost of capital, long-term growth rate and income tax considerations while the latter included guideline company enterprise values, revenue multiples and control premium rates. Our methodology to review goodwill impairment, which included a significant amount of judgment and estimates, provided a reasonable basis to determine whether impairment had occurred. Based upon the results of the goodwill impairment test of the standalone observatory reporting unit, which is after the intercompany rent expense paid to the Real Estate reporting unit, we determined that the fair value of the observatory reporting unit exceeded its carrying value by less than 15.0% at December 31, 2021. Many of the factors employed in determining whether or not goodwill is impaired are outside of our control and it is reasonably likely that assumptions and estimates will change in future periods. We will continue to assess the impairment of the observatory reporting unit goodwill going forward and that continued assessment may again utilize a third-party valuation consulting firm.

Income Taxes

We elected to be taxed as a REIT under sections 856 through 860 of the Internal Revenue Code of 1986, as amended, commencing with the taxable year ended December 31, 2013 and believe we qualify as a REIT at December 31, 2020. REITs are subject to a number of organizational and operational requirements, including a requirement that 90% of ordinary "REIT taxable income" (as determined without regard to the dividends paid deduction or net capital gains) be distributed. As a REIT, we will generally not be subject to U.S. federal income tax to the extent that we meet the organizational and operational requirements and our distributions equal or exceed REIT taxable income. For all periods subsequent to the effective date of our REIT election, we have met the organizational and operational requirements and distributions have exceeded net taxable income. Accordingly, no provision has been made for federal income taxes.

We have elected to treat ESRT observatory TRS, L.L.C., our subsidiary which holds our observatory operations, and ESRT Holdings TRS, L.L.C., our subsidiary that holds our third party management, construction (through cessation of our construction business in the first quarter of 2015), restaurant, cafeterias, health clubs and certain cleaning operations, as taxable REIT subsidiaries. Taxable REIT subsidiaries may participate in non-real estate activities and/or perform non-customary services for tenants and their operations are generally subject to regular corporate income taxes. Our taxable REIT subsidiaries account for their income taxes in accordance with GAAP, which includes an estimate of the amount of taxes payable or refundable for the current year and deferred tax liabilities and assets for the future tax consequences of events that have been recognized in our financial statements or tax returns. The calculation of the taxable REIT subsidiaries' tax provisions may require interpreting tax laws and regulations and could result in the use of judgments or estimates which could cause its recorded tax liability to differ from the actual amount due. Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The taxable REIT subsidiaries periodically assess the realizability of deferred tax assets and the adequacy of deferred tax liabilities, including the results of local, state, or federal tax audits or estimates and judgments used.

As of December 31, 2021, Empire State Realty Trust, Inc. had \$73.0 million of net operating loss ("NOL") carryforwards that may be used in the future to reduce the amount otherwise required to be distributed by ESRT to meet REIT requirements. However, for federal income tax purposes, the NOL will not be able to offset more than 80% of ESRT's REIT taxable income and, therefore, may not be able to reduce the amount required to be distributed by ESRT to meet REIT requirements to zero. As of December 31, 2021, the observatory TRS had a federal income tax receivable of \$5.5 million. This receivable reflects an anticipated refund resulting from the carryback of 2020 NOL to previous tax years. The federal NOL may be carried forward indefinitely. The federal NOL may be carried forward indefinitely. Other limitations may apply to ESRT's ability to use its NOL to offset taxable income.

As of December 31, 2021, the observatory TRS had a federal income tax receivable of \$5.5 million due to a NOL for the year ended December 31, 2020. The observatory TRS had \$3.1 million NOL carryforwards that may be used to offset future taxable income, if any. The federal NOL may be carried forward indefinitely and the state and local NOL can be carried forward for up to 20 years.

We apply provisions for measuring and recognizing tax benefits associated with uncertain income tax positions. Penalties and interest, if incurred, would be recorded as a component of income tax expense. As of December 31, 2021 and 2020, we do not have a liability for uncertain tax positions. As of December 31, 2021, the tax years ended December 31, 2018 through December 31, 2021 remain open for an audit by the Internal Revenue Service, state or local authorities.

Share-Based Compensation

Share-based compensation for market based equity awards is measured at the fair value of the award on the date of grant and recognized as an expense on a straight-line basis over the stated vesting period, which is generally three or four years, depending on retirement eligibility. Share-based compensation for time-based equity awards is measured at the fair value of the award on the date of grant and recognized as an expense on a straight-line basis over the shorter of (i) the stated vesting period, which is generally three, four or five years, or (ii) the period from the date of grant to the date the employee becomes retirement eligible, which may occur upon grant. The determination of fair value of these awards is subjective and involves significant estimates and assumptions including expected volatility of our stock, expected dividend yield, expected term, and assumptions of whether these awards will achieve parity with other operating partnership units or achieve performance thresholds. We believe that the assumptions and estimates utilized are appropriate based on the information available to management at the time of grant.

Accounting Standards Update

Reference is made to Note 2 in the accompanying consolidated financial statements for information about recently issued and recently adopted accounting standards.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our future income, cash flows and fair values relevant to financial instruments are dependent upon prevalent market interest rates. Market risk refers to the risk of loss from adverse changes in market prices and interest rates. One of the principal market risks facing us is interest rate risk on our variable rate indebtedness. As of December 31, 2021, our floating rate debt of \$125.0 million represented 2.5% of our total enterprise value.

Subject to maintaining our qualification as a REIT for U.S. federal income tax purposes, we may mitigate the risk of interest rate volatility through the use of hedging instruments, such as interest rate swap agreements and interest rate cap agreements. Our primary objectives when undertaking hedging transactions and derivative positions will be to reduce our floating rate exposure and to fix a portion of the interest rate for anticipated financing and refinancing transactions. This in turn will reduce the risk that the variability of cash flows will impose on floating rate debt. However, we can provide no assurances that our efforts to manage interest rate volatility will successfully mitigate the risks of such volatility on our portfolio. We are not subject to foreign currency risk.

We are exposed to interest rate changes primarily on our unsecured revolving credit facility and debt refinancings. Our objectives with respect to interest rate risk are to limit the impact of interest rate changes on operations and cash flows, and to lower our overall borrowing costs. To achieve these objectives, we may borrow at fixed rates and may enter into derivative financial instruments such as interest rate swaps or caps in order to mitigate our interest rate risk on a related floating rate financial instrument. We do not enter into derivative or interest rate transactions for speculative purposes.

As of December 31, 2021, we have interest rate LIBOR swap and cap agreements with an aggregate notional value of \$451.3 million, which fix interest at swap rates between 1.757% to 2.500% and cap rates between 4.5% and 5.5%, and mature between August 24, 2022 and November 1, 2033. The interest rate swaps have been designated as cash flow hedges and are deemed highly effective with a fair value of (\$25.3) million which is included in accounts payable and accrued expenses on the consolidated balance sheet as of December 31, 2021.

Based on our floating rate debt balances, interest expense would have increased by approximately \$1.3 million for the year ended December 31, 2021, if short-term interest rates had been 1% higher. As of December 31, 2021, the weighted average interest rate on the \$2.2 billion of fixed-rate indebtedness outstanding was 3.9% per annum, each with maturities at various dates through March 17, 2035.

As of December 31, 2021, the fair value of our outstanding debt was approximately \$2.3 billion which was approximately \$35.0 million more than the historical book value as of such date. Interest risk amounts were determined by considering the impact of hypothetical interest rates on our financial instruments. These analyses do not consider the effect of any change in overall economic activity that could occur in that environment. Further, in the event of a change of that magnitude, we may take actions to further mitigate our exposure to the change. However, due to the uncertainty of the specific actions that would be taken and their possible effects, these analyses assume no changes in our financial structure.

On March 5, 2021, the Financial Conduct Authority ("FCA") announced that USD LIBOR will no longer be published after June 30, 2023. This announcement has several implications, including setting the spread that may be used to automatically convert contracts from LIBOR to the Secured Overnight Financing Rate ("SOFR"). Additionally, banking regulators are encouraging banks to discontinue new LIBOR debt issuances by December 31, 2021.

We anticipate that LIBOR will continue to be available at least until June 30, 2023. Any changes adopted by the FCA or other governing bodies in the method used for determining LIBOR may result in a sudden or prolonged increase or decrease in reported LIBOR. If that were to occur, our interest payments could change. In addition, uncertainty about the extent and manner of future changes may result in interest rates and/or payments that are higher or lower than if LIBOR were to remain available in its current form.

We have contracts that are indexed to LIBOR and are monitoring and evaluating the related risks, which include interest on loans and amounts received and paid on derivative instruments. These risks arise in connection with transitioning contracts to an alternative rate, including any resulting value transfer that may occur, and are likely to vary by contract. The value of loans or derivative instruments tied to LIBOR, as well as interest rates on our unsecured revolving credit facility and our unsecured term loan facilities and the swap rate for our interest rate swaps, may also be impacted if LIBOR is limited or discontinued. For some instruments the method of transitioning to an alternative reference rate may be challenging, especially if we cannot agree with the respective counterparty about how to make the transition.

While we expect LIBOR to be available in substantially its current form until at least the end of June 30, 2023, it is possible that LIBOR will become unavailable prior to that point. This could result, for example, if sufficient banks decline to

make submissions to the LIBOR administrator. In that case, the risks associated with the transition to an alternative reference rate will be accelerated and magnified.

Alternative rates and other market changes related to the replacement of LIBOR, including the introduction of financial products and changes in market practices, may lead to risk modeling and valuation challenges, such as adjusting interest rate accrual calculations and building a term structure for an alternative rate.

The introduction of an alternative rate also may create additional basis risk and increased volatility as alternative rates are phased in and utilized in parallel with LIBOR.

Adjustments to systems and mathematical models to properly process and account for alternative rates will be required, which may strain the model risk management and information technology functions and result in substantial incremental costs for us.

Our exposures to market risk have not changed materially since December 31, 2020.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements beginning on Page F-1 of this Annual Report on Form 10-K are incorporated herein by reference.

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 (as such term is defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act) that are designed to ensure that information required to be disclosed in our reports under the Exchange Act is processed, recorded, summarized and reported within the time periods specified in the SEC's rules and regulations and that such information is accumulated and communicated to management, including our Chief Executive Officer and Principal Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As of December 31, 2021, the end of the period covered by this Report, we carried out an evaluation, under the supervision and with the participation of management, including our Chief Executive Officer and Principal Financial Officer, regarding the effectiveness of our disclosure controls and procedures at the end of the period covered by this Report. Based on the foregoing, our Chief Executive Officer and Principal Financial Officer concluded, as of that time, that our disclosure controls and procedures were effective in ensuring that information required to be disclosed by us in reports filed or submitted under the Exchange Act (i) is processed, recorded, summarized and reported within the time periods specified in the SEC's rules and forms and (ii) is accumulated and communicated to our management, including our Chief Executive Officer and our Principal Financial Officer, as appropriate to allow for timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

No significant changes to our internal control over financial reporting were identified in connection with the evaluation referenced above that occurred during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

(a) Management's Report on Internal Control Over Financial Reporting

Management of Empire State Realty Trust, Inc. is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in the Securities Exchange Act of 1934 Rule 13(a)-15(f). Under the supervision and with the participation of our management, including our Chief Executive Officer and Principal Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2021 as required by the Securities Exchange Act of 1934 Rule 13(a)-15(c). In making this assessment, we used the criteria set forth in the framework in Internal Control—Integrated Framework (2013) 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, 2021 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.

Ernst & Young LLP, an independent registered public accounting firm that audited our Financial Statements included in this Annual Report, has issued an attestation report on our internal control over financial reporting as of December 31, 2021, which appears in paragraph (b) of this Item 9A.

(b) Attestation report of the independent registered public accounting firm

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Empire State Realty Trust, Inc.

Opinion on Internal Control Over Financial Reporting

We have audited Empire State Realty Trust, Inc.'s internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, Empire State Realty Trust, Inc. (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the 2021 consolidated financial statements of the Company and our report dated February 25, 2022 expressed an unqualified opinion thereon.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the 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 audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and

expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP
New York, New York
February 25, 2022

ITEM 9B. OTHER INFORMATION

None.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by Item 10 will be set forth in our definitive proxy statement for our 2022 Annual Meeting of Stockholders (which is scheduled to be held on May 12, 2022), to be filed pursuant to Regulation 14A under the Securities and Exchange Act of 1934, as amended, or our Proxy Statement, and is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

The information required by Item 11 will be set forth in our Proxy Statement and is incorporated herein by reference.

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

The information required by Item 12 will be set forth in our Proxy Statement and is incorporated herein by reference.

The information under Item 5 of this Form 10-K under the heading "Securities Authorized For Issuance Under Equity Compensation Plans" is incorporated herein by reference.

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

The information required by Item 13 will be set forth in our Proxy Statement and is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by Item 14 will be set forth in our Proxy Statement and is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENTS AND SCHEDULES

(a) The following documents are filed as part of this report:

1. The consolidated financial statements are set forth in Item 8 of this Annual Report on Form 10-K.

2. The following financial statement schedules should be read in conjunction with the financial statements included in Item 8 of this Annual Report on Form 10-K.

Schedule III-Real Estate and Accumulated Depreciation as of December 31, 2021 on page F-42.

Schedules other than those listed are omitted as they are not applicable or the required or equivalent information has been included in the financial statements or notes thereto.

(b) The exhibits required by Item 601 of Regulation S-K (§229.601 of this chapter) are listed below:

Exhibit Index

Exhibit No.	Description
3.1	Articles of Amendment and Restatement of Empire State Realty Trust, Inc., incorporated by reference to Exhibit 3.1 to Amendment No. 8 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on September 27, 2013.
3.2	Third Amended and Restated Bylaws of Empire State Realty Trust, Inc., incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K filed with the SEC on March 7, 2019.
4.1	Specimen Class A Common Stock Certificate of Empire State Realty Trust, Inc., incorporated by reference to Exhibit 4.1 to Amendment No. 3 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on November 2, 2012.
4.2	Specimen Class B Common Stock Certificate of Empire State Realty Trust, Inc., incorporated by reference to Exhibit 4.2 to Amendment No. 3 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on November 2, 2012.
4.3	Indenture, dated August 12, 2014, by and among Empire State Realty OP, L.P., as issuer, Empire State Realty Trust, Inc., and Wilmington Trust, National Association, as trustee, incorporated by reference to Exhibit 4.1 to the Registrant's Form 8-K filed with the SEC on August 12, 2014.
4.4	Form of Global Note representing Empire State Realty OP, L.P.'s 2.625% Exchangeable Senior Notes due 2019 (included in Exhibit 4.3).
4.5	Description of Empire State Realty Trust, Inc. Securities Registered Under Section 12 of the Securities Exchange Act of 1934.
10.1	Contribution Agreement among Empire Realty Trust, Inc., Empire Realty Trust, L.P. and certain members of the Malkin Group listed on the signature pages thereto, dated November 28, 2011, incorporated by reference to Exhibit 10.8 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on February 13, 2012.
10.2	Amended and Restated Contribution Agreement among Empire Realty Trust, Inc., Empire Realty Trust, L.P. and certain entities affiliated with the Helmsley estate listed on the signature pages thereto, dated July 2, 2012, incorporated by reference to Exhibit 10.11 to Amendment No. 7 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on September 19, 2013.
10.3	Form of Contribution Agreement among Empire Realty Trust, Inc., Empire Realty Trust, L.P. and each of the private existing entities that contributed properties in the consolidation, incorporated by reference to Exhibit 10.10 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on February 13, 2012.
10.4	Form of Contribution Agreement among Empire State Realty Trust, Inc., Empire Realty OP, L.P. and each of the public existing entities that contributed properties in the consolidation, incorporated by reference to Exhibit 10.11 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on February 13, 2012.
10.5	Representation, Warranty and Indemnity Agreement among Empire Realty Trust, Inc., Empire Realty Trust, L.P., Anthony E. Malkin, Cynthia M. Blumenthal and Scott D. Malkin, dated November 28, 2011, incorporated by reference to Exhibit 10.13 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on February 13, 2012.
10.6	Form of Merger Agreement among Empire Realty Trust, Inc., Empire Realty Trust, L.P. and each of the predecessor management companies, incorporated by reference to Exhibit 10.12 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on February 13, 2012.
10.7+	First Amended and Restated Empire State Realty Trust, Inc. Empire State Realty OP, L.P. 2013 Equity Incentive Plan (as amended and restated as of April 4, 2016), incorporated by reference to Exhibit 10.10 to the Registrant's Form 10-Q filed with the SEC on May 5, 2016.
10.12	Amended and Restated Agreement of Limited Partnership of Empire State Realty OP, L.P., dated October 1, 2013, incorporated by reference to Exhibit 10.1 to the Registrant's Form 10-Q filed with the SEC on November 12, 2013.

10.13	Amendment No. 1 to the First Amended and Restated Agreement of Limited Partnership of Empire State Realty OP, L.P., dated August 26, 2014, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on August 26, 2014.
10.14	Amendment No. 2 to the First Amended and Restated Agreement of Limited Partnership of Empire State Realty OP, L.P., dated December 6, 2019, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on December 12, 2019.
10.15	Registration Rights Agreement among Empire State Realty Trust, Inc. and the persons named therein, dated October 7, 2013, incorporated by reference to Exhibit 10.2 to the Registrant's Form 10-Q filed with the SEC on November 12, 2013.
10.16	Tax Protection Agreement among Empire State Realty Trust, Inc., Empire State Realty OP, L.P., and the parties named therein, dated October 7, 2013, incorporated by reference to Exhibit 10.3 to the Registrant's Form 10-Q filed with the SEC on November 12, 2013.
10.17	Indemnification Agreement among Empire State Realty Trust, Inc. and Peter L. Malkin, dated October 7, 2013, incorporated by reference to Exhibit 10.4 to the Registrant's Form 10-Q filed with the SEC on November 12, 2013.
10.18	Indemnification Agreement among Empire State Realty Trust, Inc. and Anthony E. Malkin, dated October 7, 2013, incorporated by reference to Exhibit 10.5 to the Registrant's Form 10-Q filed with the SEC on November 12, 2013.
10.20	Indemnification Agreement among Empire State Realty Trust, Inc. and Thomas P. Durels, dated October 7, 2013, incorporated by reference to Exhibit 10.7 to the Registrant's Form 10-Q filed with the SEC on November 12, 2013.
10.21	Indemnification Agreement among Empire State Realty Trust, Inc. and Thomas N. Keltner, Jr., dated October 7, 2013, incorporated by reference to Exhibit 10.8 to the Registrant's Form 10-Q filed with the SEC on November 12, 2013.
10.22	Indemnification Agreement among Empire State Realty Trust, Inc. and John B. Kessler, dated February 1, 2015, incorporated by reference to Exhibit 10.24 to the Registrant's Form 10-K filed with the SEC on February 27, 2015.
10.23	Form of Empire State Realty Trust, Inc. Independent Director Indemnification Agreement, incorporated by reference to Exhibit 10.22 to the Registrant's Form 10-K filed with the SEC on February 28, 2018.
10.24	Indemnification Agreement among Empire State Realty Trust, Inc. and Christina Chiu, dated April 20, 2020 incorporated by reference to Exhibit 10.4 to the Registrant's Form 10-Q filed with the SEC on May 6, 2020.
10.25	Change in Control Severance Agreement between Empire State Realty Trust, Inc. and Christina Chiu, dated April 13, 2020 incorporated by reference to Exhibit 10.5 to the Registrant's Form 10-Q filed with the SEC on May 6, 2020.
10.29+	Amended and Restated Employment Agreement between Empire State Realty Trust, Inc. and Anthony E. Malkin, dated October 6 2021, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on October 6, 2021.
10.31+	Amended and Restated Change in Control Severance Agreement between Empire State Realty Trust, Inc. and Thomas N. Keltner, Jr., dated April 5, 2016, incorporated by reference to Exhibit 10.34 to the Registrant's Form 10-Q filed with the SEC on May 5, 2016.
10.32+	Amended and Restated Change in Control Severance Agreement between Empire State Realty Trust, Inc. and Thomas P. Durels, dated April 5, 2016, incorporated by reference to Exhibit 10.35 to the Registrant's Form 10-Q filed with the SEC on May 5, 2016.
10.36	Note Purchase Agreement, dated March 27, 2015, among Empire State Realty OP, L.P., Empire State Realty Trust, Inc. and the purchasers named therein, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on March 30, 2015.
10.37	Registration Rights Agreement among Empire State Realty Trust, Inc. and the persons named therein, dated July 15, 2014, incorporated by reference to Exhibit 10.4 to the Registrant's Form 8-K filed with the SEC on July 21, 2014.
10.38	Registration Rights Agreement, dated August 12, 2014, by and among Empire State Realty OP, L.P., Empire State Realty Trust, Inc. and Goldman, Sachs & Co., incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on August 12, 2014.
10.39	Form of Asset and Property Management Agreement, incorporated by reference to Exhibit 10.18 to Amendment No. 6 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on September 6, 2013.
10.40	Form of Services Agreement, incorporated by reference to Exhibit 10.19 to Amendment No. 6 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on September 6, 2013.

