

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

EAST 16<sup>TH</sup> STREET OWNER LLC,

Plaintiff,

- against -

UNION 16 PARKING LLC, and TMO PARENT  
LLC,

Defendants.

Index No. \_\_\_\_\_/2020

Date Summons Filed: August \_\_, 2020

**SUMMONS**

Plaintiff designates the place of trial New  
York County.

The basis of venue is the Subject Premises:  
110 East 16<sup>th</sup> Street  
New York, New York

To the Above Named Defendants:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance on Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete, if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
August 13, 2020

COZEN O'CONNOR  
*Attorneys for Plaintiff*

By: \_\_\_\_\_

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Hallie McDonald, Esq.  
45 Broadway - 16<sup>th</sup> Floor  
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TO: UNION 16 PARKING LLC  
(via Secretary of State)

TMO PARENT LLC  
(via Secretary of State and registered mail to 211 East 38<sup>th</sup> Street, New York, New York  
10016)

ICON PARKING

*(via registered mail to 270 Madison Avenue, 2<sup>nd</sup> Floor, New York, New York 10016)*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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EAST 16 <sup>TH</sup> STREET OWNER LLC,	:	Index No.: _____/2020
	:	
Plaintiff,	:	
	:	<b><u>VERIFIED COMPLAINT</u></b>
- against -	:	
UNION 16 PARKING LLC and TMO PARENT	:	
LLC,	:	
	:	
Defendants.	:	
	:	
	:	
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Plaintiff, EAST 16<sup>TH</sup> STREET OWNER LLC (“**Plaintiff**”), by and through its attorneys, Cozen O’Connor, as and for its Verified Complaint against defendants, UNION 16 PARKING LLC (“**Tenant**”) and TMO PARENT LLC (“**Guarantor**”), alleges as follows:

**INTRODUCTION**

1. This is an action for relief by a landlord (Plaintiff) against its tenant (Tenant) and Tenant’s Guarantor under a lease and guaranty of the lease.
2. In a nutshell -- (i) Tenant has accrued arrears in Basic Rent and Additional Rent totaling **\$657,514.89** as of August 1, 2020, which arrears continue to accrue *pendente lite*; (ii) Guarantor absolutely and unconditionally guaranteed to Plaintiff the full and prompt payment of all Basic Rent, Additional Rent and other charges due to Owner under the Lease or otherwise which guaranties are still in effect; and (iii) Plaintiff is suing Tenant in this plenary action to obtain declaratory and equitable relief, and to recover, *inter alia*, the unpaid Basic Rent and Additional Rent owed pursuant to the lease, along with all damages incurred by it as a result of Tenant’s breaches of the lease, against Tenant and Guarantor.

3. Plaintiff is also entitled to collect from Guarantor, *inter alia*, attorneys' fees and disbursements incurred in bringing this Action to enforce the terms of the Guaranties, as defined below.

4. Additionally, in the event Plaintiff is the prevailing party herein, Plaintiff is entitled to recover from Tenant and Guarantor, jointly and severally, attorneys' fees, costs, and expenses incurred by Plaintiff as a result of Tenant's breaches and in the prosecution of this action ("**Attorneys' Fees**").

### JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action, the Tenant and the Guarantor pursuant to CPLR Article 3.

6. Furthermore, this Court has jurisdiction over this action and Guarantor because this action arises out of and relates to a guaranty by which Guarantor agreed to submit to the jurisdiction of the Courts of the State of New York and expressly waived any right to contest the personal jurisdiction within the State of New York.

7. Venue is proper in this Court and County because Plaintiff's principal office is located in the State of New York, New York County, and because the actions that are the basis of this action arose in New York County.

### THE PARTIES

8. At all times relevant herein, Plaintiff was and still is a Delaware limited liability company formed under and by virtue of the laws of the State of Delaware, authorized to do business in New York State.

9. Plaintiff is the owner of the parcel of land (the "**Land**") and the improvements on said land located at 110 East 16<sup>th</sup> Street, New York, New York (the "**Building**") (collectively, the "**Parking Garage**").

