

KELLEY| CLARKE PLLC

CRISIS COVID

DUGAN P. KELLEY - YOUR REAL ESTATE AND SEC ATTORNEY

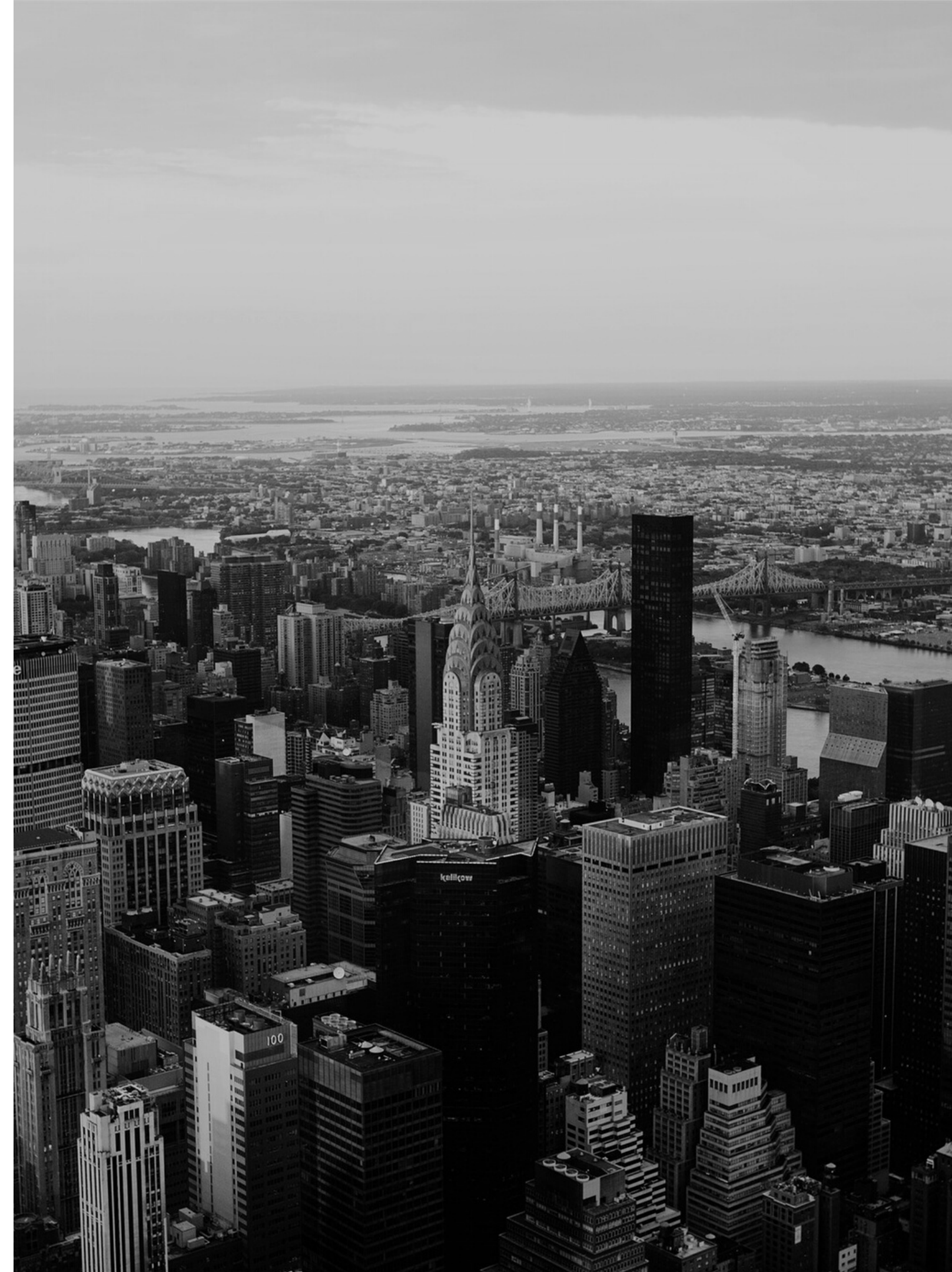
IN THE MIDDLE OF CRISIS

IMPORTANT FACTORS

- MANAGER OF LLC
- GENERAL PARTNER OF LIMITED LIABILITY PARTNERSHIP

REMEMBER

- YOUR OWNERSHIP WAS RECEIVED THROUGH THE PPM PROCESS
- MANAGER OR GENERAL PARTNER HAVE FIDUCIARY DUTIES OF CARE AND LOYALTY TO ENSURE THAT THE ASSET IS NOT FORECLOSED UPON