10.41	Stockholders Agreement dated as of August 23, 2016, by and between Empire State Realty Trust, Inc. and Q REIT Holding LLC, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on August 23, 2016.
10.42	Registration Rights Agreement dated as of August 23, 2016, by and between Empire State Realty Trust, Inc. and Q REIT Holding LLC, incorporated by reference to Exhibit 10.2 to the Registrant's Form 8-K filed with the SEC on August 23, 2016.
10.43	Amended and Restated Credit Agreement dated August 29, 2017 among Empire State Realty OP, L.P., as borrower, Empire State Realty Trust, Inc., Bank of America, N.A., as administrative agent, and the lenders and L/C issuers party hereto, Wells Fargo Bank, National Association and Capital One, National Association, as co-syndication agents, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Securities, LLC, as joint bookrunners and the other lenders party thereto, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with SEC on September 05, 2017.
10.44	Note Purchase Agreement, dated December 13, 2017, among Empire State Realty OP, L.P., Empire State Realty Trust, Inc. and the purchasers named therein, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on December 14, 2017.
10.45	Second Amendment to Credit Agreement dated March 31, 2021, among Empire State Realty OP, L.P., as borrower, Empire State Realty Trust, Inc., the subsidiary guarantor parties thereto, Bank of America, N.A., as administrative agent, and the lenders and letter of credit issuers party thereto, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on April 1, 2021.
10.50+	Empire State Realty Trust, Inc. Empire State Realty OP, L.P. 2019 Equity Incentive Plan, incorporated by reference to Exhibit A to the Company's Definitive Proxy Statement filed with the SEC on April 4, 2019.
10.51+	Form of Restricted Stock Agreement (Time Based), incorporated by reference to Exhibit 99.1 to the Registration Statement on Form S-8 (Registration No. 333-231544), filed with the SEC on May 16, 2019.
10.52+	Form of LTIP Agreement (Performance- Based), incorporated by reference to Exhibit 99.2 to the Registration Statement on Form S-8 (Registration No. 333-231544), filed with the SEC on May 16, 2019.
10.53+	Form of LTIP Agreement (Time-Based), incorporated by reference to Exhibit 99.3 to the Registration Statement on Form S-8 (Registration No. 333-231544), filed with the SEC on May 16, 2019.
10.54	Empire State Realty OP, L.P., Empire State Realty Trust, Inc. \$100,000,000 3.61% Series G Senior Notes due March 17, 2032, \$75,000,000 3.73% Series H Senior Notes due March 17, 2035 Note Purchase Agreement dated March 17, 2020 incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on March 23, 2020.
10.55	Credit Agreement Dated as of March 19, 2020 among Empire State Realty OP, L.P., as Borrower, Empire State Realty Trust, Inc., Wells Fargo Bank, National Association, as Administrative Agent, and The Lenders Party Hereto, Capital One, National Association, as Syndication Agent, U.S. Bank National Association and Truist Bank as Documentation Agents, Wells Fargo Securities, LLC, as Sole Bookrunner, Wells Fargo Securities, LLC, Capital One, National Association, U.S. Bank National Association and Suntrust Robinson Humphrey, Inc., as Joint Lead Arrangers incorporated by reference to Exhibit 10.2 to the Registrant's Form 8-K filed with the SEC on March 23, 2020.
10.56	First Amendment to Credit Agreement, dated as of March 19, 2020 (this "Amendment"), to that certain Amended and Restated Credit Agreement referenced below, is among Empire State Realty Trust, Inc., a Maryland corporation (the "Parent"), Empire State Realty OP, L.P. (the "Borrower"), the Subsidiary Guarantors party hereto, the Lenders party hereto, Bank of America, N.A. ("Bank of America"), as Administrative Agent, and Bank of America, Wells Fargo Bank, National Association and Capital One, National Association, as L/C Issuers incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on March 23, 2020.
10.57+	First Amended and Restated Empire State Realty Trust, Inc. Empire State Realty OP, L.P. 2019 Equity Incentive Plan As Amended and Restated as of July 13, 2020 incorporated by reference to Exhibit 10.6 to Empire State Realty Trust, Inc. Form 10-Q filed with the SEC on August 10, 2020.
10.58+	Form of LTIP Agreement (Executive Officer, Time Based) incorporated by reference to Exhibit 10.1 to the Empire State Realty Trust, Inc. Form 10-Q filed with the SEC on August 5, 2021.
10.59+	Form of LTIP Agreement (Executive Officer, Performance Based) incorporated by reference to Exhibit 10.1 to the Empire State Realty Trust, Inc. Form 10-Q filed with the SEC on August 5, 2021.
10.60+	Form of LTIP Agreement (Executive Officer or Director, Immediate Vest) incorporated by reference to Exhibit 10.1 to the Empire State Realty Trust, Inc. Form 10-Q filed with the SEC on August 5, 2021.
10.61+	Form of LTIP Agreement (Director, Time-Based) incorporated by reference to Exhibit 10.1 to the Empire State Realty Trust, Inc. Form 10-Q filed with the SEC on August 5, 2021.
21.1*	Subsidiaries of Registrant
23.1*	Consent of Ernst & Young LLP

31.1*	Certification of Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Chief Executive Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Principal Financial Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Document
101.DEF*	XBRL Taxonomy Extension Definitions Document
101.LAB*	XBRL Taxonomy Extension Labels Document
101.PRE*	XBRL Taxonomy Extension Presentation Document
104*	Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibits 101.)

Notes:

* Filed herewith.

+ Indicates management contract or compensatory plan or arrangement required to be filed or incorporated by reference as an exhibit to this Form 10-K pursuant to Item 15(b) of Form 10-K.

ITEM 16. FORM 10-K SUMMARY

None.

SIGNATURES

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

EMPIRE STATE REALTY TRUST, INC.

Date: February 25, 2022

By: /s/ Anthony E. Malkin
Chairman, President and Chief Executive Officer

Date: February 25, 2022

By: /s/ Christina Chiu
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

Date: February 25, 2022

By: /s/ Stephen V. Horn
Senior Vice President, Chief Accounting Officer
(Principal Accounting Officer)

Pursuant to the requirements of the Exchange Act, this report 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/ Anthony E. Malkin</u> Anthony E. Malkin	Chairman of the Board of Directors, President and Chief Executive Officer (Principal Executive Officer)	February 25, 2022
<u>/s/ Christina Chiu</u> Christina Chiu	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	February 25, 2022
<u>/s/ Stephen V. Horn</u> Stephen V. Horn	Senior Vice President, Chief Accounting Officer (Principal Accounting Officer)	February 25, 2022
<u>/s/ Leslie D. Biddle</u> Leslie D. Biddle	Director	February 25, 2022
<u>/s/ Thomas J. DeRosa</u> Thomas J. DeRosa	Director	February 25, 2022
<u>/s/ Steven J. Gilbert</u> Steven J. Gilbert	Lead Independent Director	February 25, 2022
<u>/s/ S. Michael Giliberto</u> S. Michael Giliberto	Director	February 25, 2022
<u>/s/ Patricia S. Han</u> Patricia S. Han	Director	February 25, 2022
<u>/s/ Grant H. Hill</u> Grant H. Hill	Director	February 25, 2022
<u>/s/ R. Paige Hood</u> R. Paige Hood	Director	February 25, 2022
<u>/s/ James D. Robinson IV</u> James D. Robinson IV	Director	February 25, 2022

EMPIRE STATE REALTY TRUST
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Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Empire State Realty Trust, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Empire State Realty Trust, Inc. (the Company) as of December 31, 2021 and 2020, the related consolidated statements of operations, comprehensive income (loss), stockholders' equity and cash flows for each of the three years in the period ended December 31, 2021, and the related notes and financial statement schedule listed in the Index at Item 15(a) (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, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework), and our report dated February 25, 2022, expressed an unqualified opinion thereon.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the 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 financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the 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 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 financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of the critical audit matter 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 matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Valuation of goodwill – observatory

Description of the matter

At December 31, 2021, the Company’s goodwill related to the observatory reporting unit was \$227.5 million as disclosed in Note 4 to the consolidated financial statements. As discussed in Note 2 to the consolidated financial statements, goodwill is tested for impairment at least annually or more frequently if there are indicators of impairment.

Given COVID-19’s material impact on observatory operations in 2021, the Company determined that interim impairment evaluations of goodwill were necessary for the observatory reporting unit and engaged a third-party valuation specialist to perform valuation procedures. Similarly, the Company performed its annual impairment testing as of October 1, 2021.

Auditing management’s goodwill impairment tests were complex due to the highly judgmental nature of the assumptions used. The fair value estimates were sensitive to significant assumptions such as revenue and cost projections, the weighted average cost of capital, and income tax considerations, which are affected by expectations about future market and economic conditions.

How we addressed the matter in our audit

We obtained an understanding, evaluated the design, and tested the operating effectiveness of controls over the Company’s goodwill impairment process, including controls over management’s review of the significant assumptions described above.

To test the implied fair value of the Company’s observatory reporting unit, we performed audit procedures that included, among other procedures, assessing the methodologies and testing the significant assumptions and underlying data used by the Company. We utilized internal valuation specialists in assessing the fair value methodologies applied and evaluating the reasonableness of certain assumptions selected by management. We compared the significant assumptions used by management to current industry and economic trends, recent historical performance, and other relevant factors, and performed sensitivity analyses of significant assumptions to evaluate the changes in the fair value of the observatory reporting unit that would result from changes in the assumptions.

/s/ Ernst & Young LLP

We have served as the Company’s auditor since 2010.

New York, New York

February 25, 2022

Empire State Realty Trust, Inc.
Consolidated Balance Sheets
(amounts in thousands, except share and per share amounts)

ASSETS	December 31, 2021	December 31, 2020
Commercial real estate properties, at cost:		
Land	\$ 336,278	\$ 201,196
Development costs	8,131	7,966
Building and improvements	3,156,508	2,924,804
	<u>3,500,917</u>	<u>3,133,966</u>
Less: accumulated depreciation	(1,072,938)	(941,612)
Commercial real estate properties, net	<u>2,427,979</u>	<u>2,192,354</u>
Cash and cash equivalents	423,695	526,714
Restricted cash	50,943	41,225
Tenant and other receivables	18,647	21,541
Deferred rent receivables	224,922	222,508
Prepaid expenses and other assets	76,549	77,182
Deferred costs, net	202,437	203,853
Acquired below market ground leases, net	336,904	344,735
Right of use assets	28,892	29,104
Goodwill	491,479	491,479
Total assets	<u>\$ 4,282,447</u>	<u>\$ 4,150,695</u>
LIABILITIES AND EQUITY		
Liabilities:		
Mortgage notes payable, net	\$ 948,769	\$ 775,929
Senior unsecured notes, net	973,373	973,159
Unsecured term loan facilities, net	388,223	387,561
Unsecured revolving credit facility	—	—
Accounts payable and accrued expenses	120,810	103,203
Acquired below market leases, net	24,941	31,705
Ground lease liabilities	28,892	29,104
Deferred revenue and other liabilities	84,358	88,319
Tenants' security deposits	28,749	30,408
Total liabilities	<u>2,598,115</u>	<u>2,419,388</u>
Commitments and contingencies		
Equity:		
Empire State Realty Trust, Inc. stockholders' equity:		
Preferred stock, \$0.01 par value per share, 50,000,000 shares authorized, none issued or outstanding	—	—
Class A common stock, \$0.01 par value per share, 400,000,000 shares authorized, 169,221,263 and 170,555,274 shares issued and outstanding in 2021 and 2020, respectively	1,692	1,705
Class B common stock, \$0.01 par value per share, 50,000,000 shares authorized, 995,751 and 1,010,130 shares issued and outstanding in 2021 and 2020, respectively	10	10
Additional paid-in capital	1,150,884	1,147,527
Accumulated other comprehensive loss	(20,848)	(28,320)
Retained deficit	(133,610)	(65,673)
Total Empire State Realty Trust, Inc.'s stockholders' equity	<u>998,128</u>	<u>1,055,249</u>
Non-controlling interests in operating partnership	643,012	646,118
Non-controlling interests in other partnerships	13,252	—
Private perpetual preferred units:		
Series 2019 preferred units, \$13.52 per unit liquidation preference, 4,664,038 issued and outstanding in 2021 and 2020, respectively	21,936	21,936
Series 2014 preferred units, \$16.62 per unit liquidation preference, 1,560,360 issued and outstanding in 2021 and 2020	8,004	8,004
Total equity	<u>1,684,332</u>	<u>1,731,307</u>
Total liabilities and equity	<u>\$ 4,282,447</u>	<u>\$ 4,150,695</u>

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.
Consolidated Statements of Operations
(amounts in thousands, except per share amounts)

	For the Year Ended December 31,		
	2021	2020	2019
Revenues:			
Rental revenue	\$ 559,690	\$ 563,071	\$ 586,414
Observatory revenue	41,474	29,057	128,769
Lease termination fees	16,230	9,416	4,352
Third-party management and other fees	1,219	1,225	1,254
Other revenue and fees	5,481	6,459	10,554
Total revenues	<u>624,094</u>	<u>609,228</u>	<u>731,343</u>
Operating expenses:			
Property operating expenses	126,986	136,141	174,977
Ground rent expenses	9,326	9,326	9,326
General and administrative expenses	55,947	62,244	61,063
Observatory expenses	23,206	23,723	33,767
Real estate taxes	119,967	121,923	115,916
Impairment charges	7,723	6,204	—
Depreciation and amortization	201,806	191,006	181,588
Total operating expenses	<u>544,961</u>	<u>550,567</u>	<u>576,637</u>
Total operating income	79,133	58,661	154,706
Other income (expense):			
Interest income	704	2,637	11,259
Interest expense	(94,394)	(89,907)	(79,246)
Loss on early extinguishment of debt	(214)	(86)	—
IPO litigation expense	—	(1,165)	—
Income (loss) before income taxes	<u>(14,771)</u>	<u>(29,860)</u>	<u>86,719</u>
Income tax benefit (expense)	1,734	6,971	(2,429)
Net income (loss)	<u>(13,037)</u>	<u>(22,889)</u>	<u>84,290</u>
Private perpetual preferred unit distributions	(4,201)	(4,197)	(1,743)
Net (income) loss attributable to non-controlling interests	6,527	10,374	(33,102)
Net income (loss) attributable to common stockholders	<u>\$ (10,711)</u>	<u>\$ (16,712)</u>	<u>\$ 49,445</u>
Total weighted average shares:			
Basic	<u>172,445</u>	<u>175,169</u>	<u>178,340</u>
Diluted	<u>277,420</u>	<u>283,837</u>	<u>297,798</u>
Earnings (loss) per share attributable to common stockholders:			
Basic	<u>\$ (0.06)</u>	<u>\$ (0.10)</u>	<u>\$ 0.28</u>
Diluted	<u>\$ (0.06)</u>	<u>\$ (0.10)</u>	<u>\$ 0.28</u>

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.
Consolidated Statements of Comprehensive Income (Loss)
(amounts in thousands)

	For the Year Ended December 31,		
	2021	2020	2019
Net income (loss)	\$ (13,037)	\$ (22,889)	\$ 84,290
Other comprehensive income (loss):			
Unrealized gain (loss) on valuation of interest rate swap agreements	348	(19,322)	(21,813)
Amount reclassified into interest expense	11,653	8,870	1,231
Other comprehensive income (loss)	12,001	(10,452)	(20,582)
Comprehensive income (loss)	(1,036)	(33,341)	63,708
Net (income) loss attributable to non-controlling interests and private perpetual preferred unitholders	2,326	6,177	(34,845)
Other comprehensive (income) loss attributable to non-controlling interests	(4,536)	4,003	8,254
Comprehensive income (loss) attributable to common stockholders	<u>\$ (3,246)</u>	<u>\$ (23,161)</u>	<u>\$ 37,117</u>

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.
Consolidated Statements of Stockholders' Equity
(amounts in thousands)

	Number of Class A Common Shares	Class A Common Stock	Number of Class B Common Shares	Class B Common Stock	Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Retained (Deficit) Earnings	Total Stockholders' Equity	Non-controlling Interests	Private Perpetual Preferred Units	Total Equity
Balance at December 31, 2018	173,874	\$ 1,739	1,038	\$ 10	\$ 1,204,075	\$ (8,853)	\$ 41,511	\$ 1,238,482	\$ 744,623	\$ 8,004	\$ 1,991,109
Issuance of Class A shares	—	—	—	—	—	—	—	—	(21,147)	21,147	—
Conversion of operating partnership units and Class B shares to Class A shares	6,951	70	(21)	—	27,740	(315)	—	27,495	(27,495)	—	—
Equity compensation:											
LTIP Units, net of forfeitures	—	—	—	—	—	—	—	—	20,239	—	20,239
Restricted stock, net of forfeitures	53	—	—	—	618	—	—	618	—	—	618
Dividends and distributions	—	—	—	—	—	—	(75,192)	(75,192)	(50,826)	(1,743)	(127,761)
Net income	—	—	—	—	—	—	49,445	49,445	33,102	1,743	84,290
Other comprehensive loss	—	—	—	—	—	(12,328)	—	(12,328)	(8,254)	—	(20,582)
Balance at December 31, 2019	180,878	1,809	1,017	10	1,232,433	(21,496)	15,764	1,228,520	690,242	29,151	1,947,913
Issuance of private perpetual preferred in exchange for common units	—	—	—	—	—	—	—	—	(789)	789	—
Conversion of operating partnership units and Class B shares to Class A shares	6,813	68	(7)	—	30,170	(375)	—	29,863	(29,863)	—	—
Repurchases of common shares	(17,279)	(172)	—	—	(115,997)	—	(27,544)	(143,713)	—	—	(143,713)
Equity compensation:											
LTIP Units, net of forfeitures	—	—	—	—	—	—	—	—	24,574	—	24,574
Restricted stock, net of forfeitures	143	—	—	—	921	—	—	921	—	—	921
Dividends and distributions	—	—	—	—	—	—	(37,181)	(37,181)	(23,669)	(4,197)	(65,047)
Net income (loss)	—	—	—	—	—	—	(16,712)	(16,712)	(10,374)	4,197	(22,889)
Other comprehensive loss	—	—	—	—	—	(6,449)	—	(6,449)	(4,003)	—	(10,452)
Balance at December 31, 2020	170,555	1,705	1,010	10	1,147,527	(28,320)	(65,673)	1,055,249	646,118	29,940	1,731,307
Issuance of private perpetual preferred in exchange for common units	—	—	—	—	—	—	—	—	—	—	—
Conversion of operating partnership units and Class B shares to Class A shares	3,512	35	(14)	—	10,384	7	—	10,426	(10,426)	—	—
Repurchases of common shares	(4,887)	(49)	—	—	(7,539)	—	(39,116)	(46,704)	—	—	(46,704)
Contributions to consolidated joint venture interests	—	—	—	—	—	—	—	—	13,269	—	13,269
Equity compensation:											
LTIP Units, net of forfeitures	—	—	—	—	—	—	—	—	19,747	—	19,747
Restricted stock, net of forfeitures	41	1	—	—	512	—	—	513	—	—	513
Dividends and distributions	—	—	—	—	—	—	(18,110)	(18,110)	(10,453)	(4,201)	(32,764)
Net income (loss)	—	—	—	—	—	—	(10,711)	(10,711)	(6,527)	4,201	(13,037)
Other comprehensive income	—	—	—	—	—	7,465	—	7,465	4,536	—	12,001
Balance at December 31, 2021	169,221	\$ 1,692	996	\$ 10	\$ 1,150,884	\$ (20,848)	\$ (133,610)	\$ 998,128	\$ 656,264	\$ 29,940	\$ 1,684,332