10. Upon information and belief, Tenant was and still is a Delaware limited liability company, formed under and by virtue of the laws of the State of Delaware, authorized to do business in New York State.

11. Upon information and belief, Guarantor was and still is a Delaware limited liability company, formed under and by virtue of the laws of the State of Delaware, authorized to do business in New York State.

**BACKGROUND FACTS**  
**PERTINENT TO TENANT AND GUARANTOR**

**A. Landlord/Tenant Relationship  
Between Plaintiff And Tenant  
And Between Plaintiff and Guarantor**

12. Pursuant to a written lease, dated March 24, 2015 (the “**Lease**”), between Plaintiff, as landlord, and Tenant, as tenant, Tenant leased the Parking Garage, as more fully indicated in Exhibit A of the Lease. (A copy of the Lease is annexed hereto as **Exhibit “A”**.)

13. Pursuant to a Good Guy Guaranty, executed March 24, 2015 (“**Good Guy Guaranty**”) by TMO Parent LLC, as Guarantor, Guarantor guaranteed to Landlord, in accordance with and pursuant to this Good Guy Guaranty, full and timely payment of Tenant’s monetary obligations under the Lease, including, *inter alia*, all Basic Rent, tax payments, interest, and other charges due under the Lease or otherwise payable by Tenant. (A copy of the Good Guy Guaranty is annexed hereto as **Exhibit “B”**).

14. Pursuant to a Guaranty, also executed March 24, 2015 (“**Guaranty**”) by TMO Parent LLC, as Guarantor, Guarantor guaranteed to Landlord, in accordance with and pursuant to this Guaranty, full and timely payment of Tenant’s monetary obligations under the Lease, including, *inter alia*, all Basic Rent, Additional Rent and other charges due under the Lease or

otherwise payable by Tenant. (A copy of the Guaranty is annexed hereto as **Exhibit “C”**.) (The Good Guy Guaranty and Guaranty, collectively referred to as the “**Guaranties**”).

**B. The COVID-19 Pandemic.**

15. In mid-March 2020, Governor Cuomo began issuing a series of Executive Orders to address the COVID-19 pandemic in New York State and New York City (the “**Executive Orders**”). These Executive Orders restricted the operation of certain businesses.

16. These Executive Orders, however, did not apply to Tenant. Tenant, the operator of a parking garage, was never directed to stop operating its business.

17. Tenant was never required to vacate or surrender the Parking Garage as a result of any of the Executive Orders.

18. Upon information and belief, Tenant’s business has operated throughout the COVID-19 shutdown period.

19. Upon information and belief, Tenant is currently operating its business at the Parking Garage.

**C. Tenant’s Breaches Of The Lease.**

20. Pursuant to Article 3 of the Lease (titled “Rent; Guaranty”), Tenant agreed, *inter alia*, as follows:

3.01 [...] Tenant covenants and agrees to pay to Landlord an annual rental (“**Basic Rent**”) as detailed in Schedule 1 annexed hereto and made hereof, in lawful coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, by good and sufficient check drawn on a New York City bank which is a member of the New York Clearing House Association (or a successor thereto), delivered to the address for Landlord specified in Article 34 hereof; provided, however, that, at Landlord’s option, Basic Rent shall be paid by wire transfer of immediately available federal funds to Landlord’s account in accordance with instructions that Landlord shall from time to time deliver to Tenant.

3.02 Such Basic Rent shall be paid in equal monthly installments in advance on the first (1<sup>st</sup>) day of each and every month during the Term without notice, demand, abatement, counterclaim, deduction or set-off, except as otherwise specifically provided in Article 16 of this Lease. [...].

3.04 In addition to Basic Rent, Tenant shall pay to Landlord all other charges, fees and expenses described herein (including, without limitation, Tax Payments (as hereinafter defined)) becoming due during the Term which are specified herein as being payable by Tenant to Landlord (collectively, “**additional rent**” or “**Additional Rent**”, and, together with the Basic Rent, collectively “**Rent**”), all of which shall be deemed to be additional rent payable by Tenant and collected as such whether or not designated additional rent herein. All additional rent shall be payable by Tenant to Landlord without notice or demand, except as may be expressly required in this Lease, and without abatement, counterclaim, deduction or set-off, except as otherwise specifically provided in Article 16 of this Lease. Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for herein or by law in the case of non-payment of the Basic Rent for the non-payment of any additional rent. [...].

