

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

DW BROOKLYN 75 LLC,

Plaintiff,

-against-

101 QUINCY LLC, 1012 WILLOUGHBY LLC, 1055 DEAN LLC, 1058 BERGEN STREET, LLC, 1088 BEDFORD AVE LLC, 591 FRANKLIN LLC, 1136 WILLOUGHBY LLC, 1159 DEAN LLC, 1221 ATLANTIC AVENUE LLC, 125 LEONARD LLC, BEDFORD LIVING LLC, 133 LEONARD LLC, THE HENRICA GROUP LLC, 1358 DEKALB LLC, 1361 GREENE LLC, WWW 888 REALTY INC, 1418 PUTNAM AVENUE LLC, 1420 PUTNAM AVENUE LLC, 143 N8 C3 REALTY INVESTORS LLC, 145 DRIGGS LLC, GROVE PALACE LLC, 161 MESEROLE LLC, 163 TROUTMAN REALTY LLC, 166 HARMAN REALTY LLC, HARMAN TOWERS LLC, 170 KNICKERBOCKER LLC, THE TROUTMAN RESIDENCE LLC, 192 BSD REALTY LLC, RALPH & RALPH PROPERTIES LLC, 199 WEIRFIELD LLC, 212-214 GRAND LLC, 222 STANHOPE II LLC, 226 TROUTMAN LLC, 231 JEFFERSON LLC, 233 JEFFERSON LLC, 236 MESEROLE LLC, 238 TROUTMAN LLC, 239 TROUTMAN LLC, 242 TROUTMAN LLC, 247 TROUTMAN LLC, 252 GRAND LLC, 259 EVERGREEN REALTY LLC, 273 DRIGGS LLC, 274 JEFFERSON LLC, 277 CLASSON LLC, 283 NOSTRAND AVE REALTY LLC, 30 DRIGGS LLC, 307 DEVOE LLC, 335 ST NICHOLAS LLC, 378 LEWIS LLC, 78 HAVEMEYER LLC, 392 ST MARKS LLC, LAVAN EQUITIES LLC, 461 PARK PLACE LLC, 469 PARK LLC, 48 WILSON LLC, KNICKERBOCKER ST HOLDINGS LLC, 54 LEWIS LLC, 57-59 GRAND ST LLC, A & M PARK PLACE ENTERPRISES LLC, 65 KENT AVENUE LLC, 654 PARK PLACE LLC, 69 STOCKHOLM HOLDINGS LLC, 690 PROSPECT PL LLC, 694 FRANKLIN AVENUE LLC, 697 PROSPECT PL LLC, 71 WILSON LLC, 82 JEFFERSON LLC, 871 GRAND LLC, Y & M MANAGEMENT LLC, 90 WILSON LLC, 916 MADISON ST LLC, and YOEL GOLDMAN,

Defendants.

Index No.

Date Purchased:

SUMMONS

Plaintiff designates
Kings County
as the place of trial.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer on the plaintiff's undersigned attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the 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.

The venue is designated pursuant to CPLR § 503 because defendants reside in Kings County and pursuant to CPLR § 507 because the real properties at issue are in Kings County.

Dated: New York, New York
January 19, 2021

MEISTER SEELIG & FEIN LLP

By: /s/ Stephen B. Meister
Stephen B. Meister
Kevin Fritz
125 Park Avenue, 7th Floor
New York, NY 10017
(212) 655-3500

*Attorneys for Plaintiff DW Brooklyn
75 LLC*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