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.
Consolidated Statements of Cash Flows
(amounts in thousands)

For the Year Ended December 31,

	2021	2020	2019
Cash Flows From Operating Activities			
Net income (loss)	\$ (13,037)	\$ (22,889)	\$ 84,290
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization	201,806	191,006	181,588
Impairment charges	7,723	6,204	—
Amortization of non-cash items within interest expense	10,862	9,482	7,328
Amortization of acquired above and below-market leases, net	(5,896)	(3,627)	(7,311)
Amortization of acquired below-market ground leases	7,831	7,831	7,831
Straight-lining of rental revenue	(21,078)	(5,238)	(20,057)
Equity based compensation	20,260	25,495	20,857
Settlement of derivative contract	—	(20,281)	(11,802)
Loss on early extinguishment of debt	214	86	—
Increase (decrease) in cash flows due to changes in operating assets and liabilities:			
Security deposits	(1,052)	(151)	(27,243)
Tenant and other receivables	2,894	3,881	4,015
Deferred leasing costs	(16,090)	(14,464)	(30,895)
Prepaid expenses and other assets	5,814	(11,730)	(3,643)
Accounts payable and accrued expenses	(99)	(3,305)	427
Deferred revenue and other liabilities	12,334	19,993	27,206
Net cash provided by operating activities	<u>212,486</u>	<u>182,293</u>	<u>232,591</u>
Cash Flows From Investing Activities			
Short-term investments	—	—	400,000
Additions to building and improvements	(95,037)	(143,118)	(250,256)
Development costs	(165)	—	—
Acquisition of real estate property	(117,540)	—	—
Net cash (used in) provided by investing activities	<u>(212,742)</u>	<u>(143,118)</u>	<u>149,744</u>

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.
Consolidated Statements of Cash Flows (continued)
(amounts in thousands)

	For the Year Ended December 31,		
	2021	2020	2019
Cash Flows From Financing Activities			
Proceeds from mortgage notes payable	—	180,000	—
Repayment of mortgage notes payable	(4,091)	(3,938)	(3,790)
Proceeds from unsecured senior notes	—	175,000	—
Repayment of unsecured senior notes	—	—	(250,000)
Proceeds from unsecured term loan	—	175,000	—
Repayment of unsecured term loan	—	(50,000)	—
Proceeds from unsecured revolving credit facility	—	550,000	—
Repayment of unsecured revolving credit facility	—	(550,000)	—
Deferred financing costs	(9,486)	(10,135)	—
Repurchases of common shares	(46,704)	(143,713)	—
Private perpetual preferred unit distributions	(4,201)	(4,197)	(1,743)
Dividends paid to common stockholders	(18,110)	(37,181)	(75,192)
Distributions paid to noncontrolling interests in the operating partnership	(10,453)	(23,669)	(50,826)
Net cash provided by (used in) financing activities	<u>(93,045)</u>	<u>257,167</u>	<u>(381,551)</u>
Net increase (decrease) in cash and cash equivalents and restricted cash	(93,301)	296,342	784
Cash and cash equivalents and restricted cash—beginning of period	567,939	271,597	270,813
Cash and cash equivalents and restricted cash—end of period	<u>\$ 474,638</u>	<u>\$ 567,939</u>	<u>\$ 271,597</u>
Reconciliation of Cash and Cash Equivalents and Restricted Cash:			
Cash and cash equivalents at beginning of period	\$ 526,714	\$ 233,946	\$ 204,981
Restricted cash at beginning of period	41,225	37,651	65,832
Cash and cash equivalents and restricted cash at beginning of period	<u>\$ 567,939</u>	<u>\$ 271,597</u>	<u>\$ 270,813</u>
Cash and cash equivalents at end of period	\$ 423,695	\$ 526,714	\$ 233,946
Restricted cash at end of period	50,943	41,225	37,651
Cash and cash equivalents and restricted cash at end of period	<u>\$ 474,638</u>	<u>\$ 567,939</u>	<u>\$ 271,597</u>
Supplemental disclosures of cash flow information:			
Cash paid for interest	<u>\$ 77,610</u>	<u>\$ 75,416</u>	<u>\$ 76,333</u>
Interest capitalized	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 1,433</u>
Cash paid for income taxes	<u>\$ 644</u>	<u>\$ 1,282</u>	<u>\$ 1,766</u>
Non-cash investing and financing activities:			
Building and improvements included in accounts payable and accrued expenses	\$ 49,247	\$ 58,057	\$ 90,910
Write-off of fully depreciated assets	31,341	79,527	30,977
Derivative instruments at fair values included in accounts payable and accrued expenses	25,308	8,849	13,330
Conversion of operating partnership units and Class B shares to Class A shares	10,426	29,863	27,495
Issuance of Series 2019 private perpetual preferred in exchange for common units	—	789	21,147
Right of use assets	—	—	29,452
Ground lease liabilities	—	—	29,452
Debt assumed with the acquisition of real estate properties	177,453	—	—
Contribution from other partnerships	13,269	—	—

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.
Notes to Consolidated Financial Statements

1. Description of Business and Organization

As used in these consolidated financial statements, unless the context otherwise requires, "we," "us," "our," the "company," and "ESRT" mean Empire State Realty Trust, Inc. and its consolidated subsidiaries.

We are a self-administered and self-managed real estate investment trust, or REIT, that owns, manages, operates, acquires and repositions office, retail and multifamily properties in Manhattan and the greater New York metropolitan area. We were organized as a Maryland corporation on July 29, 2011.

As of December 31, 2021, our total portfolio contained 10.1 million rentable square feet of office, retail and multifamily space. We owned 14 office properties (including three long-term ground leasehold interest) encompassing approximately 9.4 million rentable square feet of office space. Nine of these properties are located in the midtown Manhattan market and encompass in the aggregate approximately 7.6 million rentable square feet of office space, including the Empire State Building. Our Manhattan office properties also contain an aggregate of 0.5 million rentable square feet of premier retail space on their ground floor and/or lower levels. Our remaining five office properties are located in Fairfield County, Connecticut and Westchester County, New York, encompassing in the aggregate approximately 1.8 million rentable square feet. The majority of square footage for these five properties is located in densely populated metropolitan communities with immediate access to mass transportation. Additionally, we have entitled land at the Stamford Transportation Center in Stamford, Connecticut, adjacent to one of our office properties, that will support the development of an approximately 0.4 million rentable square foot office building and garage, which we refer to herein as Metro Tower. As of December 31, 2021, our portfolio also included four standalone retail properties located in Manhattan and two standalone retail properties located in the city center of Westport, Connecticut, encompassing 0.2 million rentable square feet in the aggregate. Additionally, at December 31, 2021, our portfolio included two multifamily properties totaling 625 units.

Empire State Realty OP, L.P. (the "Operating Partnership") holds substantially all of our assets and conducts substantially all of our business. As of December 31, 2021, we owned approximately 60.5% of the aggregate operating partnership units in our Operating Partnership. We, as the sole general partner in our Operating Partnership, have responsibility and discretion in the management and control of our Operating Partnership, and the limited partners in our Operating Partnership, in such capacity, have no authority to transact business for, or participate in the management activities of our Operating Partnership. Accordingly, our Operating Partnership has been consolidated by us.

We elected to be taxed as a REIT and operate in a manner that we believe allows us to qualify as a REIT for federal income tax purposes commencing with our taxable year ended December 31, 2013. We have two entities that elected to be treated as taxable REIT subsidiaries, or TRSs, and are owned by our Operating Partnership. The TRSs, through several wholly owned limited liability companies, conduct third-party services businesses, which include the Empire State Building observatory, cleaning services, cafeteria, restaurant and health clubs, and asset and property management services.

2. Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The accompanying consolidated financial statements, have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP") and with the rules and regulations of the Securities and Exchange Commission (the "SEC"), represent our assets and liabilities and operating results. The consolidated financial statements include our accounts and our partially owned and wholly owned subsidiaries as well as our Operating Partnership and its subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

We consolidate entities in which we have a controlling financial interest. In determining whether we have a controlling financial interest in a partially owned entity and the requirement to consolidate the accounts of that entity, we consider factors such as ownership interest, board representation, management representation, authority to make decisions, and contractual and substantive participating rights of the partners/members as well as whether the entity is a variable interest entity ("VIE") and whether we are the primary beneficiary. The primary beneficiary of a VIE 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. The primary beneficiary is required to

consolidate the VIE. Empire State Realty Trust, Inc. has a variable interest in our Operating Partnership, Empire State Realty OP, L.P. and we are deemed to be the primary beneficiary.

We will assess the accounting treatment for each investment we may have in the future. This assessment will include a review of each entity's organizational agreement to determine which party has what rights and whether those rights are protective or participating. For all VIEs, we will 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 and benefit. In situations where we or our partner could approve, among other things, the annual budget, or leases that cover more than a nominal amount of space relative to the total rentable space at each property, we would not consolidate the investment as we consider these to be substantive participation rights that result in shared power of the activities that would most significantly impact the performance and benefit of such joint venture investment.

A non-controlling interest in a consolidated subsidiary is defined as the portion of the equity (net assets) in a subsidiary not attributable, directly or indirectly, to a parent. Non-controlling interests are required to be presented as a separate component of equity in the consolidated balance sheets and in the consolidated statements of income by requiring earnings and other comprehensive income to be attributed to controlling and non-controlling interests.

Accounting Estimates

The preparation of the consolidated financial statements in accordance with GAAP requires management to use estimates and assumptions that in certain circumstances affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Significant items subject to such estimates and assumptions include allocation of the purchase price of acquired real estate properties among tangible and intangible assets, determination of the useful life of real estate properties and other long-lived assets, valuation and impairment analysis of commercial real estate properties, goodwill, right-of-use assets and other long-lived assets, estimate of tenant expense reimbursements, valuation of the allowance for doubtful accounts, and valuation of derivative instruments, ground lease liabilities, senior unsecured notes, mortgage notes payable, unsecured revolving credit and term loan facilities, and equity based compensation. These estimates are prepared using management's best judgment, after considering past, current, and expected events and economic conditions. Actual results could differ from those estimates.

Revenue Recognition

Rental Revenue

Rental revenue includes base rents that each tenant pays in accordance with the terms of its respective lease and is reported on a straight-line basis over the non-cancellable term of the lease which includes the effects of rent steps and rent abatements under the leases. In general, we commence rental revenue recognition when the tenant takes possession of the leased space or controls the physical use of the leased space and the leased space is substantially ready for its intended use. We account for all of our leases as operating leases. Deferred rent receivables, including free rental periods and leasing arrangements allowing for increased base rent payments, are accounted for in a manner that provides an even amount of fixed lease revenues over the respective non-cancellable lease terms. Differences between rental income recognized and amounts due under the respective lease agreements are recognized as an increase or decrease to deferred rent receivables.

In addition to base rent, our tenants also generally will pay their pro rata share of increases in real estate taxes and operating expenses for the building over a base year. In some leases, in lieu of paying additional rent based upon increases in building operating expenses, the tenant will pay additional rent based upon increases in an index such as the Consumer Price Index over the index value in effect during a base year, or contain fixed percentage increases over the base rent to cover escalations.

For Coronavirus 2019 ("COVID-19") pandemic related rent deferral agreements, we will generally elect to record rental revenue and a receivable during the deferral period.

We recognize rental revenue of acquired in-place above- and below-market leases at their fair values over the terms of the respective leases, including, for below-market leases, fixed option renewal periods, if any.

Lease termination fees are recognized when the fees are determinable, tenant vacancy has occurred, collectability is reasonably assured, we have no continuing obligation to provide services to such former tenants and the payment is not subject to any conditions that must be met or waived.

Observatory Revenue

Revenues from the sale of observatory tickets are recognized upon admission or ticket expirations. Deferred revenue related to unused and unexpired tickets as of December 31, 2021 and 2020 was \$0.9 million and \$0.8 million, respectively, and is included in deferred revenue and other liabilities on the consolidated balance sheets.

Gains on Sale of Real Estate

We record a gain on sale of real estate pursuant to provisions under Accounting Standards Codification (ASC) 610-20, Gains and Losses from the Derecognition of Nonfinancial Assets. Under ASC 610-20, we must first determine whether the transaction is a sale to a customer or non-customer. We do not sell real estate within the ordinary course of our business and therefore, expect that sale transactions will not be contracts with customers. We will next determine whether we would have a controlling financial interest in the property after the sale. If we determine that we do not have a controlling financial interest in the real estate, we would evaluate whether a contract exists under ASC 606 Revenue from Contracts with Customers and whether the buyer has obtained control of the asset that was sold. We recognize the full gain on sale of real estate when the derecognition criteria under ASC 610-20 have been met.

Third-Party Management and Other Fees

We earn revenue arising from contractual agreements with related party entities for asset and property management services. This revenue is recognized as the related services are performed under the respective agreements in place.

Other Revenues and Fees

Other revenues and fees includes parking income, legal, tax and insurance settlements, demand response energy use earnings and sales from our restaurant at the Empire State Building.

Advertising and Marketing Costs

Advertising and marketing costs are expensed as incurred. The expense for the years ended December 31, 2021, 2020, and 2019 was \$7.9 million, \$7.4 million and \$9.7 million, respectively, and is included within operating expenses in our consolidated statements of operations.

Real Estate Properties and Related Intangible Assets

Land and buildings and improvements are recorded at cost less accumulated depreciation and amortization. The recorded cost includes cost of acquisitions, development and construction and tenant allowances and improvements. Expenditures for ordinary repairs and maintenance are charged to property operating expense as incurred. Significant replacements and betterments which improve or extend the life of the asset are capitalized. Tenant improvements which improve or extend the life of the asset are capitalized. If a tenant vacates its space prior to the contractual termination of its lease, the unamortized balance of any tenant improvements are written off if they are replaced or have no future value. For developed properties, direct and indirect costs that clearly relate to projects under development are capitalized. Costs include construction costs, professional services such as architectural and legal costs, capitalized interest and direct payroll costs. We begin capitalization when the project is probable. The assets relating to the project are stated at cost and are not depreciated. Once construction is completed and the assets are placed in service, the assets are reclassified to the appropriate asset class and depreciated in accordance with the useful lives as indicated below. Capitalization of interest ceases when the asset is ready for its intended use, which is generally near the date that a certificate of occupancy is obtained. Total capitalized interest for the year ended December 31, 2019 was \$1.4 million. There was no capitalized interest for the years ended December 31, 2021 and 2020.

Depreciation and amortization are computed using the straight-line method for financial reporting purposes. Buildings and improvements are depreciated over the shorter of 39 years, the useful life, or the remaining term of any leasehold interest. Tenant improvement costs, which are included in building and improvements in the consolidated balance sheets, are depreciated over the shorter of (i) the related remaining lease term or (ii) the life of the improvement. Corporate and other equipment is depreciated over three to seven years.

Acquisitions of properties are accounted for utilizing the acquisition method and accordingly the purchase cost is allocated to tangible and intangible assets and liabilities based on their fair values. The fair value of tangible assets acquired is determined by valuing the property as if it were vacant, applying methods similar to those used by independent appraisers of

income-producing property. The resulting value is then allocated to land, buildings and improvements, and tenant improvements based on our determination of the fair value of these assets. The assumptions used in the allocation of fair values to assets acquired are based on our best estimates at the time of evaluation.

Fair value is assigned to above-market and below-market leases based on the difference between (a) the contractual amounts to be paid by the tenant based on the existing lease and (b) our estimate of current market lease rates for the corresponding in-place leases, over the remaining terms of the in-place leases. Capitalized above-market lease amounts are amortized as a decrease to rental revenue over the remaining terms of the respective leases. Capitalized below-market lease amounts are amortized as an increase to rental revenue over the remaining terms of the respective leases. If a tenant vacates its space prior to the contractual termination of the lease and no rental payments are being made on the lease, any unamortized balance of the related intangible will be written off.

The aggregate value of other acquired intangible assets consists of acquired ground leases and acquired in-place leases and tenant relationships. The fair value allocated to acquired in-place leases consists of a variety of components including, but not necessarily limited to: (a) the value associated with avoiding the cost of originating the acquired in-place leases (i.e. the market cost to execute a lease, including leasing commissions, if any); (b) the value associated with lost revenue related to tenant reimbursable operating costs estimated to be incurred during the assumed lease-up period (i.e. real estate taxes, insurance and other operating expenses); (c) the value associated with lost rental revenue from existing leases during the assumed lease-up period; and (d) the value associated with any other inducements to secure a tenant lease.

We assess the potential for impairment of our long-lived assets, including real estate properties, annually or whenever events occur or a change in circumstances indicate that the recorded value might not be fully recoverable. We determine whether impairment in value has occurred by comparing the estimated future undiscounted cash flows expected from the use and eventual disposition of the asset to its carrying value. If the undiscounted cash flows do not exceed the carrying value, the real estate is adjusted to fair value and an impairment loss is recognized. Assets held for sale are recorded at the lower of cost or fair value less costs to sell. During the fourth quarter 2021, we suspended debt service related to a \$30 million mortgage secured by our property in Norwalk, Connecticut and we identified this action as an indicator of impairment. We concluded that the cost basis of the asset exceeds its fair value when considering our reduced holding period given our new intent to transfer property ownership to the lender. As such, we incurred a \$7.7 million impairment charge. Our methodology to calculate the fair value of the property involved a combination of the discounted cash flow method, utilizing Level 3 unobservable inputs such as market capitalization rates obtained from external sources, and the market based approach utilizing recent sales comparables. We do not believe that the value of any of our other properties and intangible assets were impaired during the years ended December 31, 2021, 2020 and 2019.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash on hand, government money markets, demand deposits with financial institutions and short-term liquid investments with original maturities of three months or less when purchased. Cash and cash equivalents held at major commercial banks may at times exceed the Federal Deposit Insurance Corporation limit. To date, we have not experienced any losses on our invested cash.

Restricted Cash

Restricted cash consists of amounts held for tenants in accordance with lease agreements such as security deposits and amounts held by lenders and/or escrow agents to provide for future real estate tax expenditures and insurance expenditures, tenant vacancy related costs and debt service obligations.

Short-term Investments

Short-term investments include time deposits with original maturities of greater than three months and remaining maturities of less than one year.

Tenant and Other Receivables

Tenant and other receivables, other than deferred rent receivable, are generally expected to be collected within one year.

Deferred Leasing Costs

Deferred leasing costs consist of fees incurred to initiate and renew leases, are amortized on a straight-line basis over the related lease term and the expense is included in depreciation and amortization in our consolidated statements of income. Upon the early termination of a lease, unamortized deferred leasing costs are charged to expense.

Deferred Financing Costs

Fees and costs incurred to obtain long-term financing have been deferred and are amortized as a component of interest expense in our consolidated statements of income over the life of the respective long-term financing on the straight-line method which approximates the effective interest method. Unamortized deferred financing costs are expensed when the associated debt is refinanced or repaid before maturity. Costs incurred in seeking debt, which do not close, are expensed in the period in which it is determined that the financing will not close.

Equity Method Investments

We account for investments under the equity method of accounting where we do not have control but have the ability to exercise significant influence. Under this method, investments are recorded at cost, and the investment accounts are adjusted for our share of the entities' income or loss and for distributions and contributions. Equity income (loss) is allocated based on the portion of the ownership interest that is controlled by us. The agreements may designate different percentage allocations among investors for profits and losses; however, our recognition of the entity's income or loss generally follows the entity's distribution priorities, which may change upon the achievement of certain investment return thresholds.