3.06 Interest shall accrue and be payable as additional rent on any amount not paid by Tenant under this Lease within five (5) days after same is due from and after the due date thereof at the per annum rate which is the lesser of (the “**Lease Interest Rate**”): (a) the then prime rate of interest charged by JP Morgan Chase, New York (or the successor thereto) plus five percent (5%), or (b) the highest rate permitted by law. Additionally, in the event Landlord makes any expenditure due to a default by Tenant hereunder, which continues beyond all applicable grace and cure periods after notice, if required hereunder, in addition to such amounts, Tenant shall pay interest on the amounts expended at the Lease Interest Rate. In default of payment of any such interest, Landlord shall have (in addition to all other remedies) the same rights as provided in this Lease for nonpayment of Basic Rent. Nothing in this Section contained and no acceptance of interest by Landlord shall be deemed to extend or change the time for payment of Basic Rent or additional rent. [...].

3.07 Tenant acknowledges that Landlord would not have entered into this Lease without TMO Parent LLC, a Delaware limited liability company, Tenant’s parent (“**Guarantor**”), executing and delivering herewith to Landlord, its successors and assigns, simultaneously with the execution and delivery of this Lease, (i) a good guy guaranty in the form annexed hereto and made a part hereof as Exhibit C (the “**Good Guy Guaranty**”), and (ii) a

guaranty in the form annexed hereto and made a part hereof as Exhibit D (the “**Guaranty**”).

21. As referenced in Article 3 of the Lease, pursuant to Schedule 1 of the Lease,

Tenant agreed, *inter alia*, to pay Basic Rent for the Parking Garage as follows:

For the Fourth (4 <sup>th</sup> ) Lease Year through and including the Sixth (6 <sup>th</sup> ) Lease Year:	One Million Four Hundred Eighty Four Thousand and 00/100 Dollars (\$1,484,000.00) per annum (\$123,666.67 per month).
For the Seventh (7 <sup>th</sup> ) Lease Year through and including the Ninth (9 <sup>th</sup> ) Lease Year:	One Million Five Hundred Seventy Three Thousand Forty 00/100 dollars (\$1,573,040.00) per annum (\$131,086.67 per month).
For the Tenth (10 <sup>th</sup> ) Lease Year through and including the Twelfth (12 <sup>th</sup> ) Lease Year:	One Million Six Hundred Sixty Seven Thousand Four Hundred Twenty Two and 40/100 Dollars (\$1,667,422.40) per annum (\$147,288.98 per month).
For the Thirteenth (13 <sup>th</sup> ) Lease Year through and including the Fifteen [sic] (15 <sup>th</sup> ) Lease Year:	One Million Seven Hundred Sixty Seven Thousand Four Hundred Sixty Seven and 74/100 Dollars (\$1,767,467.74) per annum (\$147,288.98 per month).
For the Sixteenth (16 <sup>th</sup> ) Lease Year through and including the Eighteenth (18 <sup>th</sup> ) Lease Year:	One Million Eight Hundred Seventh [sic] Three Thousand Five Hundred Fifteen and 81/100 Dollars (\$1,873,515.81) per annum (\$156,126.32 per month).
For the Nineteenth (19 <sup>th</sup> ) Lease Year through and including the Expiration Date:	One Million Nine Hundred Eighty Five Thousand Nine Hundred Twenty Six and 76/100 Dollars (\$1,985,926.76) per annum (\$165,493.90 per month).