DW BROOKLYN 75 LLC,

Plaintiff,

-against-

101 QUINCY LLC, 1012 WILLOUGHBY LLC, 1055 DEAN LLC, 1058 BERGEN STREET, LLC, 1088 BEDFORD AVE LLC, 591 FRANKLIN LLC, 1136 WILLOUGHBY LLC, 1159 DEAN LLC, 1221 ATLANTIC AVENUE LLC, 125 LEONARD LLC, BEDFORD LIVING LLC, 133 LEONARD LLC, THE HENRICA GROUP LLC, 1358 DEKALB LLC, 1361 GREENE LLC, WWW 888 REALTY INC, 1418 PUTNAM AVENUE LLC, 1420 PUTNAM AVENUE LLC, 143 N8 C3 REALTY INVESTORS LLC, 145 DRIGGS LLC, GROVE PALACE LLC, 161 MESEROLE LLC, 163 TROUTMAN REALTY LLC, 166 HARMAN REALTY LLC, HARMAN TOWERS LLC, 170 KNICKERBOCKER LLC, THE TROUTMAN RESIDENCE LLC, 192 BSD REALTY LLC, RALPH & RALPH PROPERTIES LLC, 199 WEIRFIELD LLC, 212-214 GRAND LLC, 222 STANHOPE II LLC, 226 TROUTMAN LLC, 231 JEFFERSON LLC, 233 JEFFERSON LLC, 236 MESEROLE LLC, 238 TROUTMAN LLC, 239 TROUTMAN LLC, 242 TROUTMAN LLC, 247 TROUTMAN LLC, 252 GRAND LLC, 259 EVERGREEN REALTY LLC, 273 DRIGGS LLC, 274 JEFFERSON LLC, 277 CLASSON LLC, 283 NOSTRAND AVE REALTY LLC, 30 DRIGGS LLC, 307 DEVOE LLC, 335 ST NICHOLAS LLC, 378 LEWIS LLC, 78 HAVEMEYER LLC, 392 ST MARKS LLC, LAVAN EQUITIES LLC, 461 PARK PLACE LLC, 469 PARK LLC, 48 WILSON LLC, KNICKERBOCKER ST HOLDINGS LLC, 54 LEWIS LLC, 57-59 GRAND ST LLC, A & M PARK PLACE ENTERPRISES LLC, 65 KENT AVENUE LLC, 654 PARK PLACE LLC, 69 STOCKHOLM HOLDINGS LLC, 690 PROSPECT PL LLC, 694 FRANKLIN AVENUE LLC, 697 PROSPECT PL LLC, 71 WILSON LLC, 82 JEFFERSON LLC, 871 GRAND LLC, Y & M MANAGEMENT LLC, 90 WILSON LLC, 916 MADISON ST LLC and YOEL GOLDMAN

Defendants.

Index No.

COMPLAINT

Plaintiff DW Brooklyn 75 LLC (“Purchaser”), for its Complaint against Defendants, 101 Quincy LLC, 1012 Willoughby LLC, 1055 Dean LLC, 1058 Bergen Street, LLC, 1088 Bedford Ave LLC, 591 Franklin LLC, 1136 Willoughby LLC, 1159 Dean LLC, 1221 Atlantic Avenue LLC, 125 LEONARD LLC, Bedford Living LLC, 133 LEONARD LLC, THE HENRICA GROUP LLC, 1358 DeKalb LLC, 1361 Greene LLC, WWW 888 Realty Inc., 1418 Putnam Avenue LLC, 1420 Putnam Avenue LLC, 143 N8 C3 Realty Investors LLC, 145 Driggs LLC, Grove Palace LLC, 161 Meserole LLC, 163 Troutman Realty LLC, 166 Harman Realty LLC, Harman Towers LLC, 170 Knickerbocker LLC, The Troutman Residence LLC, 192 BSD Realty LLC, Ralph & Ralph Properties LLC, 199 Weirfield LLC, 212-214 Grand LLC, 222 Stanhope II LLC, 226 Troutman LLC, 231 Jefferson LLC, 233 Jefferson LLC, 236 Meserole LLC, 238 Troutman LLC, 239 Troutman LLC, 242 Troutman LLC, 247 Troutman LLC, 252 Grand LLC, 259 EVERGREEN REALTY LLC, 273 Driggs LLC, 274 Jefferson LLC, 277 CLASSON LLC, 283 Nostrand Ave Realty LLC, 30 Driggs LLC, 307 Devoe LLC, 335 St Nicholas LLC, 378 Lewis LLC, 78 Havemeyer LLC, 392 St Marks LLC, Lavan Equities LLC, 461 Park Place LLC, 469 Park LLC, 48 Wilson LLC, Knickerbocker St Holdings LLC, 54 Lewis LLC, 57-59 Grand St LLC, A & M Park Place Enterprises LLC, 65 KENT AVENUE LLC, 654 Park Place LLC, 69 Stockholm Holdings LLC, 690 Prospect Pl LLC, 694 Franklin Avenue LLC, 697 Prospect Pl LLC, 71 Wilson LLC, 82 Jefferson LLC, 871 Grand LLC, Y & M Management LLC, 90 Wilson LLC, 916 MADISON ST LLC (collectively, “Seller”) and Yoel Goldman (“Mr. Goldman”), alleges as follows:

PRELIMINARY STATEMENT

1. Purchaser brings this action against Seller and its principal, Yoel Goldman, who guaranteed the repayment of the \$15,000,000 down payment to Purchaser, for a declaration that

Purchaser's termination of its agreement to acquire a portfolio of 72 buildings is valid and to enforce its rights under that agreement. Specifically, the Seller could not and did not satisfy the conditions precedent to closing and, accordingly, Purchaser was contractually permitted to terminate the transaction and be repaid its down payment.

2. The parties signed the Agreement of Purchase and Sale effective March 5, 2020 (the "Agreement"). Pursuant to the Agreement, Purchaser sought to purchase from Seller a portfolio of real properties in Brooklyn, New York. The various properties consisted of mixed residential and commercial space. Purchaser agreed to pay \$344,000,000 for the portfolio. A true copy of the Agreement is attached as Exhibit A.

3. Purchaser paid a \$15,000,000 down payment to Seller, although the down payment was not held in escrow. Instead, Mr. Goldman, Seller's principal and a real estate developer, personally guaranteed its repayment upon a termination of the Agreement. The closing was scheduled for May 5, 2020.

4. The Agreement attaches a "rent roll" (the "Rent Roll") in a schedule, enumerating the rent paid by each tenant at each of the properties. The rental revenue set forth in the Rent Roll, totaling \$1,895,196 per month – and which Purchaser expected to continue to receive after closing – was the lynchpin justifying the \$344,000,000 purchase price.

5. In the days preceding the anticipated closing, in light of the global COVID-19 pandemic and the widespread news of tenant defaults, Purchaser heard that, upon information and belief, Seller was providing discounts or concessions to tenants without Purchaser's consent. Accordingly, Purchaser asked Seller (1) to update its "data room" with current information about any concessions made by Seller to tenants without Purchaser's consent and (2) whether Seller had taken reasonable steps to mitigate any losses.

6. Seller failed to provide Purchaser with the information it reasonably requested and that Seller was required to provide pursuant to the terms of the Agreement, despite multiple requests. Among other items, Seller failed and refused to provide Purchaser with (1) current T12 financials; (2) schedules of unpaid rent, rent concessions, and any leasing commissions that may have paid, or were owed, to brokers; and (3) information and documents regarding deferred maintenance items.

7. Seller, thereafter, also admitted to negotiating rent abatements with an unknown number of tenants, without the knowledge, involvement, or consent of Purchaser, which is required by Section 17.1 of the Agreement. These rent abatements diminished the cash flow generated from the portfolio to an unknown extent and violated multiple Seller representations and obligations.

8. Against the backdrop of the COVID-19 pandemic and without the reasonable assurances to which Purchaser was contractually entitled, Purchaser was compelled to conclude that Seller was unable, as of the closing date, to attest that the representations and warranties in the Agreement were true and correct, as was Seller's obligation.

9. On May 4, 2020 Purchaser sent a "Notice of Termination" to Seller in which it informed Seller that, in light of Seller's material breaches, Purchaser elected to terminate the Agreement which was its absolute right (the "Notice of Termination"). Purchaser further elected to invoke the contractual remedy of the return of the down payment. The Notice of Termination stated, in pertinent part:

The sellers Listed in the Agreement...have failed and refused to provide adequate assurances that the representations and warranties contained in the Agreement will be true and correct as of the closing date. Purchaser DW Brooklyn 75 LLC ("Purchaser") asked multiple times for even basic information about the rental income from properties to be conveyed in the Agreement. Seller refused to provide such information to Purchaser for nearly two weeks, despite numerous requests.