To the extent that we contributed assets to an entity, our investment in the entity is recorded at cost basis in the assets that were contributed to the entity. Upon contributing assets to an entity, we make a judgment as to whether the economic substance of the transaction is a sale. In accordance with the provisions of ASC 610-20, we will recognize a full gain on both the retained and sold portions of real estate contributed or sold to an entity by recognizing our new equity method investment interest at fair value.

To the extent that the carrying amount of these investments on our combined balance sheets is different than the basis reflected at the entity level, the basis difference would be amortized over the life of the related asset and included in our share of equity in net income of the entity.

On a periodic basis, we assess whether there are any indicators that the carrying value of our investments in entities may be impaired on an other than temporary basis. An investment is impaired only if management's estimate of the fair value of the investment is less than the carrying value of the investment on an other than temporary basis. To the extent impairment has occurred, the loss shall be measured as the excess of the carrying value of the investment over the fair value of the investment.

As of December 31, 2021 and 2020, we had no equity method investments.

Goodwill

Goodwill is tested annually for impairment and is tested for impairment more frequently if events and circumstances indicate that the asset might be impaired. An impairment loss is recognized to the extent that the carrying amount, including goodwill, exceeds the reporting unit's fair value and the implied fair value of goodwill is less than the carrying amount of that goodwill. Non-amortizing intangible assets, such as trade names and trademarks, are subject to an annual impairment test based on fair value and amortizing intangible assets are tested whenever events or changes in circumstances indicate that the carrying amount may not be recoverable.

In compliance with the requirements of authorities, we closed the Empire State Building observatory on March 16, 2020 due to the COVID-19 pandemic and it remained closed until the 86th floor observation deck was reopened on July 20, 2020. The 102nd observation deck was reopened on August 24, 2020. The closure of our observatory and subsequent reopening under international, national, and local travel restrictions and quarantines caused us during the quarter, and each subsequent quarters, to choose to perform an impairment test related to goodwill. We engaged a third-party valuation consulting firm to perform the valuation process. The analysis used a combination of the discounted cash flow method (a form of the income approach) utilizing Level 3 unobservable inputs and the guideline company method (a form of the market approach). Significant assumptions under the former included revenue and cost projections, weighted average cost of capital, long-term growth rate and income tax considerations while the latter included guideline company enterprise values, revenue multiples and

control premium rates. Our methodology to review goodwill impairment, which included a significant amount of judgment and estimates, provided a reasonable basis to determine whether impairment had occurred. Based upon the results of the goodwill impairment test of the stand-alone observatory reporting unit, which is after the intercompany rent expense paid to the Real Estate reporting unit, we determined that the fair value of the observatory reporting unit exceeded its carrying value by less than 15.0%. Many of the factors employed in determining whether or not goodwill is impaired are outside of our control and it is reasonably likely that assumptions and estimates will change in future periods. We will continue to assess the impairment of the observatory reporting unit goodwill going forward and that continued assessment may again utilize a third-party valuation consulting firm.

Fair Value

Fair value is a market-based measurement, not an entity-specific measurement, and should be determined based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, the FASB guidance establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within levels one and two of the hierarchy) and the reporting entity's own assumptions about market participant assumptions (unobservable inputs classified within Level 3 of the hierarchy).

The methodologies used for valuing financial instruments have been categorized into three broad levels as follows:

Level 1 - Quoted prices in active markets for identical instruments.

Level 2 - Valuations based principally on other observable market parameters, including:

- Quoted prices in active markets for similar instruments;
- Quoted prices in less active or inactive markets for identical or similar instruments;
- Other observable inputs (such as risk free interest rates, yield curves, volatilities, prepayment speeds, loss severities, credit risks and default rates); and
- Market corroborated inputs (derived principally from or corroborated by observable market data).

Level 3 - Valuations based significantly on unobservable inputs, including:

- Valuations based on third-party indications (broker quotes or counterparty quotes) which were, in turn, based significantly on unobservable inputs or were otherwise not supportable; and
- Valuations based on internal models with significant unobservable inputs.

These levels form a hierarchy. We follow this hierarchy for our financial instruments measured or disclosed at fair value on a recurring and nonrecurring basis and other required fair value disclosures. The classifications are based on the lowest level of input that is significant to the fair value measurement.

We use the following methods and assumptions in estimating fair value disclosures for financial instruments.

Cash and cash equivalents, restricted cash, short term investments, tenant and other receivables, prepaid expenses and other assets, deferred revenue, tenant security deposits, accounts payable and accrued expenses carrying values approximate their fair values due to the short term maturity of these instruments.

The fair value of derivative instruments is determined using widely accepted valuation techniques, including discounted cash flow analysis on the expected cash flows of each derivative. Although the majority of the inputs used to value our derivatives fall within Level 2 of the fair value hierarchy, the credit valuation adjustments associated with our derivatives utilize Level 3 inputs, such as estimates of current credit spreads to evaluate the likelihood of default by ourselves and our counterparties. The impact of such credit valuation adjustments, determined based on the fair value of each individual contract, was not significant to the overall valuation. As a result, all of our derivatives were classified as Level 2 of the fair value hierarchy.

The fair value of our mortgage notes payable, senior unsecured notes - Series A, B, C, D, E, F, G and H, and unsecured term loan facilities which are determined using Level 3 inputs, are estimated by discounting the future cash flows using current interest rates at which similar borrowings could be made to us.

Derivative Instruments

We are exposed to the effect of interest rate changes and manage these risks by following policies and procedures including the use of derivatives. To manage exposure to interest rates, derivatives are used primarily to fix the rate on debt based on floating-rate indices. We record all derivatives on the balance sheet at fair value. We incorporate credit valuation adjustments to appropriately reflect both our own nonperformance risk and the respective counterparty's nonperformance risk in the fair value measurements. We measure the credit risk of our derivative instruments that are subject to master netting agreements on a net basis by counterparty portfolio. For derivatives that qualify as cash flow hedges, we report the gain or loss on the derivative designated as a hedge as part of other comprehensive income (loss) and subsequently reclassify the gain or loss into income in the period that the hedged transaction affects income.

Income Taxes

We elected to be taxed as a REIT under sections 856 through 860 of the Internal Revenue Code of 1986, as amended, (the "Code"), commencing with the taxable year ended December 31, 2013 and believe we qualify as a REIT at December 31, 2021. REITs are subject to a number of organizational and operational requirements, including a requirement that 90% of ordinary "REIT taxable income" (as determined without regard to the dividends paid deduction or net capital gains) be distributed. As a REIT, we will generally not be subject to U.S. federal income tax to the extent that we meet the organizational and operational requirements and our distributions equal or exceed REIT taxable income. For all periods subsequent to the effective date of our REIT election, we have met the organizational and operational requirements and distributions have exceeded net taxable income. Accordingly, no provision has been made for federal income taxes.

We have elected to treat ESRT Observatory TRS, L.L.C., our subsidiary which holds our observatory operations, and ESRT Holdings TRS, L.L.C., our subsidiary that holds our third party management, restaurant, cafeteria, health clubs and certain cleaning operations, as taxable REIT subsidiaries. Taxable REIT subsidiaries may participate in non-real estate activities and/or perform non-customary services for tenants and their operations are generally subject to regular corporate income taxes. Our taxable REIT subsidiaries accounts for its income taxes in accordance with GAAP, which includes an estimate of the amount of taxes payable or refundable for the current year and deferred tax liabilities and assets for the future tax consequences of events that have been recognized in our financial statements or tax returns. The calculation of the taxable REIT subsidiaries' tax provisions may require interpreting tax laws and regulations and could result in the use of judgments or estimates which could cause its recorded tax liability to differ from the actual amount due. Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The taxable REIT subsidiaries periodically assess the realizability of deferred tax assets and the adequacy of deferred tax liabilities, including the results of local, state, or federal statutory tax audits or estimates and judgments used.

We apply provisions for measuring and recognizing tax benefits associated with uncertain income tax positions. Penalties and interest, if incurred, would be recorded as a component of income tax expense. As of December 31, 2021 and 2020, we do not have a liability for uncertain tax positions. As of December 31, 2021, the tax years ended December 31, 2018 through December 31, 2021 remain open for an audit by the Internal Revenue Service, state or local authorities.

Share-Based Compensation

Share-based compensation for market-based equity awards is measured at the fair value of the award on the date of grant and recognized as an expense on a straight-line basis over the stated vesting period, which is generally three or four years, depending on retirement eligibility. Share-based compensation for time-based equity awards is measured at the fair value of the award on the date of grant and recognized as an expense on a straight-line basis over the shorter of (i) the stated vesting period, which is generally three, four or five years, or (ii) the period from the date of grant to the date the employee becomes retirement eligible, which may occur upon grant. An employee is retirement eligible when the employee attains the (i) age of 65 and (ii) has first completed ten years of continuous service with us or our affiliates. During the second quarter of 2020, the Board approved changing the definition of retirement age from 60 to 65 starting with the grant awards issued in March 2020 under the 2019 Plan. Any forfeitures of share-based compensation awards are recognized as they occur.

The determination of fair value of these awards is subjective and involves significant estimates and assumptions including expected volatility of our stock, expected dividend yield, expected term, and assumptions of whether these awards will achieve parity with other Operating Partnership units or achieve performance thresholds. We believe that the assumptions and estimates utilized are appropriate based on the information available to management at the time of grant.

Per Share Data

Basic and diluted earnings per share are computed based upon the weighted average number of shares outstanding during the respective period.

Segment Reporting

We have identified two reportable segments: (1) Real Estate and (2) observatory. Our real estate segment includes all activities related to the ownership, management, operation, acquisition, repositioning and disposition of our real estate assets. Our observatory segment operates the 86th and 102nd floor observatories at the Empire State Building. These two lines of businesses are managed separately because each business requires different support infrastructures, provides different services and has dissimilar economic characteristics such as investments needed, stream of revenues and different marketing strategies. We account for intersegment sales and rent as if the sales or rent were to third parties, that is, at current market prices.

Recently Issued or Adopted Accounting Standards

During April 2020, the Financial Accounting Standards Board ("FASB") staff issued a question and answer document (the "Lease Modification Q&A") focused on the application of lease accounting guidance to lease concessions provided as a result of the COVID-19 global pandemic. Under existing lease guidance, the entity would have to determine, on a lease by lease basis, if a lease concession was the result of a new arrangement reached with the tenant, which would be accounted for under the lease modification framework, or if a lease concession was under the enforceable rights and obligations that existed in the original lease, which would be accounted for outside the lease modification framework. The Lease Modification Q&A provides entities with the option to elect to account for lease concessions as though the enforceable rights and obligations existed in the original lease. This election is only available when total cash flows resulting from the modified lease are substantially similar to the cash flows in the original lease.

During March 2020, the FASB issued Accounting Standards Update ("ASU") 2020-04, Reference Rate Reform (Topic 848). ASU 2020-04 contains practical expedients for reference rate reform related activities that impact debt, leases, derivatives and other contracts. The guidance in ASU 2020-04 is optional and may be elected over time as reference rate reform activities occur. During the first quarter 2020, we elected to apply the hedge accounting expedients related to probability and the assessments of effectiveness for future LIBOR-indexed cash flows to assume that the index upon which future hedged transactions will be based matches the index on the corresponding derivatives. Application of these expedients preserves the presentation of derivatives consistent with past presentation. We continue to evaluate the impact of the guidance and may apply other elections as applicable as additional changes in the market occur.

Note 3. Acquisitions

On December 22, 2021, we acquired 90% of two multifamily assets located in Manhattan, the Victory (561 10th Avenue) and 345 East 94th Street, previously owned by a joint venture of Fetner Properties and an institutional owner. The total transaction value was \$307.0 million, inclusive of \$134.0 million of debt on the Victory, that matures in 2033 and has an effective interest rate of 3.85%, and \$52.0 million of debt on 345 East 94th Street, that matures in 2030 and has an effective interest rate of 3.56%. Fetner Properties retained a 10% equity stake and continues to manage onsite operations. We will asset manage the properties and have control over all decision making through our voting interests in each entity. Additionally, we have the right to assume day-to-day management for no additional consideration. The fair value of the non-controlling interest retained by Fetner Properties was equivalent to 10%, the equity stake they retained, of the gross purchase price less their pro-rata share of the debt assumed. The purchase price of the non-controlling interest is its fair value at the date of acquisition.

The Victory is a 417 unit, 45-story apartment building at the corner of 10th Avenue and 41st Street near Hudson Yards. It is a participant in an extendable 421a tax abatement program. The Class A, 310,707 square feet asset offers a mix of studio, 1- and 2-bedroom units and a full suite of amenities including 24-hour concierge, fitness center with half-court basketball, resident lounge with outdoor terraces, roof deck and parking, as well as an 11,000 square feet retail space leased to CVS through 2040.

345 East 94th Street is a 208 unit, 30-story, apartment building at the corner of 1st Avenue and 94th Street near the 2nd Avenue subway line at 96th Street. It is a participant in an extendable 421a tax abatement program. The Class A, 168,243 square feet asset offers a mix of studio, 1- and 2- bedroom units and a full suite of amenities including a 24-hour concierge, fitness center, resident lounge, outdoor terrace and parking.

Assets and liabilities acquired are as follows (amounts in thousands):

Intangibles

	Land	Building and Improvements	Assets	Liabilities	Total
The Victory	\$ 91,437	\$ 124,997	\$ 13,573	\$ (19,895)	\$ 210,112
345 East 94th St.	44,228	55,766	4,824	(5,491)	99,327
	<u>\$ 135,665</u>	<u>\$ 180,763</u>	<u>\$ 18,397</u>	<u>\$ (25,386)</u>	<u>\$ 309,439 *</u>

*Includes total capitalized transaction costs of \$2.4 million.

4. Deferred Costs, Acquired Lease Intangibles and Goodwill

Deferred costs, net, consisted of the following at December 31, 2021 and 2020 (amounts in thousands):

	2021	2020
Leasing costs	\$ 211,189	\$ 203,905
Acquired in-place lease value and deferred leasing costs	166,491	181,336
Acquired above-market leases	33,289	40,398
	410,969	425,639
Less: accumulated amortization	(215,764)	(223,918)
Total deferred costs, net, excluding net deferred financing costs	<u>\$ 195,205</u>	<u>\$ 201,721</u>

At December 31, 2021 and 2020, \$7.2 million and \$2.1 million, respectively, of net deferred financing costs associated with the unsecured revolving credit facility was included in deferred costs, net on the consolidated balance sheets.

Amortization expense related to deferred leasing and acquired deferred leasing costs was \$28.6 million, \$24.8 million, and \$24.5 million, for the years ended December 31, 2021, 2020, and 2019, respectively. Amortization expense related to acquired lease intangibles was \$10.5 million, \$7.6 million and \$10.9 million for the years ended December 31, 2021, 2020 and 2019, respectively.

Amortizing acquired intangible assets and liabilities consisted of the following at December 31, 2021 and 2020 (amounts in thousands):

	2021	2020
Acquired below-market ground leases	\$ 396,916	\$ 396,916
Less: accumulated amortization	(60,012)	(52,181)
Acquired below-market ground leases, net	<u>\$ 336,904</u>	<u>\$ 344,735</u>

	2021	2020
Acquired below-market leases	\$ (65,403)	\$ (78,451)
Less: accumulated amortization	40,462	46,746
Acquired below-market leases, net	<u>\$ (24,941)</u>	<u>\$ (31,705)</u>

Rental revenue related to the amortization of below market leases, net of above market leases was \$5.9 million, \$3.6 million and \$7.3 million for the years ended December 31, 2021, 2020 and 2019, respectively. The remaining weighted-average amortization period as of December 31, 2021 is 23.1 years, 3.6 years, 3.8 years and 3.0 years for below-market ground leases, in-place leases and deferred leasing costs, above-market leases and below-market leases, respectively. We expect to recognize amortization expense and rental revenue from the acquired intangible assets and liabilities as follows (amounts in thousands):

For the year ending:	Future Ground Rent Amortization	Future Amortization Expense	Future Rental Revenue
2022	\$ 7,831	\$ 14,604	\$ 4,858
2023	7,831	8,807	2,737
2024	7,831	7,003	2,172
2025	7,831	6,096	2,121
2026	7,831	5,033	1,236
Thereafter	297,749	11,516	1,510
	<u>\$ 336,904</u>	<u>\$ 53,059</u>	<u>\$ 14,634</u>

As of December 31, 2021, we had goodwill of \$491.5 million. In 2013, we acquired the interests in Empire State Building Company, L.L.C. and 501 Seventh Avenue Associates, L.L.C. for an amount in excess of their net tangible and identified intangible assets and liabilities and as a result we recorded goodwill related to the transaction. Goodwill was allocated \$227.5 million to the observatory operations of the Empire State Building, \$250.8 million to Empire State Building, and \$13.2 million to 501 Seventh Avenue.

In compliance with the requirements of authorities, we closed the Empire State Building observatory on March 16, 2020 due to the COVID-19 pandemic and it remained closed until the 86th floor observation deck was reopened on July 20, 2020. The 102nd observation deck was reopened on August 24, 2020. The closure of our observatory and subsequent reopening under international, national, and local travel restrictions and quarantines caused us during the quarter, and each subsequent quarters, to choose to perform an impairment test related to goodwill. We engaged a third-party valuation consulting firm to perform the valuation process. The analysis used a combination of the discounted cash flow method (a form of the income approach) utilizing Level 3 unobservable inputs and the guideline company method (a form of the market approach). Significant assumptions under the former included revenue and cost projections, weighted average cost of capital, long-term growth rate and income tax considerations while the latter included guideline company enterprise values, revenue multiples and control premium rates. Our methodology to review goodwill impairment, which included a significant amount of judgment and estimates, provided a reasonable basis to determine whether impairment had occurred. Based upon the results of the goodwill impairment test of the standalone observatory reporting unit, which is after the intercompany rent expense paid to the Real Estate reporting unit, we determined that the fair value of the observatory reporting unit exceeded its carrying value by less than 15.0%. Many of the factors employed in determining whether or not goodwill is impaired are outside of our control and it is reasonably likely that assumptions and estimates will change in future periods. We will continue to assess the impairment of the observatory reporting unit goodwill going forward and that continued assessment may again utilize a third-party valuation consulting firm.

5. Debt

Debt consisted of the following as of December 31, 2021 and 2020 (amounts in thousands)

	As of December 31, 2021					
	Principal Balance as of December 31, 2021	Principal Balance as of December 31, 2020	Stated Rate	Effective Rate ⁽¹⁾	Maturity Date ⁽²⁾	
<i>Fixed rate mortgage debt</i>						
Metro Center	\$ 85,032	\$ 87,382	3.59 %	3.68 %	11/5/2024	
10 Union Square	50,000	50,000	3.70 %	3.97 %	4/1/2026	
1542 Third Avenue	30,000	30,000	4.29 %	4.53 %	5/1/2027	
First Stamford Place ⁽³⁾	180,000	180,000	4.28 %	4.77 %	7/1/2027	
1010 Third Avenue and 77 West 55th Street	36,670	37,477	4.01 %	4.23 %	1/5/2028	
250 West 57th Street	180,000	180,000	2.83 %	3.23 %	12/1/2030	
10 Bank Street	31,091	32,025	4.23 %	4.37 %	6/1/2032	
383 Main Avenue	30,000	30,000	4.44 %	4.56 %	6/30/2032	
1333 Broadway	160,000	160,000	4.21 %	4.29 %	2/5/2033	
345 East 94th Street - Series A	43,600	—	70.0% of LIBOR plus 0.95%	3.56 %	11/1/2030	
345 East 94th Street - Series B	8,650	—	LIBOR plus 2.24%	3.56 %	11/1/2030	
561 10th Avenue - Series A	114,500	—	70.0% of LIBOR plus 1.07%	3.85 %	11/1/2033	
561 10th Avenue - Series B	19,250	—	LIBOR plus 2.45%	3.85 %	11/1/2033	
Total fixed rate mortgage debt	968,793	786,884				
Senior unsecured notes: ⁽⁴⁾						
Series A	100,000	100,000	3.93 %	3.96 %	3/27/2025	
Series B	125,000	125,000	4.09 %	4.12 %	3/27/2027	
Series C	125,000	125,000	4.18 %	4.21 %	3/27/2030	
Series D	115,000	115,000	4.08 %	4.11 %	1/22/2028	
Series E	160,000	160,000	4.26 %	4.27 %	3/22/2030	
Series F	175,000	175,000	4.44 %	4.45 %	3/22/2033	
Series G	100,000	100,000	3.61 %	4.89 %	3/17/2032	
Series H	75,000	75,000	3.73 %	5.00 %	3/17/2035	
Unsecured revolving credit facility ⁽⁴⁾	—	—	LIBOR plus 1.30%	— %	3/31/2025	
Unsecured term loan facility ⁽⁴⁾	215,000	215,000	LIBOR plus 1.20%	3.57 %	3/19/2025	
Unsecured term loan facility ⁽⁴⁾	175,000	175,000	LIBOR plus 1.50%	3.68 %	12/31/2026	
Total principal	2,333,793	2,151,884				
Deferred financing costs, net	(14,881)	(15,235)				
Unamortized debt discount	(8,547)	—				
Total	\$ 2,310,365	\$ 2,136,649				

(1) The effective rate is the yield as of December 31, 2021, including the effects of debt issuance costs and interest rate swaps.