22. Furthermore, pursuant to Article 4 of the Lease, Tenant agreed, *inter alia*, as

follows:

4.01 (a) “**Taxes**” shall mean the aggregate amount of real estate taxes and any general or special assessments (exclusive of penalties and interest thereon) imposed upon the Land and Building without taking into account any discount that Landlord may receive by virtue of any early payment of Taxes; provided, however, that if because of any change in the taxation of real estate, any other tax assessment, however denominated (including, without limitation, any franchise, income, profit, sales, use, occupancy, gross receipts or rental tax), is imposed upon Landlord, or the occupancy, rents or income



therefrom, in addition to and/or in substitution for any of the foregoing Taxes, such other tax or assessment shall be deemed part of Taxes. With respect to any Tax Year, all expenses, including reasonable attorneys' fees and disbursements, experts' and other witnesses' fees, incurred in contesting the validity or amount of any Taxes or in obtaining a refund of Taxes shall be considered as part of the Taxes for such Tax Year. Notwithstanding anything to the contrary herein contained, "Taxes" shall not include and/or be reduced by any exemptions or abatements.

(b) "**Tax Payment**" shall mean, with respect to any Tax Year, the product obtained by multiplying (x) the excess of Taxes for such Tax Year over Base Taxes, by (y) Tenant's Tax Share; provided that in no event shall the Tax Payment in any Tax Year be greater than three percent (3%) of the Basic Rent due during such Tax Year.

[...] (d) "**Tax Year**" shall mean the period July 1 through June 30 (or such other period as hereinafter may be duly adopted by the Governmental Authority then imposing taxes as its fiscal year for real estate purposes), or any portion of which occurs during the Term.

(e) "**Tenant's Tax Share**" shall mean one hundred percent (100%).

(f) "**Base Taxes**" shall mean the Taxes payable (but without taking into account any exemptions or abatements) for the July 1, 2015 – June 30, 2016 Tax Year.

4.02 Tax Payment. (a) Subject to the provisions of this Article 4, Tenant shall pay to Landlord, on the first day of the calendar month following the calendar month during which Landlord gives the initial Tax Statement to Tenant, and on the first day of each succeeding calendar month during the Term (until Landlord gives Tenant an additional Tax Statement pursuant to Section 4.02(b) hereof), an amount equal to the quotient obtained by dividing (x) the Tax Payment for the Tax Year covered by such Tax Statement, by (y) twelve (12) (the "**Initial Monthly Tax Amount**"). If Landlord gives the initial Tax Statement to Tenant after the first day of the Tax Year covered thereby, then Tenant, on the first day of the following calendar month, shall also pay to Landlord an amount equal to the product obtained by multiplying (i) the Initial Monthly Tax Amount, by (ii) the number of calendar months which have elapsed since the beginning of such Tax Year.

(b) [...] Tenant shall pay to Landlord, on the first day of the calendar month immediately following the calendar month during which Landlord gives to Tenant such additional Tax Statement, and on the first day of each succeeding calendar month during the Term (until Landlord gives Tenant an additional Tax Statement pursuant to this Section 4.02(b)), an amount equal to the quotient obtained by

dividing (x) the Tax Payment for the Tax Year covered by such additional Tax Statement, by (y) twelve (the “**Subsequent Monthly Tax Amount**”). If the Subsequent Monthly Tax Amount exceeds the Initial Monthly Tax Amount, or the Subsequent Monthly Tax Amount calculated using the previous Tax Statement most recently given to Tenant, as the case may be (the amount of any such excess being referred to herein as a “**Monthly Tax Deficiency**”), then, on the first day of the calendar month immediately following the calendar month during which Landlord gives to Tenant such additional Tax Statement, Tenant shall also pay to Landlord an amount equal to the product obtained by multiplying (i) the Monthly Tax Deficiency, by (ii) the number of calendar months which have elapsed since the beginning of the Tax Year covered by such additional Tax Statement. [...].