CASH CALL

**OPERATING AGREEMENT
IS THE
GOVERNING DOC**

NOTICE PROVISIONS

- PERSONAL SERVICE
- MAIL
- EMAIL
- TIME FOR MEETING
- VOTING

ADDITIONAL CONTRIBUTIONS

- MEETING
- VOTING
- PAYMENT
- NO PAYMENT = DILUTION

ADVANCES/ LOANS

**OPERATING AGREEMENT IS THE
GOVERNING DOC**

- **APPROVED BY THE MANAGER OR
GENERAL PARTNER**
- **WILL BEAR AN INTEREST RATE SET
FORTH IN THE OPERATING AGREEMENT**
- **IS NOT TREATED AS A CAPITAL
CONTRIBUTION**
- **WILL BE SUBORDINATE TO THE SENIOR
LENDER**

NEW SECURITIES

OPERATING AGREEMENT IS THE GOVERNING DOC

NEW SECURITIES IS AN ADDITIONAL RAISE AFTER THE INITIAL RAISE IS CLOSED OR EXPIRED

- APPROVAL BY THE MANAGER OR GENERAL PARTNER
- WILL REQUIRE A VOTE OF ALL THE MEMBERS BY SOME %
- WILL RESULT IN DILUTION OF THE OTHER PASSIVE INVESTORS





FORBEARANCE

- **MORATORIUM ON EVICTIONS RIGHT NOW**
- **IF OTHER OPTIONS ARE NOT AVAILABLE OR ATTRACTIVE FOR YOUR SITUATION, DISCUSS FORBEARANCE**
- **PAUSES LOAN / MORTGAGE OBLIGATIONS FOR PERIOD OF TIME**
- **LEGALLY BINDING AND NO DEFAULT**
- **RELEASES ANY PRIOR CLAIMS**

FORCE MAJURE

WHAT TO REMEMBER

FORCE MAJEURE

- **IN YOUR CONTRACT?**
- **IS THE REASON UNFORSEEABLE?**
- **WHAT IS THE REASON FOR CANCELLATION (IMPOSSIBLE, IMPRACTICABLE, OR ILLEGAL)?**
- **IS THERE A KITCHEN SINK PROVISION?**
- **IS THERE A NOTICE PROVISION?**

FORCE MAJUERE

FORCE MAJEURE REFERS TO A LEGAL DOCTRINE THAT IS INCLUDED IN CONTRACTS TO REMOVE LIABILITY FOR NATURAL AND UNAVOIDABLE CATASTROPHIES THAT INTERRUPT THE EXPECTED COURSE OF EVENTS AND RESTRICT PARTICIPANTS FROM FULLFILLING OBLIGATIONS.

FORCE MAJEURE

Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from Force Majeure Events (defined below) beyond the impacted party's ("Impacted Party") reasonable control. The following events shall be deemed force majeure events (individually referred to as "Force Majeure Event" and collectively referred to as "Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, pandemic (including the COVID-19 virus) or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) national or state emergency; or (f) any other event outside the reasonable control of a party. In the event a Force Majeure Event prohibits or delays an Impacted Party's ability to timely perform under the terms of the Agreement, including Purchaser's ability to complete its physical due diligence and inspections of the Property within the Due Diligence Period, the Impacted Party shall have additional days to perform under the terms of this Agreement.

FORCE MAJEURE

Force Majeure.

Further, in the event that one or more of the following takes place, Buyer shall have the right to terminate this Agreement and receive a refund of its earnest money: The capital market(s) are frozen by the Federal Government, State Government, or Regulatory Authorities; OR Purchaser is unable to obtain debt financing for its acquisition of the Property; OR Purchaser or its agents are unable to perform their Phase 1 Environmental Testing; OR Purchaser is unable to obtain equity financing for its acquisition of the Property; OR a national quarantine goes into effect preventing Purchaser from completing its physical due diligence of the Property.

If one of these event(s) shall occur, the Buyer (in its sole discretion) shall have the right to terminate this Agreement and receive a return of all its earnest money.

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CONTACT US

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THANK YOU!