(2) Pre-payment is generally allowed for each loan upon payment of a customary pre-payment penalty.

(3) Represents a \$164 million mortgage loan bearing interest of 4.09% and a \$16 million loan bearing interest at 6.25%.

(4) At December 31, 2021, we were in compliance with all debt covenants.

Principal Payments

Aggregate required principal payments at December 31, 2021 are as follows (amounts in thousands):

Year	Amortization	Maturities	Total
2022	\$ 7,689	\$ —	\$ 7,689
2023	10,130	—	10,130
2024	10,424	77,675	88,099
2025	8,523	315,000	323,523
2026	9,030	225,000	234,030
Thereafter	39,968	1,630,354	1,670,322
Total principal maturities	<u>\$ 85,764</u>	<u>\$ 2,248,029</u>	<u>\$ 2,333,793</u>

Deferred Financing Costs

Deferred financing costs, net, consisted of the following at December 31, 2021 and 2020 (amounts in thousands):

	2021	2020
Financing costs	\$ 44,637	\$ 35,365
Less: accumulated amortization	(22,525)	(17,998)
Total deferred financing costs, net	<u>\$ 22,112</u>	<u>\$ 17,367</u>

Amortization expense related to deferred financing costs was \$4.5 million, \$4.1 million, and \$3.8 million, for the years ended December 31, 2021, 2020 and 2019, respectively, and was included in interest expense.

Mortgage Debt

Mortgage debt of \$30.0 million on our 383 Main Avenue property in Norwalk, Connecticut was in default as of December 31, 2021. We had suspended debt service as of November 1, 2021 and we identified this action as an indicator of impairment. We concluded that the cost basis of the asset exceeds its fair value when considering our reduced holding period given our new intent to transfer property ownership to the lender. We believe this action is in the best interest of our shareholders given the challenging fundamentals of the Norwalk, CT submarket. During the quarter, we had incurred an \$7.7 million impairment charge on the same property. Refer to Note 2 Summary of Significant Accounting Policies.

Except as noted above, we are not in default on any of our loan agreements.

On December 22, 2021, we acquired two multifamily assets, the Victory (561 10th Avenue) and 345 East 94th Street. In connection with this acquisition, we assumed \$134.0 million of debt on the Victory, which matures in November 2033 and has an effective interest rate of 3.85%, and \$52 million of debt on 345 East 94th Street, which matures in November 2030 and has an effective interest rate of 3.56%.

Unsecured Revolving Credit and Term Loan Facilities

On March 31, 2021, through our Operating Partnership, we entered into a second amendment to an existing credit agreement ("Amended Credit Agreement") that will govern an amended senior unsecured credit facility (the "Credit Facility") with Bank of America, N.A., as administrative agent, and Bank of America, Wells Fargo Bank, National Association, Capital One, National Association and JPMorgan Chase Bank, N.A., as co-syndication agents, and the lenders and the letter of credit issuers party thereto. The Amended Credit Agreement amends the amended and restated credit agreement dated August 29, 2017, as amended, by and among the parties named therein.

The Credit Facility is in the initial maximum principal amount of up to \$1.065 billion, which consists of a \$850.0 million revolving credit facility and a \$215.0 million term loan facility. We borrowed the term loan facility in full in August 2017. We may request the Credit Facility be increased through one or more increases in the revolving credit facility or one or more increases in the term loan facility or the addition of new pari passu term loan tranches, for a maximum aggregate principal amount not to exceed \$1.50 billion. The Credit Facility will be used for our working capital needs and for other general corporate purposes. As of December 31, 2021, we had no borrowings under the revolving credit facility and \$215.0 million under the term loan facility.

The revolving credit facility matures on March 31, 2025. We have the option to extend the initial term for up to two additional 6-month periods, subject to certain conditions, including the payment of an extension fee equal to 0.0625% and 0.075% of the then outstanding commitments under the revolving credit facility on the first and the second extensions, respectively. The term loan facility matures on March 19, 2025. We may prepay the loans under the Credit Facility at any time in whole or in part, subject to reimbursement of the lenders' breakage and redeployment costs in the case of prepayment of Eurodollar Rate borrowings.

On March 19, 2020, we entered into a senior unsecured term loan facility (the "Term Loan Facility") with Wells Fargo Bank, National Association, as administrative agent, Wells Fargo Securities, LLC as sole bookrunner, Wells Fargo Securities, LLC, Capital One, National Association, U.S. Bank National Association and SunTrust Robinson Humphrey, Inc. as Joint Lead Arrangers, Capital One, National Association, as syndication agent, U.S. Bank National Association and Truist Bank, as documentation agents, and the lenders party thereto.

The Term Loan Facility is in the original principal amount of \$175 million which we borrowed in full at closing. We may request the Term Loan Facility be increased through one or more increases or the addition of new pari passu term loan tranches, for a maximum aggregate principal amount not to exceed \$225 million. As of December 31, 2021, our borrowings amounted to \$175.0 million under the Term Loan Facility.

The Term Loan Facility matures on December 31, 2026. We may prepay loans under the Term Loan Facility at any time in whole or in part, subject to reimbursement of the lenders' breakage and redeployment costs in the case of prepayment of Eurodollar rate borrowings.

The terms of both the Credit Facility and the Term Loan Facility include customary covenants, including limitations on liens, investment, distributions, debt, fundamental changes, and transactions with affiliates and require certain customary financial reports. It also requires compliance with financial ratios including a maximum leverage ratio, a maximum secured leverage ratio, a minimum fixed charge coverage ratio, a minimum unencumbered interest coverage ratio, and a maximum unsecured leverage ratio. The agreements also contain customary events of default (subject in certain cases to specified cure periods), including but not limited to non-payment, breach of covenants, representations or warranties, cross defaults, bankruptcy or other insolvency events, judgments, ERISA events, invalidity of loan documents, loss of real estate investment trust qualification, and occurrence of a change of control. As of December 31, 2021, we were in compliance with the covenants under the Credit Facility and the Term Loan Facility.

Senior Unsecured Notes Exchangeable

During August 2014, we issued \$250.0 million principal amount of 2.625% Exchangeable Senior Notes ("2.625% Exchangeable Senior Notes") due August 15, 2019. The 2.625% Exchangeable Senior Notes were exchangeable into cash, shares of Class A common stock or a combination of cash and shares of Class A common stock, at our election. On August 15, 2019, we settled the principal amount of the 2.625% Exchangeable Senior Notes in cash.

For the year ended December 31, 2019, total interest expense related to the 2.625% Exchangeable Senior Notes was \$6.1 million, consisting of (i) contractual interest expense of \$4.1 million, (ii) additional non-cash interest expense of \$1.6 million, related to the accretion of the debt discount, and (iii) amortization of deferred financing costs of \$0.4 million.

Senior Unsecured Notes

The terms of the senior unsecured notes include customary covenants, including limitations on liens, investment, distributions, debt, fundamental changes, and transactions with affiliates and require certain customary financial reports. It also requires compliance with financial ratios including a maximum leverage ratio, a maximum secured leverage ratio, a minimum fixed charge coverage ratio, a minimum unencumbered interest coverage ratio, and a maximum unsecured leverage ratio. The agreements also contain customary events of default (subject in certain cases to specified cure periods), including but not limited to non-payment, breach of covenants, representations or warranties, cross defaults, bankruptcy or other insolvency events, judgments, ERISA events, the occurrence of certain change of control transactions and loss of real estate investment trust qualification. As of December 31, 2021, we were in compliance with the covenants under the outstanding Senior Unsecured Notes.

6. Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses consist of the following as of December 31, 2021 and 2020 (amounts in thousands):

	2021	2020
Accrued capital expenditures	\$ 49,247	\$ 58,057
Accounts payable and accrued expenses	41,664	32,309
Interest rate swap agreements liability	25,308	8,849
Accrued interest payable	3,460	3,219
Due to affiliated companies	1,131	769
Total accounts payable and accrued expenses	<u>\$ 120,810</u>	<u>\$ 103,203</u>

7. Financial Instruments and Fair Values

Derivative Financial Instruments

We use derivative financial instruments primarily to manage interest rate risk and such derivatives are not considered speculative. These derivative instruments are typically in the form of interest rate swap and forward agreements and the primary objective is to minimize interest rate risks associated with investing and financing activities. The counterparties of these arrangements are major financial institutions with which we may also have other financial relationships. We are exposed to credit risk in the event of non-performance by these counterparties; however, we currently do not anticipate that any of the counterparties will fail to meet their obligations.

We have agreements with our derivative counterparties that contain a provision where if we either default or are capable of being declared in default on any of our indebtedness, then we could also be declared in default on our derivative obligations. As of December 31, 2021, the fair value of derivatives in a net liability position, which includes accrued interest but excludes any adjustment for nonperformance risk, related to these agreements was \$26.7 million. If we had breached any of these provisions at December 31, 2021, we could have been required to settle our obligations under the agreements at their termination value of \$26.7 million.

As of December 31, 2021 and 2020, we had interest rate LIBOR swaps and caps with an aggregate notional value of \$451.3 million and \$265.0 million, respectively. The notional value does not represent exposure to credit, interest rate or market risks. As of December 31, 2021 and 2020, the fair value of our derivative instruments amounted to (\$25.3 million) and (\$8.8 million), respectively, which is included in accounts payable and accrued expenses on the consolidated balance sheets. These interest rate swaps have been designated as cash flow hedges and hedge the variability in future cash flows associated with our existing variable-rate term loan facilities. Interest rate caps not designated as hedges are not speculative and are used to manage our exposure to interest rate movements, but do not meet the strict hedge accounting requirements.

As of December 31, 2021 and 2020, our cash flow hedges are deemed highly effective and for the years ended December 31, 2021 and 2020, net unrealized gains (losses) of \$12.0 million and \$(10.5) million, respectively, are reflected in the consolidated statements of comprehensive income (loss) relating to both active and terminated cash flow hedges of interest rate risk. Amounts reported in accumulated other comprehensive income (loss) related to derivatives will be reclassified to interest expense as interest payments are made on the debt. We estimate that \$10.7 million net loss of the current balance held in accumulated other comprehensive loss will be reclassified into interest expense within the next 12 months.

The table below summarizes the terms of agreement and the fair value of our derivative financial instruments as of December 31, 2021 and 2020 (dollar amounts in thousands):

Derivative						December 31, 2021		December 31, 2020	
	Notional Amount	Receive Rate	Pay Rate	Effective Date	Expiration Date	Asset	Liability	Asset	Liability
Interest rate swap	\$ 265,000	1 Month LIBOR	2.1485 %	August 31, 2017	August 24, 2022	\$ —	\$ (3,184)	\$ —	\$ (8,849)
Interest rate swap	36,820	70% of 1 Month LIBOR	2.5000 %	December 1, 2021	November 1, 2030	—	(4,527)	—	—
Interest rate swap	103,790	70% of 1 Month LIBOR	2.5000 %	December 1, 2021	November 1, 2033	—	(15,945)	—	—
Interest rate swap	10,710	70% of 1 Month LIBOR	1.7570 %	December 1, 2021	November 1, 2033	—	(754)	—	—
Interest rate swap	19,008	1 Month LIBOR	2.2540 %	December 1, 2021	November 1, 2030	—	(898)	—	—
Interest rate cap	6,780	70% of 1 Month LIBOR	4.5000 %	December 1, 2021	October 1, 2024	5	—	—	—
Interest rate cap	9,188	1 Month LIBOR	5.5000 %	December 1, 2021	October 1, 2024	8	—	—	—
						<u>\$ 13</u>	<u>\$ (25,308)</u>	<u>\$ —</u>	<u>\$ (8,849)</u>

During the year ended December 31, 2020, we terminated a \$125.0 million swap and paid a settlement fee of \$20.3 million.

The table below shows the effect of our derivative financial instruments designated as cash flow hedges on accumulated other comprehensive income (loss) for the years ended December 31, 2021, 2020 and 2019 (amounts in thousands):

Effects of Cash Flow Hedges	December 31, 2021	December 31, 2020	December 31, 2019
Amount of gain (loss) recognized in other comprehensive income (loss)	\$ 348	\$ (19,322)	\$ (21,813)
Amount of loss reclassified from accumulated other comprehensive income (loss) into interest expense	(11,653)	(8,870)	(1,231)

The table below shows the effect of our derivative financial instruments designated as cash flow hedges on the consolidated statements of operations for the years ended December 31, 2021, 2020 and 2019 (amounts in thousands):

Effects of Cash Flow Hedges	December 31, 2021	December 31, 2020	December 31, 2019
Total interest expense presented on the consolidated statements of income in which the effects of cash flow hedges are recorded	\$ (94,394)	\$ (89,907)	\$ (79,246)
Amount of loss reclassified from accumulated other comprehensive income (loss) into interest expense	(11,653)	(8,870)	(1,231)

Fair Valuation

The estimated fair values at December 31, 2021 and 2020 were determined by management, using available market information and appropriate valuation methodologies. Considerable judgment is necessary to interpret market data and develop estimated fair value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts we could realize on disposition of the financial instruments. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

The following tables summarize the carrying and estimated fair values of our financial instruments as of December 31, 2021 and 2020 (amounts in thousands):

December 31, 2021

	Carrying Value	Estimated Fair Value			
		Total	Level 1	Level 2	Level 3
Interest rate swaps included in accounts payable and accrued expenses	\$ 25,308	\$ 25,308	\$ —	\$ 25,308	\$ —
Mortgage notes payable	948,769	960,933	—	—	960,933
Senior unsecured notes - Series A, B, C, D, E, F, G and H	973,373	994,389	—	—	994,389
Unsecured term loan facilities	388,223	390,000	—	—	390,000

December 31, 2020

	Carrying Value	Estimated Fair Value			
		Total	Level 1	Level 2	Level 3
Interest rate swaps included in accounts payable and accrued expenses	8,849	8,849	—	8,849	—
Mortgage notes payable	775,929	808,294	—	—	808,294
Senior unsecured notes - Series A, B, C, D, E and F	973,159	1,039,857	—	—	1,039,857
Unsecured term loan facility	387,561	390,000	—	—	390,000

Disclosure about the fair value of financial instruments is based on pertinent information available to us as of December 31, 2021 and 2020. Although we are not aware of any factors that would significantly affect the reasonable fair value amounts, such amounts have not been comprehensively revalued for purposes of these financial statements since that date and current estimates of fair value may differ significantly from the amounts presented herein.

8. Leases

Lessor

We lease various spaces to tenants over terms ranging from one to 21 years. Certain leases have renewal options for additional terms. The leases provide for base monthly rentals and reimbursements for real estate taxes, escalations linked to the consumer price index or common area maintenance known as operating expense escalation. Operating expense reimbursements are reflected in our December 31, 2021, 2020 and 2019 consolidated statements of operations as rental revenue.

Rental revenue includes fixed and variable payments. Fixed payments primarily relate to base rent and variable payments primarily relate to tenant expense reimbursements for certain property operating costs. The components of rental revenue for the years ended December 31, 2021, 2020 and 2019 are as follows (amounts in thousands):

	Year Ended December 31,		
	2021	2020	2019
Fixed payments	\$ 500,847	\$ 496,515	\$ 510,799
Variable payments	58,843	66,556	75,615
Total rental revenue	<u>\$ 559,690</u>	<u>\$ 563,071</u>	<u>\$ 586,414</u>

As of December 31, 2021, we were entitled to the following future contractual minimum lease payments (excluding operating expense reimbursements) on non-cancellable operating leases to be received which expire on various dates through 2039 (amounts in thousands):

2022	\$ 485,549
2023	479,215
2024	445,548
2025	408,787
2026	367,554
Thereafter	1,634,308
	<u>\$ 3,820,961</u>

The above future minimum lease payments exclude tenant recoveries and the net accretion of above-below-market lease intangibles. Some leases are subject to termination options generally upon payment of a termination fee. The preceding table is prepared assuming such options are not exercised.

Lessee

We determine if an arrangement is a lease at inception. Our operating lease agreements relate to three ground lease assets and are reflected in right-of-use assets of \$28.9 million and lease liabilities of \$28.9 million in our consolidated balance sheets as of December 31, 2021. Right-of-use assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. Right-of-use assets and liabilities are recognized at the commencement date based on the present value of lease payments over the lease term. Variable lease payments are excluded from the right-of-use assets and lease liabilities and are recognized in the period in which the obligation for those payments is incurred.

We make payments under ground leases related to three of our properties. The ground leases are due to expire between the years 2050 and 2077, inclusive of extension options, and have no variable payments or residual value guarantees. As our leases do not provide an implicit rate, we determined our incremental borrowing rate based on information available at the date of adoption of ASU No. 2016-02, Leases (Topic 842), in determining the present value of lease payments. The weighted average incremental borrowing rate used to calculate the right-of-use assets and lease liabilities as of December 31, 2021 was 4.5%. Rent expense for lease payments related to our operating leases is recognized on a straight-line basis over the non-cancellable term of the leases. The weighted average remaining lease term as of December 31, 2021 was 48.4 years.

As of December 31, 2021, the following table summarizes our future minimum lease payments with the amounts discounted by our incremental borrowing rates to calculate the lease liabilities of our leases (amounts in thousands):

2022	\$ 1,518
2023	1,518
2024	1,518
2025	1,518
2026	1,518
Thereafter	63,744
Total undiscounted lease payments	<u>71,334</u>
Present value discount	(42,442)
Ground lease liabilities	<u>\$ 28,892</u>

9. Commitments and Contingencies

Legal Proceedings

Litigation

Except as described below, as of December 31, 2021, we were not involved in any material litigation, nor, to our knowledge, was any material litigation threatened against us or our properties, other than routine litigation arising in the ordinary course of business such as disputes with tenants. We believe that the costs and related liabilities, if any, which may result from such actions will not materially affect our consolidated financial position, operating results or liquidity.

As previously disclosed, in October 2014, 12 former investors (the "Claimants") in Empire State Building Associates L.L.C. ("ESBA"), which prior to the initial public offering of our company (the "Offering"), owned the fee title to the Empire State Building, filed an arbitration with the American Arbitration Association against Peter L. Malkin, Anthony E. Malkin, Thomas N. Keltner, Jr., and our subsidiary ESRT MH Holdings LLC, the former supervisor of ESBA, (the "Respondents"). The statement of claim (also filed later in federal court in New York for the expressed purpose of tolling the statute of limitations) alleges breach of fiduciary duty and related claims in connection with the Offering and formation transactions and seeks \$20 million monetary damages and declaratory relief. Claimants had opted out of a prior class action bringing similar claims that was settled with court approval. Respondents filed an answer and counterclaims. In March 2015, the federal court action was stayed on consent of all parties pending the arbitration. Arbitration hearings started in May 2016 and concluded in August 2018. On August 26, 2020, the arbitration panel issued an award that denied all Claimants' claims with one exception, on which it awarded Claimants approximately \$1.2 million, inclusive of seven years of interest through October 2, 2020. This amount was recorded as an IPO litigation expense in the consolidated statement of operations for the year ended December 31, 2020.