23. Tenant has breached Articles 3 and 4 of the Lease by failing to pay Basic Rent and Additional Rent (as those terms are used and defined in the Lease) (collectively, the “**Payment Breaches**”), totaling **\$657,514.89**, through August 1, 2020, comprised of Basic Rent charges and Taxes that remain outstanding with respect to the Parking Garage, as same continue to accrue (the **\$657,514.89** and, to the extent permitted by law, any associated fees, as they continue to accrue, shall hereinafter be referred to as the “**Arrears**”). (Arrears ledger through August 1, 2020 pertaining to the Parking Garage is annexed hereto as **Exhibit “D”**)

**D. Damages and Remedies Under the Lease  
As A Result Of Tenant’s Breaches.**

24. Pursuant to Article 19 of the Lease (titled “Remedies of Owner and Waiver of Redemption”), Tenant agreed, *inter alia*, as follows:

19.01 [...] In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Landlord shall have the right to seek an injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this Lease of any particular remedy, shall not preclude Landlord from any other remedy, in law or in equity. [...]

19.03 If Landlord and Tenant are involved in any litigation regarding the performance of any of their obligations under this Lease, the unsuccessful party by final unappealable order, decree, or

judgment by a court of competent jurisdiction in such litigation shall reimburse the substantially successful party in connection with obtaining such final unappealable order, decree or judgment. [...].

25. Tenant's arrears in Basic Rent, Additional Rent and other amounts due under the Lease total **\$657,514.89** as of the date hereof, as set forth in Exhibit "D" annexed hereto (as same continue to accrue *pendent lite*).

26. Tenant's failure to pay the Arrears constitutes a breach of the Lease by Tenant.

**E. The Guaranties**

27. Pursuant to Article 3 of the Lease, Tenant agreed to "a good guy guaranty in the form annexed hereto and made a part hereof as Exhibit C [...] and [a] guaranty in the form annexed hereto and made a part hereof as Exhibit D [...]."

28. As referenced in Article 3 of the Lease, pursuant to paragraph 1 of Exhibit "C" of the Lease (titled "GOOD GUY GUARANTY"), Guarantor agreed, *inter alia*, as follows:

[Guarantor] unconditionally guarantees to Landlord (which term shall be deemed to include the named landlord and its successors and assigns) all of the obligations of Tenant under the Lease to pay any and all of the following through the date of surrender of the Premises by Tenant to Landlord (or the date upon which Landlord obtains possession of the Premises) vacant (other than parking customers) (the "Surrender Date"): (i) Basic Rent, (ii) Tax Payments owed pursuant to Article 4 of the Lease, and (iii) interest on the foregoing items (i) and (ii) owed pursuant to Section 3.06 of the Lease; provided Tenant or Guarantor has given Landlord not less than ninety (90) days' prior written notice that Tenant intends to vacate and surrender to Landlord possession of the Premises and, in the absence of such notice, the Surrender Date shall be extended for an additional ninety (90) days. [...] [N]otwithstanding anything to the contrary set forth herein, Guarantor shall be, and shall remain, liable for Landlord's costs and expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the enforcement of this Guaranty. Neither the obligations nor the liabilities of Guarantor hereunder shall be released, reduced, diminished, offset or otherwise affected by the existence of, or Landlord's receipt, application, use, retention or release of, any security given for the performance, observance and compliance with any of the terms, covenants or conditions required to be performed,

observed and complied with by Tenant under the Lease, and for the purposes of Guarantor's obligations and liabilities under this Guaranty, Landlord shall be deemed not to be holding any security under the Lease and not to have applied, used or retained any security deposit.

29. Furthermore, pursuant to paragraph 2 of the Good Guy Guaranty, Guarantor agreed, *inter alia*, as follows:

This Guaranty is an absolute and unconditional guaranty of payment and not only of collection. Guarantor's liability under this Guaranty is direct and primary, and not secondary, and shall be joint and several with that of Tenant. Guarantor hereby covenants and agrees to and with Landlord and its successors and assigns, that Guarantor may be joined in any action against Tenant in connection with the Lease, and that recovery may be had against Guarantor in such action or in any independent action against Guarantor without Landlord or its successors or assigns first pursuing or exhausting any remedy or claim against Tenant or its heirs, executors, administrators, successors or assigns or any other remedy or claim under any other security for, or guaranty of, the obligations or liabilities of Tenant under the Lease and without the necessity of any notice. Guarantor also agrees that, in any jurisdiction, it will be conclusively bound by the judgment in any such action by Landlord against Tenant (wherever brought) as if Guarantor were a party to such action even though Guarantor is not joined as a party in such action. If more than one natural person and/or entity shall constitute Guarantor, then the liability of each such person or entity shall be joint and several, and no waiver, release or modification of the obligations of any such person or entity shall affect the obligations of any other such person or entity. The obligations of Guarantor under this Guaranty are unconditional, are not subject to any set-off or defense based upon any claim Guarantor may have against Landlord, and will remain in full force and effect without regard to any circumstance or condition [...].