Respondents believe that such award in favor of the Claimants is entirely without merit and sought to vacate that portion of the award. On September 27, 2021, the court denied Respondents' motion to vacate and entered judgement in the aforementioned amount, inclusive of accumulated interest. Respondents have appealed that ruling. In addition, certain of the Claimants in the federal court action sought to pursue claims in that case against Respondents. Respondents believe that any such claims are meritless. The magistrate judge assigned to the action has issued a Report and Recommendation rejecting Claimants' claims; the district judge will decide whether to adopt the Report and Recommendation.

Pursuant to indemnification agreements which were made with our directors, executive officers and chairman emeritus as part of our formation transactions, Anthony E. Malkin, Peter L. Malkin and Thomas N. Keltner, Jr. have defense and indemnity rights from us with respect to this arbitration.

Unfunded Capital Expenditures

At December 31, 2021, we estimate that we will incur approximately \$109.6 million of capital expenditures (including tenant improvements and leasing commissions) on our properties pursuant to existing lease agreements. We expect to fund these capital expenditures with operating cash flow, additional property level mortgage financings, our unsecured credit facility, cash on hand and other borrowings. Future property acquisitions may require substantial capital investments for refurbishment and leasing costs. We expect that these financing requirements will be met in a similar fashion.

Concentration of Credit Risk

Financial instruments that subject us to credit risk consist primarily of cash and cash equivalents, restricted cash, short-term investments, tenant and other receivables and deferred rent receivables. At December 31, 2021, we held on deposit at various major financial institutions cash and cash equivalents and restricted cash balances in excess of amounts insured by the Federal Deposit Insurance Corporation.

Real Estate Investments

Our properties are located in Manhattan, New York; Fairfield County, Connecticut; and Westchester County, New York. The latter locations are suburbs of the city of New York. The ability of the tenants to honor the terms of their respective leases is dependent upon the economic, regulatory and social factors affecting the markets in which the tenants operate. We perform ongoing credit evaluations of our tenants for potential credit losses.

Tenant Credit Evaluations

Our investments in real estate properties are subject to risks incidental to the ownership and operation of commercial real estate. These risks include, among others, the risks normally associated with changes in general economic conditions, trends in the real estate industry, creditworthiness of tenants, competition of tenants and customers, changes in tax laws, interest rate levels, the availability and cost of financing, and potential liability under environmental and other laws.

We may require tenants to provide some form of credit support such as corporate guarantees and/or other financial guarantees and we perform ongoing credit evaluations of tenants. Although the tenants operate in a variety of industries, to the extent we have a significant concentration of rental revenue from any single tenant, the inability of that tenant to make its lease payments could have an adverse effect on our company.

Major Customers and Other Concentrations

For the year ended December 31, 2021, other than four tenants who accounted for 4.6%, 3.3%, 2.8% and 2.1% of rental revenues, no other tenant in our portfolio accounted for more than 2.0% of rental revenues. For the year ended December 31, 2020, other than two tenants who accounted for 6.9% and 3.5% of rental revenues, no other tenant in our portfolio accounted for more than 2.0% of rental revenues. For the year ended December 31, 2019, other than three tenants who accounted for 6.8%, 3.2% and 3.2% of rental revenues, no other tenant in our portfolio accounted for more than 2.0% of rental revenues.

For the years ended December 31, 2021, 2020 and 2019, the six properties listed below accounted for the indicated percentage of total rental revenues. No other property accounted for more than 5.0% of total rental revenues.

	Year Ended December 31,		
	2021	2020	2019
Empire State Building	31.7 %	32.8 %	32.9 %
One Grand Central Place	12.6 %	12.4 %	12.3 %
111 West 33rd Street	11.3 %	10.5 %	9.9 %
1400 Broadway	8.9 %	8.0 %	7.1 %
250 West 57th Street	5.8 %	5.7 %	5.5 %
First Stamford Place	5.2 %	5.4 %	5.4 %

Asset Retirement Obligations

We are required to accrue costs that we are legally obligated to incur on retirement of our properties which result from acquisition, construction, development and/or normal operation of such properties. Retirement includes sale, abandonment or disposal of a property. Under that standard, a conditional asset retirement obligation represents a legal obligation to perform an asset retirement activity in which the timing and/or method of settlement is conditional on a future event that may or may not be within a company's control and a liability for a conditional asset retirement obligation must be recorded if the fair value of the obligation can be reasonably estimated. Environmental site assessments and investigations have identified asbestos or asbestos-containing building materials in certain of our properties. As of December 31, 2021, management has no plans to remove or alter these properties in a manner that would trigger federal and other applicable regulations for asbestos removal, and accordingly, the obligations to remove the asbestos or asbestos-containing building materials from these properties have indeterminable settlement dates. As such, we are unable to reasonably estimate the fair value of the associated conditional asset retirement obligation. However ongoing asbestos abatement, maintenance programs and other required documentation are carried out as required and related costs are expensed as incurred.

Other Environmental Matters

Certain of our properties have been inspected for soil contamination due to pollutants, which may have occurred prior to our ownership of these properties or subsequently in connection with its development and/or its use. Required remediation to such properties has been completed and, as of December 31, 2021, management believes that there are no obligations related to environmental remediation other than maintaining the affected sites in conformity with the relevant authority's mandates and filing the required documents. All such maintenance costs are expensed as incurred. We expect that resolution of the environmental matters relating to the above will not have a material impact on our business, assets, consolidated and combined financial condition, results of operations or liquidity. However, we cannot be certain that we have identified all environmental liabilities at our properties, that all necessary remediation actions have been or will be undertaken at our properties or that we will be indemnified, in full or at all, in the event that such environmental liabilities arise.

Insurance Coverage

We carry insurance coverage on our properties of types and in amounts with deductibles that we believe are in line with coverage customarily obtained by owners of similar properties.

Multiemployer Pension and Defined Contribution Plans

We contribute to a number of multiemployer defined benefit pension plans under the terms of collective bargaining agreements that cover our union-represented employees. The risks of participating in these multiemployer plans are different from single-employer plans in the following respects:

- Assets contributed to the multiemployer plan by one employer may be used to provide benefits to employees of other participating employers.
- If a participating employer stops contributing to the plan, the unfunded obligations of the plan may be borne by the remaining participating employers.
- If we choose to stop participating in some of our multiemployer plans, we may be required to pay those plans an amount based on the underfunded status of the plan, referred to as a withdrawal liability.

We participate in various unions. The union in which we have significant employees and costs is 32BJ.

32BJ

We participate in the Building Service 32BJ ("Union") Pension Plan and Health Plan. The Pension Plan is a multi-employer, non-contributory defined benefit pension plan that was established under the terms of collective bargaining agreements between the Service Employees International Union, Local 32BJ, the Realty Advisory Board on Labor Relations, Inc. and certain other employers. This Pension Plan is administered by a joint board of trustees consisting of union trustees and employer trustees and operates under employer identification number 13-1879376. The Pension Plan year runs from July 1 to June 30. Employers contribute to the Pension Plan at a fixed rate on behalf of each covered employee. Separate actuarial information regarding such pension plans is not made available to the contributing employers by the union administrators or trustees, since the plans do not maintain separate records for each reporting unit. However, on September 27, 2019, September 28, 2020 and September 28, 2021, the actuary certified that for the plan years beginning July 1, 2019, July 1, 2020 and July 1, 2021, respectively, the Pension Plan was in critical status under the Pension Protection Act of 2006. The Pension Plan trustees adopted a rehabilitation plan consistent with this requirement. For the years ended June 30, 2020 and 2019, the Pension Plan received contributions from employers totaling \$291.3 million and \$290.1 million, respectively. The Form 5500 is not yet available for the plan year June 30, 2021.

The Health Plan was established under the terms of collective bargaining agreements between the Union, the Realty Advisory Board on Labor Relations, Inc. and certain other employers. The Health Plan provides health and other benefits to eligible participants employed in the building service industry who are covered under collective bargaining agreements, or other written agreements, with the Union. The Health Plan is administered by a Board of Trustees with equal representation by the employers and the Union and operates under employer identification number 13-2928869. The Health Plan receives contributions in accordance with collective bargaining agreements or participation agreements. Generally, these agreements provide that the employers contribute to the Health Plan at a fixed rate on behalf of each covered employee. For the years ended June 30, 2020 and 2019, the Health Plan received contributions from employers totaling \$1.6 billion and \$1.5 billion, respectively. The Form 5500 is not yet available for the plan year June 30, 2021.

Term of Collective Bargaining Agreement

The most recent collective bargaining agreement for Local 32BJ commenced from January 1, 2020 and runs through December 31, 2023.

Contributions

Contributions we made to the multi-employer plans for the years ended December 31, 2021, 2020 and 2019 are included in the table below (amounts in thousands):

Benefit Plan	For the Year Ended December 31,		
	2021	2020	2019
Pension Plans (pension and annuity)*	\$ 2,165	\$ 2,383	\$ 3,418
Health Plans**	6,214	6,873	10,055
Other***	305	416	641
Total plan contributions	\$ 8,684	\$ 9,672	\$ 14,114

* Pension plans include \$0.7 million, \$0.8 million and \$1.0 million for the years ended 2021, 2020 and 2019, respectively, to multiemployer plans not discussed above.

** Health plans include \$1.4 million, \$1.4 million and \$1.8 million for the years ended 2021, 2020 and 2019, respectively, to multiemployer plans not discussed above.

*** Other consists of union costs which were not itemized between pension and health plans. Other includes \$0.2 million, \$0.3 million and \$0.4 million for the years ended 2021, 2020 and 2019, respectively, in connection with other

multiemployer plans not discussed above.

The decrease in plan contributions in 2020 is mainly due to the reduction in payroll levels as a result of the COVID-19 pandemic. Benefit plan contributions are included in operating expenses in our consolidated statements of operations.

10. Equity

Shares and Units

An operating partnership unit ("OP Unit") and a share of our common stock have essentially the same economic characteristics as they receive the same per unit profit distributions of the Operating Partnership. On the one-year anniversary of issuance, an OP Unit may be tendered for redemption for cash; however, we have sole and absolute discretion, and sufficient authorized common stock, to exchange OP Units for shares of common stock on a one-for-one basis instead of cash.

On May 16, 2019, the Empire State Realty Trust, Inc. Empire State Realty OP, L.P. 2019 Equity Incentive Plan ("2019 Plan") was approved by our shareholders. The 2019 Plan provides for grants to directors, employees and consultants of our company and operating partnership, including options, restricted stock, restricted stock units, stock appreciation rights, performance awards, dividend equivalents and other equity-based awards. An aggregate of approximately 11.0 million shares of our common stock are authorized for issuance under awards granted pursuant to the 2019 Plan. We will not issue any new equity awards under the First Amended and Restated Empire State Realty Trust, Inc. and Empire State Realty OP, L.P. 2013 Equity Incentive Plan ("2013 Plan", and collectively with the 2019 Plan, "the Plans"). The shares of Class A common stock underlying any awards under the 2019 Plan and the 2013 Plan that are forfeited, canceled or otherwise terminated, other than by exercise, will be added back to the shares of Class A common stock available for issuance under the 2019 Plan. Shares tendered or held back upon exercise of a stock option or settlement of an award under the 2019 Plan or the 2013 Plan to cover the exercise price or tax withholding and shares subject to a stock appreciation right that are not issued in connection with the stock settlement of the stock appreciation right upon exercise thereof, will not be added back to the shares of Class A common stock available for issuance under the 2019 Plan. In addition, shares of Class A common stock repurchased on the open market will not be added back to the shares of Class A common stock available for issuance under the 2019 Plan.

Long-term incentive plan ("LTIP") units are a special class of partnership interests in the Operating Partnership. Each LTIP unit awarded will be deemed equivalent to an award of one share of stock under the Plans, reducing the availability for other equity awards on a one-for-one basis. The vesting period for LTIP units, if any, will be determined at the time of issuance. Under the terms of the LTIP units, the Operating Partnership will revalue for tax purposes its assets upon the occurrence of certain specified events, and any increase in valuation from the time of grant until such event will be allocated first to the holders of LTIP units to equalize the capital accounts of such holders with the capital accounts of OP unitholders. Subject to any agreed upon exceptions, once vested and having achieved parity with OP unitholders, LTIP units are convertible into OP Units in the Operating Partnership on a one-for-one basis.

LTIP units subject to time based vesting, whether vested or not, receive the same per unit distributions as OP Units, which equal per share dividends (both regular and special) on our common stock. LTIP units subject to market-based vesting receive 10% of such distributions currently, unless and until such LTIP units are earned based on performance, at which time they will receive the accrued and unpaid 90% and will commence receiving 100% of such distributions thereafter.

The following is net income attributable to common stockholders and the issuance of our class A shares in exchange for the conversion of OP Units into common stock (amounts in thousands):

	Year ended December 31,		
	2021	2020	2019
Net income (loss) attributable to common stockholders	\$ (10,711)	\$ (16,712)	\$ 49,445
Increase in additional paid-in capital for the conversion of OP Units into common stock	10,384	30,170	27,740
Change from net income attributable to common stockholders and transfers from noncontrolling interests	<u>\$ (327)</u>	<u>\$ 13,458</u>	<u>\$ 77,185</u>

As of December 31, 2021, there were approximately 281.2 million common stock and OP Units outstanding, of which approximately 170.2 million, or 60.5%, were owned by us and approximately 111.0 million, or 39.5%, were owned by other partners, including certain directors, officers and other members of executive management.

Stock and Publicly Traded Operating Partnership Unit Repurchase Program

Our Board of Directors reauthorized the repurchase of up to \$500 million of our Class A common stock and the Operating Partnership's Series ES, Series 250 and Series 60 operating partnership units through December 31, 2021. Under the program, we may purchase our Class A common stock and the Operating Partnership's Series ES, Series 250 and Series 60 operating partnership units in accordance with applicable securities laws from time to time in the open market or in privately negotiated transactions. The timing, manner, price and amount of any repurchases will be determined by us at our discretion and will be subject to stock price, availability, trading volume and general market conditions. The authorization does not obligate us to acquire any particular amount of securities, and the program may be suspended or discontinued at our discretion without prior notice.

The following table summarizes our purchases of equity securities for the year ended December 31, 2021:

Period	Total Number of Shares Purchased	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plan	Maximum Approximate Dollar Value Available for Future Purchase (in thousands)
Year ended December 31, 2021	4,886,932	\$ 9.56	4,886,932	\$ 453,296

Private Perpetual Preferred Units

As of December 31, 2021, there were 4,664,038 Series 2019 Preferred Units ("Series 2019 Preferred Units") and 1,560,360 Series 2014 Private Perpetual Preferred Units ("Series 2014 Preferred Units"). The Series 2019 Preferred Units have a liquidation preference of \$13.52 per unit and are entitled to receive cumulative preferential annual cash distributions of \$0.70 per unit payable in arrears on a quarterly basis. The Series 2019 Preferred Units are not redeemable at the option of the holders and are redeemable at our option only in the case of specific defined events. The Series 2014 Preferred Units which have a liquidation preference of \$16.62 per unit and are entitled to receive cumulative preferential annual cash distributions of \$0.60 per unit payable in arrears on a quarterly basis. The Series 2014 Preferred Units are not redeemable at the option of the holders and are redeemable at our option only in the case of specific defined events.

Dividends and Distributions

The following table summarizes the dividends paid on our Class A common stock and Class B common stock for the years ended December 31, 2021, 2020 and 2019:

Record Date	Payment Date	Amount per Share
December 20, 2021	December 31, 2021	\$0.035
September 15, 2021	September 30, 2021	\$0.035
June 15, 2021	June 30, 2021	\$0.035
June 19, 2020	June 30, 2020	\$0.105
March 16, 2020	March 31, 2020	\$0.105
December 23, 2019	December 31, 2019	\$0.105
September 16, 2019	September 30, 2019	\$0.105
June 14, 2019	June 28, 2019	\$0.105
March 15, 2019	March 29, 2019	\$0.105

Total dividends paid to common securityholders during 2021, 2020 and 2019 were \$18.1 million, \$37.2 million and \$75.2 million, respectively. Total distributions paid to OP unitholders, excluding inter-company distributions, during 2021, 2020 and 2019 totaled \$10.5 million, \$23.7 million and \$50.8 million, respectively. Total distributions paid to Preferred unitholders during 2021, 2020 and 2019 were \$4.2 million, \$4.2 million, and \$1.7 million, respectively.

Earnings and profits, which determine the tax treatment of distributions to securityholders, will differ from income reported for financial reporting purposes due to the differences for federal income tax purposes, including, but not limited to, treatment of revenue recognition, compensation expense, and basis of depreciable assets and estimated useful lives used to compute depreciation. The 2021 dividends of \$0.105 per share are classified for income tax purposes 16.2% as taxable ordinary dividends eligible for the Section 199A deduction and 83.8% as a return of capital. The 2020 dividends of \$0.21 per share are classified for income tax purposes 100% as taxable ordinary dividends eligible for the Section 199A deduction and 0% as a return of capital. The 2019 dividends of \$0.42 per share are classified for income tax purposes 31.4% as taxable ordinary dividends eligible for the Section 199A deduction and 68.6% as a return of capital.

Incentive and Share-Based Compensation

The Plans provide for grants to directors, employees and consultants consisting of stock options, restricted stock, dividend equivalents, stock payments, performance shares, LTIP units, stock appreciation rights and other incentive awards. An aggregate of 11.0 million shares of our common stock are authorized for issuance under awards granted pursuant to the 2019 Plan, and as of December 31, 2021, approximately 7.7 million shares of common stock remain available for future issuance under the Plans.

In March 2021, we made grants of LTIP units to executive officers under the 2019 Plan. At such time, we granted to executive officers a total of 364,199 LTIP units that are subject to time-based vesting and 1,007,156 LTIP units that are subject to market-based vesting, with fair market values of \$3.4 million for the time-based vesting awards and \$6.9 million for the market-based vesting awards. In March 2021, we made grants of LTIP units and restricted stock to certain other employees under the 2019 Plan. At such time, we granted to certain other employees a total of 128,419 LTIP units and 113,333 shares of restricted stock that are subject to time-based vesting and 192,760 LTIP units that are subject to market-based vesting, with fair market values of \$2.7 million for the time-based vesting awards and \$1.5 million for the market-based vesting awards. The awards subject to time-based vesting vest ratably over four years from January 1, 2021, subject generally to the grantee's continued employment. The first installment vests on January 1, 2022 and the remainder will vest thereafter in three equal annual installments. The vesting of the LTIP units subject to market-based vesting is based on the achievement of relative total stockholder return hurdles over a three-year performance period, commencing on January 1, 2021. Following the completion of the three-year performance period, our Compensation and Human Capital Committee will determine the number of LTIP units to which the grantee is entitled based on our performance relative to the performance hurdles set forth in the LTIP unit award agreements the grantee entered into in connection with the award grant. These units then vest in two installments, with the first installment vesting on January 1, 2024 and the second installment vesting on January 1, 2025, subject generally to the grantee's continued employment on those dates.

In March 2021, we also made one-time additional grants of LTIP units and restricted stock to an executive officer and certain other employees under the 2019 Plan. At such time, we granted the executive officer 46,168 LTIP units that are subject to time-based vesting and we granted to certain other employees 85,409 LTIP units and 7,562 restricted stock that are subject to time-based vesting, with fair market values of \$1.5 million. These awards are subject to time-based vesting and vest over five years from January 1, 2021, subject generally to the grantee's continued employment. The first installment vests 30% on January 1, 2024, the second installment vests 30% on January 1, 2025 and the remainder of 40% will vest on January 1, 2026.

For awards granted in 2021, our named executive officers can elect to receive their annual incentive bonus in any combination of (i) cash or vested LTIPs at the face amount of such bonus or (ii) time-vesting LTIPs which would vest over three years, subject to continued employment, at 120% of such face amount. In March 2021, we made grants of LTIP units to executive officers under the 2019 Plan in connection with the 2020 bonus election program. We granted to executive officers a total of 235,729 LTIP units that are subject to time-based vesting with a fair market value of \$2.2 million. Of these LTIP units, 39,472 LTIP units vested immediately on the grant date and 196,257 LTIP units vest ratably over three years from January 1, 2021, subject generally to the grantee's continued employment. The first installment vests on January 1, 2022 and the remainder will vest thereafter in two equal annual installments.