30. Moreover, pursuant to paragraph 4 of the Good Guy Guaranty, Guarantor agreed, *inter alia*, as follows:

[...] Guarantor hereby [...] irrevocably submits to the jurisdiction of the Supreme Court of the State of New York for the County of New York (or, in a case involving diversity of citizenship or another matter to which federal jurisdiction is applicable, the United States District Court for the Southern District of New York) for the purposes of each and every suit, action or other proceeding arising

out of or based upon this Guaranty or the subject matter hereof brought by Landlord, it being expressly understood and agreed that this consent to jurisdiction shall be self-operative and no further instrument or action, other than service of process in one of the manners permitted by law, shall be necessary in order to confer jurisdiction upon Guarantor in any of the above-named courts, and [] waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding brought in any such court, any claim that Guarantor is not subject personally to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court, and further agrees to waive, to the fullest extent permitted under applicable law, the benefit of any defense that would hinder, fetter, or delay the levy, execution or collection of any amount to which Landlord or its successors or assigns are entitled pursuant to the final judgment of any court having jurisdiction. [...] Guarantor shall pay for all costs and expenses in the enforcement of this Guaranty including but not limited to Landlord's reasonable attorney fees and expenses.

31. As referenced in Article 3 of the Lease, pursuant to paragraph 1 of Exhibit "D" of the Lease (titled "GUARANTY"), Guarantor agreed, *inter alia*, as follows:

[Guarantor] absolutely and unconditionally guarantees the payment and performance when due by UNION 16 PARKING LLC, as tenant ("Tenant"), of all of the terms, covenants, conditions, agreements and other obligations (collectively, the "Obligations") of Tenant pursuant to that certain Lease [...] with the same force and effect as if a signatory thereto and liable thereunder with Tenant, and the full and prompt payment of all damages and expenses that may arise in connection with or as a consequence of the non-payment, non-performance or non-observance of such Obligations, in each and every instance without requiring any notice of non-payment, non-performance or non-observance or proof or notice or demand whereby to charge Guarantor therefor, all of which Guarantor hereby expressly waives. Notwithstanding the foregoing and/or anything to the contrary set forth herein, the liability of Guarantor for the Obligations hereunder shall be limited to an amount equal to (i) all costs and expenses to discharge any and all liens filed against the Premises or the Building that are Tenant's responsibility to remove pursuant to the terms of the Lease, plus (ii) Three Hundred Fifty Thousand and 00/100 (\$350,000) Dollars, plus (iii) any amounts due Landlord pursuant to Section 28.05 of the Lease; provided, however, that in addition to the foregoing

Guarantor shall be liable for and pay all of Landlord's costs and expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the enforcement of this Guaranty.

32. Moreover, pursuant to paragraph 2 of the Guaranty, Guarantor agreed, *inter alia*, as follows:

This Guaranty is a continuing one and shall terminate only upon the full performance of all terms, covenants and conditions required to be kept, observed, or performed by Tenant with respect to the Lease including but not limited to all payment obligations. Landlord may continue to rely on this Guaranty remaining in force. [...]

33. Additionally, pursuant to paragraph 3 of the Guaranty, Guarantor agreed, *inter alia*, as follows:

[...] Guarantor does hereby further covenant and agree to and with Landlord that Guarantor may be joined in any action against Tenant in such action or in any independent action against Guarantor without Landlord first pursuing or exhausting any remedy or claims against Tenant or its successors or assigns. [...]

34. Moreover, pursuant to paragraph 13 of the Guaranty, Guarantor agreed that “[t]his Guaranty shall be deemed to have been made in the State of New York and shall be construed in accordance with the laws of the State of New York.”

**F. Guarantor's Liability Under  
The Guaranty For The Amounts  
Due And Owning By Tenant  
Under The Lease.**

35. Tenant's arrears in Basic Rent, Additional Rent and other amounts due under the Lease currently total **\$657,514.89** as of the date hereof (as same continue to accrue).

36. Neither Tenant nor Guarantor have given Landlord ninety (90) days' prior written notice that Tenant intends to vacate and surrender to Landlord possession of the Parking Garage.

37. Tenant has not surrendered possession of the Parking Garage.

38. Tenant continues to operate its business from the Parking Garage.

39. Tenant's failure to pay the Arrears constitutes a breach of the Lease by Tenant for which Guarantor is responsible ("**Guaranteed Arrears**"). (Exhibits "B" and "C", Guaranties)

40. In addition to the Arrears are the costs and expenses (including reasonable attorneys' fees and disbursements) expended by Plaintiff in, *inter alia*, endeavoring to enforce the Guaranties through instituting this Action ("**Collection Costs**"), for which Guarantor is responsible ("**Guaranteed Collection Costs**").

41. Pursuant to the Guaranty, Guarantor is liable for the entirety of the Guaranteed Arrears, Guaranteed Collection Costs, and costs incurred by Plaintiff in enforcing the Guaranty against Guarantor.

**AS AND FOR A FIRST CAUSE OF ACTION**

*(Breach Of The Lease)*

42. Plaintiff repeats and realleges all of the allegations in paragraphs "1" through "41" as if fully set forth below.

43. The Lease constitutes a binding contract between Plaintiff and Tenant.

44. Plaintiff has performed its obligations under the Lease.

45. The Payment Breaches constitute breaches of the Lease by Tenant.

46. As a result of Tenant's breaches of the Lease, Plaintiff has incurred, and continues to incur, Arrears and Damages in an amount to be determined by the Court for which Tenant is liable, but in no event less than **\$657,514.89**.

**AS AND FOR A SECOND CAUSE OF ACTION**

*(Declaratory Judgment)*

47. Plaintiff repeats and realleges all of the allegations in paragraphs "1" through "46" as if fully set forth below.

48. Tenant is, and continues to be, liable to Plaintiff for Basic Rent, Additional Rent, and other monetary obligations under the lease (collectively, the “**Monetary Obligations**”), as same continue to accrue *pendente lite* in an amount to be determined by this Court.

49. Plaintiff is entitled to a Declaration that Tenant is, and continues to be, liable to Plaintiff for the Monetary Obligations, as same continue to accrue *pendente lite*, in an amount to be determined by this Court.

50. Plaintiff has no adequate remedy at law.

**AS AND FOR A THIRD CAUSE OF ACTION**  
*(Attorneys’ Fees Under The Lease)*

51. Plaintiff repeats and realleges all of the allegations in paragraphs “1” through “50” as if fully set forth below.

52. To the extent Plaintiff is the prevailing party herein, Tenant is liable to Plaintiff for Plaintiff’s attorneys’ fees.

53. By reason of the foregoing, Plaintiff is entitled to a money judgment against Tenant for Plaintiff’s reasonable legal fees, costs, and expenses in an amount to be determined by the Court.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
*(Guarantor’s Liability Under the Lease)*

54. Plaintiff repeats and realleges all of the allegations in paragraphs “1” through “53” as if fully set forth below.

55. Pursuant to the Guaranties, Guarantor is liable to Plaintiff for, *inter alia*, the Guaranteed Arrears, which include unpaid Basic Rent, Additional Rent, and other amounts due under the Lease, as well as the Guaranteed Collection Costs.



56. Based upon the foregoing, Plaintiff is entitled to the entry of a money judgment in favor of Plaintiff and against Guarantor for the Guaranteed Arrears and Guaranteed Collection Costs, in an amount to be determined by this Court.