Annually, we make grants of LTIP units to our non-employee directors under the 2019 Plan. In 2021, each of our directors received 60% of their \$200,000 annual base retainer in the form of equity vesting ratably over four years, and could elect to receive the remaining 40% of such base retainer (i) in cash at the face value of the award, (ii) in immediately vesting equity at the face value of the award, or (iii) in equity vesting ratably over three years at 120% of the face amount. Each director could elect to receive any equity portion of the base retainer in either (i) LTIP units or (ii) restricted shares of our Class A common stock. In accordance with each director's election, we granted a total of 126,713 LTIP units that are subject to time-based vesting with fair market values of \$1.4 million and no restricted shares. The LTIP units vest ratably over three or four years from the date of the grant, based on grantee election, subject generally to the director's continued service on our Board of Directors. We also granted 8,324 LTIP units that are subject to immediate vesting with fair market values of \$0.1 million.

In August 2021, we granted LTIP units under the 2019 Plan to Christina Chiu, our Executive Vice President and Chief Financial Officer, consisting of 8,772 LTIP units that are subject to time-based vesting and 26,930 LTIP units that are subject to market-based vesting, with fair market values of \$0.08 million for the time-based vesting awards and \$0.15 million for the market-based vesting awards. The awards subject to time-based vesting vest ratably over four years from January 1, 2021, subject generally to her continued employment. The first installment vests on January 1, 2022 and the remainder will vest thereafter in three equal annual installments. The vesting of the LTIP units subject to market-based vesting is based on the achievement of relative total stockholder return hurdles over a three-year performance period, commencing on January 1, 2021. Following the completion of the three-year performance period, our Compensation and Human Capital Committee will determine the number of LTIP units to which she is entitled based on our performance relative to the performance hurdles set forth in the LTIP unit award agreement entered into in connection with the award grant. These units then vest in two installments, with the first installment vesting on January 1, 2024 and the second installment vesting on January 1, 2025, subject generally to her continued employment on those dates.

Share-based compensation for time-based equity awards is measured at the fair value of the award on the date of grant and recognized as an expense on a straight-line basis over the shorter of (i) the stated vesting period, which is generally three, four or five years, or (ii) the period from the date of grant to the date the employee becomes retirement eligible, which may occur upon grant. Prior to amendment of the 2019 Plan on July 13, 2020, an employee is retirement eligible when the employee attains the (i) age of 60 and (ii) the date on which the employee has first completed ten years of continuous service with us or our affiliates. During the second quarter of 2020, the Board approved changing the definition of retirement age from 60 to 65 starting with grant awards issued in March 2020 under the 2019 Plan. Share-based compensation for market-based equity awards is measured at the fair value of the award on the date of grant and recognized as an expense on a straight-line basis over three or four years, depending on retirement eligibility.

For the market-based LTIP units, the fair value of the awards was estimated using a Monte Carlo Simulation model. Our stock price, along with the prices of the comparative indexes, is assumed to follow the Geometric Brownian Motion Process. Geometric Brownian motion is a common assumption when modeling in financial markets, as it allows the modeled quantity (in this case, the stock price) to vary randomly from its current value and take any value greater than zero. The volatilities of the returns on our stock price and the comparative indexes were estimated based on implied volatilities and historical volatilities using a six-year look-back period. The expected growth rate of the stock prices over the performance period is determined with consideration of the risk free rate as of the grant date. For LTIP unit awards that are time-based, the fair value of the awards was estimated based on the fair value of our stock at the grant date discounted for the restriction period during which the LTIP units cannot be redeemed or transferred and the uncertainty regarding if, and when, the book capital account of the LTIP units will equal that of the common units. For restricted stock awards that are time-based, we estimate the stock compensation expense based on the fair value of the stock at the grant date.

LTIP units and restricted stock issued during the year ended December 31, 2021, 2020 and 2019 were valued at \$20.0 million, \$28.3 million and \$27.9 million, respectively. The weighted-average per unit or share fair value was \$8.52, \$5.44 and \$9.56 for grants issued in 2021, 2020 and 2019, respectively. The per unit or share granted in 2021 was estimated on the respective dates of grant using the following assumptions: an expected life from 2.0 to 5.3 years, a dividend rate of 2.60%, a risk-free interest rate from 0.12% to 0.32%, and an expected price volatility from 36.0% to 53.0%. The per unit or share granted in 2020 was estimated on the respective dates of grant using the following assumptions: an expected life from 2.0 to 5.5 years, a dividend rate of 3.70%, a risk-free interest rate from 0.16% to 0.50%, and an expected price volatility from 19.0% to 26.0%. The per unit or share granted in 2019 was estimated on the respective dates of grant using the following assumptions: an expected life from 2.0 to 5.3 years, a dividend rate of 2.40%, a risk-free interest rate from 2.48% to 2.63%, and an expected price volatility from 17.0% to 22.0%. No other stock options, dividend equivalents, or stock appreciation rights were issued or outstanding in 2021, 2020 and 2019.

The following is a summary of restricted stock and LTIP unit activity for the year ended December 31, 2021:

	Restricted Stock	LTIP Units	Weighted Average Grant Fair Value
Unvested balance at December 31, 2020	217,700	7,750,284	\$ 6.94
Vested	(72,520)	(992,776)	11.54
Granted	120,313	2,230,579	8.52
Forfeited or unearned	(51,085)	(1,449,361)	5.70
Unvested balance at December 31, 2021	<u>214,408</u>	<u>7,538,726</u>	<u>\$ 7.02</u>

The total fair value of LTIP units and restricted stock that vested during 2021, 2020 and 2019 was \$12.3 million, \$15.6 million and \$10.1 million, respectively.

The LTIP unit and restricted stock award agreements will immediately vest when a grantee attains the (i) age of 60 or 65, as applicable, and (ii) the date on which the grantee has first completed ten years of continuous service with us or our affiliates. For award agreements that qualify, we recognize noncash compensation expense on the grant date for the time-based awards and ratably over the vesting period for the market-based awards, and accordingly, we recognized \$1.3 million, \$2.6 million and \$2.0 million for the years ended December 31, 2021, 2020 and 2019, respectively. Unrecognized compensation expense was \$0.4 million at December 31, 2021, which will be recognized over a weighted average period of 2.1 years.

For the remainder of the LTIP unit and restricted stock awards, we recognized noncash compensation expense ratably over the vesting period, and accordingly, we recognized \$19.0 million, \$22.9 million and \$18.8 million in noncash compensation expense for the years ended December 31, 2021, 2020 and 2019, respectively. Unrecognized compensation expense was \$24.9 million at December 31, 2021, which will be recognized over a weighted average period of 2.2 years.

Earnings Per Share

Earnings per share for the years ended December 31, 2021, 2020 and 2019 is computed as follows (amounts in thousands, except per share amounts):

	For the Year Ended December 31,		
	2021	2020	2019
Numerator - Basic:			
Net income (loss)	\$ (13,037)	\$ (22,889)	\$ 84,290
Private perpetual preferred unit distributions	(4,201)	(4,197)	(1,743)
Net (income) loss attributable to non-controlling interest in operating partnership	6,527	10,374	(33,102)
Earnings allocated to unvested shares	(26)	(60)	(45)
Net income (loss) attributable to common stockholders - basic	<u>\$ (10,737)</u>	<u>\$ (16,772)</u>	<u>\$ 49,400</u>
Numerator - Diluted:			
Net income (loss)	\$ (13,037)	\$ (22,889)	\$ 84,290
Private perpetual preferred unit distributions	(4,201)	(4,197)	(1,743)
Earnings allocated to unvested shares	(26)	(60)	(45)
Net income (loss) attributable to common stockholders - diluted	<u>\$ (17,264)</u>	<u>\$ (27,146)</u>	<u>\$ 82,502</u>
Denominator:			
Weighted average shares outstanding - basic	172,445	175,169	178,340
Operating partnership units	104,975	108,657	119,458
Effect of dilutive securities:			
Stock-based compensation plans	—	11	—
Weighted average shares outstanding - diluted	<u>277,420</u>	<u>283,837</u>	<u>297,798</u>
Earnings per share - basic	<u>\$ (0.06)</u>	<u>\$ (0.10)</u>	<u>\$ 0.28</u>
Earnings per share - diluted	<u>\$ (0.06)</u>	<u>\$ (0.10)</u>	<u>\$ 0.28</u>

There were 1,052,390, 307,536, and 416,492 antidilutive shares for the years ended December 31, 2021, 2020 and 2019, respectively.

11. Related Party Transactions

Tax Protection Agreements

In 2013, we entered into a tax protection agreement with Anthony E. Malkin and Peter L. Malkin that is intended to protect to a limited extent the Malkin Group and an additional third party investor in Metro Center (who was one of the original

landowners and was involved in the development of the property) against certain tax consequences arising from a transaction involving one of four properties, which we refer to in this section as the protected assets.

First, this agreement provides that our operating partnership will not sell, exchange, transfer or otherwise dispose of such protected assets, or any interest in a protected asset, until (i) October 7, 2025, with respect to one protected asset, First Stamford Place, and (ii) the later of (x) October 7, 2021 and (y) the death of both Peter L. Malkin and Isabel W. Malkin, who are 88 and 85 years old, respectively, for the three other protected assets, Metro Center, 10 Bank Street and 1542 Third Avenue, unless:

- (1) Anthony E. Malkin consents to the sale, exchange, transfer or other disposition; or
- (2) our operating partnership delivers to each protected party thereunder a cash payment intended to approximate the tax liability arising from the recognition of the pre-contribution built-in gain resulting from the sale, exchange, transfer or other disposition of such protected asset (with the pre-contribution “built-in gain” being not more than the taxable gain that would have been recognized by such protected party if the protected asset been sold for fair market value in a taxable transaction at the time of the consolidation) plus an additional amount so that, after the payment of all taxes on amounts received pursuant to the agreement (including any tax liability incurred as a result of receiving such payment), the protected party retains an amount equal to such protected party’s total tax liability incurred as a result of the recognition of the pre-contribution built-in gain pursuant to such sale, exchange, transfer or other disposition; or
- (3) the disposition does not result in a recognition of any built-in gain by the protected party.

Second, with respect to the Malkin Group, including Anthony E. Malkin and Peter L. Malkin, and one additional third party investor in Metro Center (who was one of the original landowners and was involved in the development of the property), to protect against gain recognition resulting from a reduction in such continuing investor’s share of the operating partnership liabilities, the agreement provides that during the period from October 7, 2013 until such continuing investor owns less than the aggregate number of operating partnership units and shares of common stock equal to 50% of the aggregate number of such units and shares such investor received in the formation transactions, which we refer to in this section as the tax protection period, our operating partnership will (i) refrain from prepaying any amounts outstanding under any indebtedness secured by the protected assets and (ii) use its commercially reasonable efforts to refinance such indebtedness at or prior to maturity at its current principal amount, or, if our operating partnership is unable to refinance such indebtedness at its current principal amount, at the highest principal amount possible. The agreement also provides that, during the tax protection period, our operating partnership will make available to such continuing investors the opportunity (i) to enter into a “bottom dollar” guarantee of their allocable share of \$160.0 million of aggregate indebtedness of our operating partnership meeting certain requirements or (ii) in the event our operating partnership has recourse debt outstanding and such a continuing investor agrees, in lieu of guaranteeing debt pursuant to clause (i) above, to enter into a deficit restoration obligation, in each case, in a manner intended to provide an allocation of operating partnership liabilities to the continuing investor. In the event that a continuing investor guarantees debt of our operating partnership, such continuing investor will be responsible, under certain circumstances, for the repayment of the guaranteed amount to the lender in the event that the lender would otherwise recognize a loss on the loan, such as, for example, if property securing the loan was foreclosed and the value was not sufficient to repay a certain amount of the debt. A deficit restoration obligation is a continuing investor’s obligation, under certain circumstances, to contribute a designated amount of capital to our operating partnership upon our operating partnership’s liquidation in the event that the assets of our operating partnership are insufficient to repay our operating partnership liabilities.

Because we expect that our operating partnership will at all times have sufficient liabilities to allow it to meet its obligations to allocate liabilities to its partners that are protected parties under the tax protection agreement, our operating partnership’s indemnification obligation with respect to “certain tax liabilities” would generally arise only in the event that the operating partnership disposes in a taxable transaction of a protected asset within the period specified above in a taxable transaction. In the event of such a disposition, the amount of our operating partnership’s indemnification obligation would depend on several factors, including the amount of “built-in gain,” if any, recognized and allocated to the indemnified partners with respect to such disposition and the effective tax rate to be applied to such gain at the time of such disposition.

The operating partnership agreement requires that allocations with respect to such acquired property be made in a manner consistent with Section 704(c) of the Code. Treasury Regulations issued under Section 704(c) of the Code provide partnerships with a choice of several methods of allocating book-tax differences. Under the tax protection agreement, our operating partnership has agreed to use the “traditional method” for accounting for book-tax differences for the properties acquired by our operating partnership in the consolidation. Under the traditional method, which is the least favorable method

from our perspective, the carryover basis of the acquired properties in the hands of our operating partnership (i) may cause us to be allocated lower amounts of depreciation and other deductions for tax purposes than would be allocated to us if all of the acquired properties were to have a tax basis equal to their fair market value at the time of acquisition and (ii) in the event of a sale of such properties, could cause us to be allocated gain in excess of its corresponding economic or book gain (or taxable loss that is less than its economic or book loss), with a corresponding benefit to the partners transferring such properties to our operating partnership for interests in our operating partnership.

In 2016, we entered into a tax protection agreement with Q REIT Holding LLC, a Qatar Financial Centre limited liability company and a wholly owned subsidiary of the Qatar Investment Authority, a governmental authority of the State of Qatar ("QREIT", and together with any eligible transferee, "QIA"). Subject to certain minimum thresholds and conditions, we will indemnify QIA for certain applicable U.S. federal and state taxes payable by QIA in connection with dividends paid by us on the QIA shares that are attributable to capital gains from the sale or exchange of any U.S. real property interests. Our obligation to indemnify QIA will terminate one year following the date on which the sum of the QIA shares then owned by QIA falls below 10% of our outstanding common shares.

Registration Rights

We entered into a registration rights agreement with certain persons receiving shares of our common stock or operating partnership units in the formation transactions, including certain members of our senior management team and our other continuing investors. In connection therewith, we have filed, and are obligated to maintain the effectiveness of, an automatically effective shelf registration statement, along with a prospectus supplement, with respect to, among other things, shares of our Class A common stock that may be issued upon redemption of operating partnership units or issued upon conversion of shares of Class B common stock to continuing investors in the public existing entities. Pursuant to the registration rights agreement, under certain circumstances, we will also be required to undertake an underwritten offering upon the written request of the Malkin Group, which we refer to as the holder, provided (i) the registrable shares to be registered in such offering will have a market value of at least \$150.0 million, (ii) we will not be obligated to effect more than two underwritten offerings during any 12-month period; and (iii) the holder will not have the ability to effect more than four underwritten offerings. In addition, if we file a registration statement with respect to an underwritten offering for our own account or on behalf of the holder, the holder will have the right, subject to certain limitations, to register such number of registrable shares held by him, her or it as each such holder requests. With respect to underwritten offerings on behalf of the holder, we will have the right to register such number of primary shares as we request; provided, however, that if cut backs are required by the managing underwriters of such an offering, our primary shares shall be cutback first (but in no event will our shares be cut back to less than \$25.0 million).

We have also agreed to indemnify the persons receiving rights against specified liabilities, including certain potential liabilities arising under the Securities Act, or to contribute to the payments such persons may be required to make in respect thereof. We have agreed to pay all of the expenses relating to the registration and any underwritten offerings of such securities, including, without limitation, all registration, listing, filing and stock exchange or FINRA fees, all fees and expenses of complying with securities or "blue sky" laws, all printing expenses and all fees and disbursements of counsel and independent public accountants retained by us, but excluding underwriting discounts and commissions, any out-of-pocket expenses (except we will pay any holder's out-of-pocket fees (including disbursements of such holder's counsel, accountants and other advisors) up to \$25,000 in the aggregate for each underwritten offering and each filing of a resale shelf registration statement or demand registration statement), and any transfer taxes.

Employment Agreement and Change in Control Severance Agreements

We entered into an employment agreement with Anthony E. Malkin, which provides for salary, bonuses and other benefits, including among other things, severance benefits upon a termination of employment under certain circumstances and the issuance of equity awards. In addition, we entered into change in control severance agreements with Thomas P. Durels, Thomas N. Keltner, Jr. and Christina Chiu.

Indemnification of Our Directors and Officers

We entered into indemnification agreements with each of our directors, executive officers, chairman emeritus and certain other parties, providing for the indemnification by us for certain liabilities and expenses incurred as a result of actions brought, or threatened to be brought, against (i) our directors, executive officers and chairman emeritus and (ii) our executive officers, chairman emeritus and certain other parties who are former members, managers, securityholders, directors, limited partners, general partners, officers or controlling persons of our predecessor in such capacities.

Excluded Properties and Businesses

The Malkin Group, including Anthony E. Malkin, our Chairman and Chief Executive Officer, owns non-controlling interests in, and Anthony E. Malkin and Peter L. Malkin control the general partners or managers of, the entities that own interests in nine multi-family properties and five net leased retail properties, (including one single tenant retail property in Greenwich, Connecticut). The Malkin Group also owns non-controlling interests in one Manhattan office property, two Manhattan retail properties and several retail properties outside of Manhattan, none of which were contributed to us in the formation transactions. We refer to the non-controlling interests described above collectively as the excluded properties. In addition, the Malkin Group owns interests in one mezzanine and senior equity fund and five property managers, and which we refer to collectively as the excluded businesses. Other than the Greenwich retail property, we do not believe that the excluded properties or the excluded businesses are consistent with our portfolio geographic or property type composition, management or strategic direction.

Pursuant to management and/or service agreements with the owners of interests in those excluded properties and services agreements with five residential property managers and the managers of certain other excluded businesses which historically were managed by affiliates of our predecessor, we are designated as the asset manager (supervisor) and/or property manager of the excluded properties and will provide services to the owners of certain of the excluded properties and the five residential property managers and provide services and access to office space to the existing managers of the other excluded businesses. As the manager or service provider, we are paid a management or other fee with respect to those excluded properties and excluded businesses where our predecessor had previously received a management fee on the same terms as the fee paid to our predecessor, and reimbursed for our costs in providing the management and other services to those excluded properties and businesses where our predecessor had not previously received a management fee. Our management of the excluded properties and provision of services to the five residential property managers and the existing managers of the other excluded businesses represent a minimal portion of our overall business. There is no established time period in which we will manage such properties or provide services to the owners of certain of the excluded properties and the five residential property managers and provide services and access to office space to the existing managers of the other excluded businesses; and Peter L. Malkin and Anthony E. Malkin expect to sell certain properties or unwind these businesses over time. We are not precluded from acquiring all or certain interests in the excluded properties or businesses. If we were to attempt any such acquisition, we anticipate that Anthony E. Malkin, our Chairman and Chief Executive Officer, will not participate in the negotiation process on our behalf with respect to our potential acquisition of any of these excluded properties or businesses, and the approval of a majority of our independent directors will be required to approve any such acquisition.

Services are and were provided by us to excluded properties and businesses. These transactions are reflected in our consolidated statements of operations as third-party management and other fees.

We earned asset management (supervisory) and service fees from excluded properties and businesses of \$1.0 million, \$0.9 million and \$0.9 million during the years ended December 31, 2021, 2020 and 2019, respectively.

We earned property management fees from excluded properties of \$0.2 million, \$0.3 million and \$0.3 million during the years ended December 31, 2021, 2020 and 2019, respectively.