**AS AND FOR A FIFTH CAUSE OF ACTION**  
*(Attorneys' Fees Under The Guaranties)*

57. Plaintiff repeats and realleges all of the allegations in paragraphs "1" through "56" as if fully set forth below.

58. Pursuant to the Guaranties, Guarantor is liable to Plaintiff for all amounts which Plaintiff is entitled to receive from Tenant (Exhibits "B" and "C").

59. Plaintiff is entitled to payment from Tenant for its Collection Costs, including attorneys' fees, under the Lease.

60. Relatedly, pursuant to the Guaranties, Plaintiff is entitled to payment from Guarantor for the Guaranteed Collection Costs.

61. Pursuant to the Guaranties, Plaintiff is also entitled to payment from Guarantor for, *inter alia*, attorneys' fees and disbursements incurred in enforcing the terms of the Guaranties.

62. By reason of the foregoing, Plaintiff is entitled to the entry of a monetary judgment in favor of Plaintiff and against Guarantor for, *inter alia*, the Guaranteed Collection Costs and all attorneys' fees, costs, and disbursements incurred by Plaintiff in prosecuting this action to enforce the terms and conditions of the Guaranties in an amount to be determined by this Court.

WHEREFORE, Plaintiff seeks judgment as follows:

1. On Plaintiff's First Cause of Action, a judgment in favor of Plaintiff and against Tenant for all Arrears and Damages resulting from Tenant's breaches of the Lease, in an amount to be determined by this Court, as same continue to accrue;

2. On Plaintiff's Second Cause of Action, a declaratory judgment that Tenant is, and continues to be, liable to Plaintiff for the Monetary Obligations, as same continue to accrue *pendente lite*, in an amount to be determined by this Court;
3. On Plaintiff's Third Cause of Action, a judgment in favor of Plaintiff and against Tenant for the Attorneys' Fees in an amount to be determined by this Court, as same continue to accrue;
4. On Plaintiff's Fourth Cause of Action, issuance of a money judgment in favor of Plaintiff, and against Guarantor for the Guaranteed Arrears, Guaranteed Collection Costs, in an amount to be determined by this Court;
5. On Plaintiff's Fifth Cause of Action, issuance of a money judgment in favor of Plaintiff, and against Guarantor, for the Guaranteed Collection Costs and all attorneys' fees, costs, and disbursements incurred by Plaintiff in prosecuting this Action to enforce the Guaranties in an amount to be determined by this Court; and
6. such other and further relief in favor of Plaintiff as this Court deems just and proper.

Dated: New York, New York  
August 13, 2020

  
COZEN O'CONNOR  
*Attorneys for Plaintiff*

By: \_\_\_\_\_

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Hallie McDonald, Esq.  
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**VERIFICATION**

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK )

Haley Jenkins, being duly sworn, deposes and says:

I am a Director of TRP Asset LLC, an indirect owner and manager of East 16<sup>th</sup> Street Owner LLC, the owner of the building located at 110 East 16<sup>th</sup> Street, New York, New York. I have reviewed the foregoing Complaint and the allegations contained therein are true to my own knowledge and belief, except as to those matters alleged upon information and belief and, as to those matters, I believe them to be true. The basis of my belief is from the books and records of Plaintiff.

**East 16<sup>th</sup> Street Owner LLC**

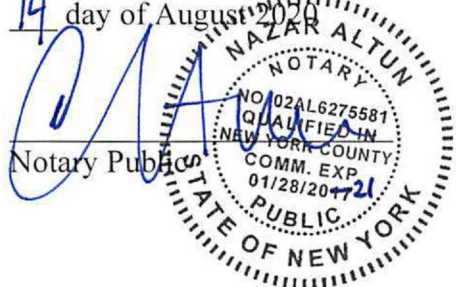
**By: East 16<sup>th</sup> Street Mezz LLC, its sole member**

**By: East 16<sup>th</sup> Street Associates LLC, its sole member**

**By: East 16<sup>th</sup> Street Investors LLC, its sole member**

**By: TRP Asset LLC, its Managing Member**

  
\_\_\_\_\_  
By: Haley Jenkins

Sworn to before me this  
14 day of August, 2020  
  
Notary Public