Other

We receive rent generally at market rental rate for 5,447 square feet of leased space from entities affiliated with Anthony E. Malkin at one of our properties. Under the lease, the tenant has the right to cancel such lease without special payment on 90 days' notice. We also have a shared use agreement with such tenant to occupy a portion of the leased premises as the office location for Peter L. Malkin, our chairman emeritus and employee, utilizing approximately 15% of the space, for which we pay to such tenant an allocable pro rata share of the cost. We also have agreements with these entities and excluded properties and businesses to provide them with general computer-related support services. Total revenue aggregated \$0.3 million, \$0.3 million and \$0.3 million for the years ended December 31, 2021, 2020 and 2019, respectively.

12. Income Taxes

TRS Holdings and observatory TRS are taxable entities and their consolidated provision for income taxes consisted of the following for the years ended December 31, 2021, 2020 and 2019 (amounts in thousands):

For the Year Ended December 31,

	2021	2020	2019
Current:			
Federal	\$ (266)	\$ 4,932	\$ (1,077)
State and local	(347)	2,699	(872)
Total current	(613)	7,631	(1,949)
Deferred:			
Federal	1,206	(340)	(248)
State and local	1,141	(320)	(232)
Total deferred	2,347	(660)	(480)
Income tax benefit (expense)	<u>\$ 1,734</u>	<u>\$ 6,971</u>	<u>\$ (2,429)</u>

In December 2017, the Tax Cuts and Jobs Act (the “TCJA”) was enacted. The TCJA includes a number of changes to existing U.S. tax laws, most notably a reduction of the U.S. corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018.

In March 2020, the Coronavirus Aid, Relief, Economic Security (“CARES”) Act was enacted. The CARES Act includes a number of federal tax reliefs, including the carryback of a net operating loss (“NOL”) incurred in 2018, 2019 and 2020 to each of the five preceding taxable years to generate a refund of previous paid income taxes. Such NOLs may offset 100% of taxable income for taxable years beginning before 2021 (80% thereafter). Many states, including New York, have not adopted the NOL provisions of the CARES Act and continue to have their own rules with respect to the application of NOLs. The carryback of observatory TRS’s NOL to previous tax years resulted in a 13% increase of U.S. corporation income tax benefit.

As of December 31, 2021, Empire State Realty Trust, Inc. had \$73.0 million of NOL carryforwards that may be used in the future to reduce the amount otherwise required to be distributed by ESRT to meet REIT requirements. However, for federal income tax purposes, the NOL will not be able to offset more than 80% of ESRT’s REIT taxable income and, therefore, may not be able to reduce the amount required to be distributed by ESRT to meet REIT requirements to zero. The federal NOL may be carried forward indefinitely. Other limitations may apply to ESRT’s ability to use its NOL to offset taxable income.

As of December 31, 2021, the observatory TRS had a federal income tax receivable of \$5.5 million. This receivable reflects an anticipated refund resulting from the carryback of 2020 NOL to previous tax years.

The observatory TRS had \$3.1 million NOL carryforwards that may be used to offset future taxable income, if any. The federal NOL may be carried forward indefinitely and the state and local NOL can be carried forward for up to 20 years.

We measure deferred tax assets using enacted tax rates that will apply in the years in which the temporary differences are expected to be recovered or paid.

The effective income tax rate is 26.0%, 47.0% and 34.0% for the years ended December 31, 2021, 2020 and 2019, respectively. The actual tax provision differed from that computed at the federal statutory corporate rate as follows (amounts in thousands):

	For the Year Ended December 31,		
	2021	2020	2019
Federal tax benefit (expense) at statutory rate	\$ 940	\$ 2,544	\$ (1,575)
State income tax benefit (expense), net of federal benefit	794	2,379	(854)
Corporate income tax rate adjustment	—	2,048	—
Income tax benefit (expense)	<u>\$ 1,734</u>	<u>\$ 6,971</u>	<u>\$ (2,429)</u>

The income tax effects of temporary differences that give rise to deferred tax assets are presented below as of December 31, 2021, 2020 and 2019 (amounts in thousands):

	2021	2020	2019
Deferred tax assets:			
Deferred revenue on unredeemed observatory admission ticket sales	\$ 383	\$ 256	\$ 916
Federal net operating loss carryforward credit	1,393	—	—
New York State net operating loss carryforward credit	612	—	—
New York City net operating loss carryforward credit	704	334	—
Deferred tax assets	<u>\$ 3,092</u>	<u>\$ 590</u>	<u>\$ 916</u>

Deferred tax assets at December 31, 2021, 2020 and 2019 are included in prepaid expenses and other assets on the consolidated balance sheets. The deferred tax assets at December 31, 2021 are mainly attributable to the inclusion of the Federal net operating loss to be carried forward and utilized during income years indefinitely and the New York State and New York City net operating loss to be carried forward and utilized during income years for a period of 20 years. No valuation allowance has been recorded against the deferred tax asset because the company believes it is more likely than not that the deferred tax asset will be realized. This determination is based on the observatory TRS's anticipated future taxable income and the reversal of the deferred tax asset.

At December 31, 2021, 2020 and 2019, the TRS entities have no amount of unrecognized tax benefits. The federal and state tax returns of 2021, 2020, 2019 and 2018 remain open for examination.

13. Segment Reporting

We have identified two reportable segments: (1) Real Estate and (2) observatory. Our real estate segment includes all activities related to the ownership, management, operation, acquisition, repositioning and disposition of our real estate assets. Our observatory segment operates the 86th and 102nd floor observatories at the Empire State Building. These two lines of businesses are managed separately because each business requires different support infrastructures, provides different services and has dissimilar economic characteristics such as investments needed, stream of revenues and different marketing strategies. We account for intersegment sales and rents as if the sales or rents were to third parties, that is, at current market prices. Asset information by segment is not reported because we do not use this measure to assess performance or make decisions to allocate resources.

The following tables provide components of segment profit for each segment for the years ended December 31, 2021, 2020 and 2019 (amounts in thousands):

2021

	Real Estate	Observatory	Intersegment Elimination	Total
Revenues:				
Rental revenue	\$ 559,690	\$ —	\$ —	\$ 559,690
Intercompany rental revenue	23,413	—	(23,413)	—
Observatory revenue	—	41,474	—	41,474
Lease termination fees	16,230	—	—	16,230
Third-party management and other fees	1,219	—	—	1,219
Other revenue and fees	5,343	138	—	5,481
Total revenues	605,895	41,612	(23,413)	624,094
Operating expenses:				
Property operating expenses	126,986	—	—	126,986
Intercompany rent expense	—	23,413	(23,413)	—
Ground rent expense	9,326	—	—	9,326
General and administrative expenses	55,947	—	—	55,947
Observatory expenses	—	23,206	—	23,206
Real estate taxes	119,967	—	—	119,967
Impairment charges	7,723	—	—	7,723
Depreciation and amortization	201,676	130	—	201,806
Total operating expenses	521,625	46,749	(23,413)	544,961
Total operating income (loss)	84,270	(5,137)	—	79,133
Other income (expense):				
Interest income	701	3	—	704
Interest expense	(94,292)	(102)	—	(94,394)
Loss on early extinguishment of debt	(214)	—	—	(214)
Loss before income taxes	(9,535)	(5,236)	—	(14,771)
Income tax (expense) benefit	(613)	2,347	—	1,734
Net loss	\$ (10,148)	\$ (2,889)	\$ —	\$ (13,037)
Segment assets	\$ 4,037,122	\$ 245,325	\$ —	\$ 4,282,447
Expenditures for segment assets	\$ 398,368	\$ 4	\$ —	\$ 398,372

2020

	Real Estate	Observatory	Intersegment Elimination	Total
Revenues:				
Rental revenue	\$ 563,071	\$ —	\$ —	\$ 563,071
Intercompany rental revenue	17,827	—	(17,827)	—
Observatory revenue	—	29,057	—	29,057
Lease termination fees	9,416	—	—	9,416
Third-party management and other fees	1,225	—	—	1,225
Other revenue and fees	6,459	—	—	6,459
Total revenues	597,998	29,057	(17,827)	609,228
Operating expenses:				
Property operating expenses	136,141	—	—	136,141
Intercompany rent expense	—	17,827	(17,827)	—
Ground rent expense	9,326	—	—	9,326
General and administrative expenses	62,244	—	—	62,244
Observatory expenses	—	23,723	—	23,723
Real estate taxes	121,923	—	—	121,923
Impairment charges	6,204	—	—	6,204
Depreciation and amortization	190,863	143	—	191,006
Total operating expenses	526,701	41,693	(17,827)	550,567
Total operating income	71,297	(12,636)	—	58,661
Other income (expense):				
Interest income	2,542	95	—	2,637
Interest expense	(89,907)	—	—	(89,907)
Loss on early extinguishment of debt	(86)	—	—	(86)
IPO litigation expense	(1,165)	—	—	(1,165)
Income before income taxes	(17,319)	(12,541)	—	(29,860)
Income tax expense	(843)	7,814	—	6,971
Net income	\$ (18,162)	\$ (4,727)	\$ —	\$ (22,889)
Segment assets	\$ 3,903,884	\$ 246,811	\$ —	\$ 4,150,695
Expenditures for segment assets	\$ 101,306	\$ 2,754	\$ —	\$ 104,060

2019

	Real Estate	Observatory	Intersegment Elimination	Total
Revenues:				
Rental revenue	\$ 586,414	\$ —	\$ —	\$ 586,414
Intercompany rental revenue	82,469	—	(82,469)	—
Observatory revenue	—	128,769	—	128,769
Lease termination fees	4,352	—	—	4,352
Third-party management and other fees	1,254	—	—	1,254
Other revenue and fees	10,554	—	—	10,554
Total revenues	685,043	128,769	(82,469)	731,343
Operating expenses:				
Property operating expenses	174,977	—	—	174,977
Intercompany rent expense	—	82,469	(82,469)	—
Ground rent expense	9,326	—	—	9,326
General and administrative expenses	61,063	—	—	61,063
Observatory expenses	—	33,767	—	33,767
Real estate taxes	115,916	—	—	115,916
Depreciation and amortization	181,558	30	—	181,588
Total operating expenses	542,840	116,266	(82,469)	576,637
Total operating income	142,203	12,503	—	154,706
Other income (expense):				
Interest income	11,259	—	—	11,259
Interest expense	(79,246)	—	—	(79,246)
Income before income taxes	74,216	12,503	—	86,719
Income tax expense	(896)	(1,533)	—	(2,429)
Net income	73,320	10,970	—	84,290
Segment assets	3,671,211	260,623	—	3,931,834
Expenditures for segment assets	\$ 191,630	\$ 64,294	\$ —	\$ 255,924

During the fourth quarter 2021, we incurred a \$7.7 million impairment charge relating to our property in Norwalk, Connecticut. Our methodology to calculate the fair value of the property involved a combination of the discounted cash flow method, utilizing Level 3 unobservable inputs such as market capitalization rates obtained from external sources, and the market based approach utilizing recent sales comparables.

During the second quarter 2020, we wrote-off \$4.1 million of prior expenditures on a Combined Heat Power/Redundancy onsite power generation project in our real estate segment that is rendered economically unviable due to New York City's Local Law 97 and from its measurement of carbon from natural gas combustion generates fines. During the third quarter 2020, we also wrote off \$2.1 million of prior expenditures on a build-to-suit development project in our real estate segment that was halted due to reconsideration by the user driven by the COVID-19 pandemic. The \$7.7 million and \$6.2 million write-offs are shown as impairment charges in the consolidated statement of operations for the years ended December 31, 2021 and 2020, respectively.

14. Subsequent Events

None.

Empire State Realty Trust, Inc.
Schedule III—Real Estate and Accumulated Depreciation
(amounts in thousands)

Development	Type	Encumbrances	Initial Cost to the Company		Cost Capitalized Subsequent to Acquisition		Gross Amount at which Carried at 12/31/21					Date of Construction	Date Acquired	Life on which depreciation in latest income statement is computed
			Land and Development Costs	Building & Improvements	Improvements	Carrying Costs	Land and Development Costs	Buildings & Improvements	Total	Accumulated Depreciation				
111 West 33rd Street, New York, NY	office / retail	\$ —	\$ 13,630	\$ 244,461	\$ 128,857	n/a	\$ 13,630	\$ 373,318	\$ 386,948	\$ 86,606	1954	2014	various	
1400 Broadway, New York, NY	office / retail	—	—	96,338	94,057	n/a	—	190,395	190,395	57,716	1930	2014	various	
1333 Broadway, New York, NY	office / retail	158,760	91,435	120,190	13,534	n/a	91,435	133,724	225,159	34,132	1915	2013	various	
1350 Broadway, New York, NY	office / retail	—	—	102,518	41,035	n/a	—	143,553	143,553	44,713	1929	2013	various	
250 West 57th Street, New York, NY	office/retail	174,422	2,117	5,041	168,501	n/a	2,117	173,542	175,659	58,624	1921	1953	various	
501 Seventh Avenue, New York, NY	office/retail	—	1,100	2,600	99,073	n/a	1,100	101,673	102,773	49,386	1923	1950	various	
1359 Broadway, New York, NY	office/retail	—	1,233	1,809	70,054	n/a	1,233	71,863	73,096	35,619	1924	1953	various	
350 Fifth Avenue (Empire State Building), New York, NY	office/retail	—	21,551	38,934	983,452	n/a	21,551	1,022,386	1,043,937	339,787	1930	2013	various	
One Grand Central Place, New York, NY	office/retail	—	7,240	17,490	289,760	n/a	7,222	307,268	314,490	139,061	1930	1954	various	
First Stamford Place, Stamford, CT	office	179,094	22,952	122,739	75,313	n/a	24,861	196,143	221,004	97,356	1986	2001	various	
One Station Place, Stamford, CT (Metro Center)	office	84,931	5,313	28,602	28,996	n/a	5,313	57,598	62,911	34,344	1987	1984	various	
285 main Avenue, Norwalk, CT (1)	office	29,692	2,262	12,820	6,582	n/a	1,679	19,985	21,664	—	1985	1994	various	
500 Mamaroneck Avenue, Harrison, NY	office	—	4,571	25,915	27,053	n/a	4,571	52,968	57,539	28,856	1987	1999	various	
10 Bank Street, White Plains, NY	office	30,719	5,612	31,803	20,191	n/a	5,612	51,994	57,606	26,841	1989	1999	various	
10 Union Square, New York, NY	retail	49,486	5,003	12,866	3,805	n/a	5,003	16,671	21,674	9,121	1987	1996	various	
1542 Third Avenue, New York, NY	retail	29,656	2,239	15,266	473	n/a	2,239	15,739	17,978	9,084	1991	1999	various	
1010 Third Avenue, New York, NY and 77 West 55th Street, New York, NY	retail	36,250	4,462	15,819	1,301	n/a	4,462	17,120	21,582	9,984	1962	1998	various	
69-97 Main Street, Westport, CT	retail	—	2,782	15,766	6,595	n/a	2,782	22,361	25,143	8,740	1922	2003	various	
103-107 Main Street, Westport, CT	retail	—	1,243	7,043	371	n/a	1,260	7,397	8,657	2,968	1900	2006	various	
345 E 94th Street NY (2)	Multifamily	49,421	44,228	55,766	19	n/a	44,228	55,785	100,013	—	2000	2021	various	
Victory 561 10th Ave NY (2)	Multifamily	126,338	91,437	124,997	28	n/a	91,437	125,025	216,462	—	2004	2021	various	
Property for development at the Transportation Hub in Stamford, CT	land	—	4,542	—	8,132	n/a	12,674	—	12,674	—	n/a	n/a	n/a	
Totals		<u>\$ 948,769</u>	<u>\$ 334,952</u>	<u>\$ 1,098,783</u>	<u>\$ 2,067,182</u>	<u>\$ —</u>	<u>\$ 344,409</u>	<u>\$ 3,156,508</u>	<u>\$ 3,500,917</u>	<u>\$ 1,072,938</u>				

1 Property written down to fair value in December 31, 2021.

Empire State Realty Trust, Inc.

Notes to Schedule III—Real Estate and Accumulated Depreciation
(amounts in thousands)

1. Reconciliation of Investment Properties

The changes in our investment properties for the years ended December 31, 2021, 2020 and 2019 are as follows:

	<u>2021</u>	<u>2020</u>	<u>2019</u>
Balance, beginning of year	\$ 3,133,966	\$ 3,109,433	\$ 2,884,486
Acquisition of new properties	316,428	—	—
Improvements	89,426	104,060	255,924
Disposals	(38,903)	(79,527)	(30,977)
Balance, end of year	<u>\$ 3,500,917</u>	<u>\$ 3,133,966</u>	<u>\$ 3,109,433</u>

The unaudited aggregate cost of investment properties for federal income tax purposes as of December 31, 2021 was \$3.3 billion.

2. Reconciliation of Accumulated Depreciation

The changes in our accumulated depreciation for the years ended December 31, 2021, 2020 and 2019 are as follows:

	<u>2021</u>	<u>2020</u>	<u>2019</u>
Balance, beginning of year	\$ 941,612	\$ 862,534	\$ 747,304
Depreciation expense	162,667	158,605	146,207
Disposals	(31,341)	(79,527)	(30,977)
Balance, end of year	<u>\$ 1,072,938</u>	<u>\$ 941,612</u>	<u>\$ 862,534</u>

Depreciation of investment properties reflected in the combined statements of income is calculated over the estimated original lives of the assets as follows:

Buildings	39 years or useful life
Building improvements	39 years or useful life
Tenant improvements	Term of related lease

Corporate Information

CORPORATE OFFICES

111 West 33rd Street, 12th Floor, New York, NY 10120

BOARD OF DIRECTORS

Anthony E. Malkin
*Chairman, President and
Chief Executive Officer*

Leslie D. Biddle ^{1,2,4}
Independent Director

Thomas J. DeRosa ^{1,4}
Independent Director

Steven J. Gilbert ^{2,3,4}
Lead Independent Director

S. Michael Giliberto ^{1,3,4}
Independent Director

Patricia S. Han ^{2,3,4}
Independent Director

Grant H. Hill ^{3,4}
Independent Director

R. Paige Hood ^{1,3,4}
Independent Director

James D. Robinson IV ⁴
Independent Director

SENIOR MANAGEMENT

Anthony E. Malkin
*Chairman, President and
Chief Executive Officer*

Christina Chiu
*Executive Vice President and
Chief Financial Officer*

Thomas P. Durels
*Executive Vice President,
Real Estate*

Thomas N. Keltner, Jr.
*Executive Vice President and
General Counsel*

COMMITTEE MEMBERSHIPS:

- 1 Audit Committee
- 2 Compensation and Human Capital Committee
- 3 Finance Committee
- 4 Nominating and Corporate Governance Committee

STOCKHOLDER ACCOUNT ASSISTANCE

Registered stockholder records are maintained by our Transfer Agent: American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219
Shareholder Service Number:
(800) 937-5449
www.amstock.com

FORM 10-K

Our Form 10-K is incorporated herein and has been filed with the Securities and Exchange Commission. To request a copy of our Form 10-K, free of charge, from the Company, please contact Investor Relations.

INVESTOR RELATIONS

Company information is available upon request without charge. Please contact the Investor Relations Department at (212) 850-2678 or by email at ir@esrtreit.com

ANNUAL STOCKHOLDERS MEETING

May 12, 2022 at 11:00 a.m. EST
Virtual Only
www.virtualshareholdermeeting.com/ESRT2022

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Ernst & Young LLP
One Manhattan West
New York, New York 10001

STOCK EXCHANGE

The New York Stock Exchange – NYSE
Ticker Symbol – ESRT

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Front Cover - Empire State Building - 2020 Photo Contest Winner

¹ Vanderbilt Plaza ² Naomi Watts - Empire State Building 102nd Floor Observatory ³ Chop't at the Empire State Building ⁴ A3 Artists Agency's Lounge Area at the Empire State Building ⁵ LinkedIn's Pantry at the Empire State Building ⁶ The Victory - Luxury Rental Building ⁷ COOKFOX Architects' Terrace at 250 West 57th Street ⁸ Nespresso's Pantry at 111 West 33rd Street

Back Cover - Empire State Building - View of the 102nd Floor Observatory



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