Seller also advised Purchaser that it has given rent abatements and made other contractual arrangements with certain tenants without Purchaser's knowledge or consent. While Seller finally provided some additional information to Purchaser in the evening of May 3, 2020, such information is not complete and does not rectify any of the breaches of Seller's representations and obligations under the Agreement. For these and other reasons, Purchaser elects to terminate the Agreement.

Seller's conduct constitutes material breaches of Seller's representations and obligations under the Agreement. In particular, Seller has breached, among other provisions of the Agreement, Sections 7.1.5, 7.1.6, 7.1.28, 8.1.7, 9.2.1, 9.2.2, 9.5, 17.1.2(c), 17.1.3, and 22.

Accordingly, pursuant to Sections 9.3 and 10.2 of the Agreement, Purchaser hereby provides notice to Seller that it has elected to terminate the Agreement and receive its down payment back from Seller. Purchaser hereby demands the refund of its \$15,000,000 down payment.

Pursuant to Section 10.3 of the Agreement, Mr. Goldman, you have personally guaranteed the return of Purchaser's down payment. Purchaser hereby demands that you personally refund Purchaser's \$15,000,000 down payment.

10. In derogation of its express contractual obligations, Seller and Mr. Goldman have failed to return the down payment to Purchaser.

11. Seller's actions and its failure to return the down payment constitute a breach of the Agreement. Purchaser has therefore been damaged in the amount of at least \$15,000,000, in addition to its costs, also recoverable under the terms of the Agreement. Mr. Goldman, as guarantor, is liable to make such payment to Purchaser.

THE PARTIES

12. Plaintiff DW Brooklyn 75 LLC is the Purchaser under the Agreement and a Delaware limited liability company having an office at c/o DWREI Real Estate, 780 Third Avenue, 25th Floor, New York, New York 10017.

13. Defendant 101 Quincy LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

14. Defendant 1012 Willoughby LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

15. Defendant 1055 Dean LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

16. Defendant 1058 Bergen Street, LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

17. Defendant 1088 Bedford Ave LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

18. Defendant 591 Franklin LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

19. Defendant 1136 Willoughby LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

20. Defendant 1159 Dean LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

21. Defendant 1221 Atlantic Avenue LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

22. Defendant 125 LEONARD LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

23. Defendant Bedford Living LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

24. Defendant 133 LEONARD LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

25. Defendant THE HENRICA GROUP LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

26. Defendant 1358 DeKalb LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

27. Defendant 1361 Greene LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

28. Defendant WWW 888 Realty Inc. is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

29. Defendant 1418 Putnam Avenue LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

30. Defendant 1420 Putnam Avenue LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

31. Defendant 143 N8 C3 Realty Investors LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

32. Defendant 145 Driggs LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

33. Defendant Grove Palace LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

34. Defendant 161 Meserole LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

35. Defendant 163 Troutman Realty LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

36. Defendant 166 Harman Realty LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

37. Defendant Harman Towers LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

38. Defendant 170 Knickerbocker LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

39. Defendant The Troutman Residence LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

40. Defendant 192 BSD Realty LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

41. Defendant Ralph & Ralph Properties LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

42. Defendant 199 Weirfield LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

43. Defendant 212-214 Grand LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

44. Defendant 222 Stanhope II LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

45. Defendant 226 Troutman LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

46. Defendant 231 Jefferson LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

47. Defendant 233 Jefferson LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

48. Defendant 236 Meserole LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

49. Defendant 238 Troutman LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

50. Defendant 239 Troutman LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

51. Defendant 242 Troutman LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

52. Defendant 247 Troutman LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

53. Defendant 252 Grand LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

54. Defendant 259 EVERGREEN REALTY LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

55. Defendant 273 Driggs LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

56. Defendant 274 Jefferson LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

57. Defendant 277 CLASSON LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

58. Defendant 283 Nostrand Ave Realty LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

59. Defendant 30 Driggs LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

60. Defendant 307 Devoe LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

61. Defendant 335 St Nicholas LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

62. Defendant 378 Lewis LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

63. Defendant 78 Havemeyer LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

64. Defendant 392 St Marks LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

65. Defendant Lavan Equities LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

66. Defendant 461 Park Place LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

67. Defendant 469 Park LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

68. Defendant 48 Wilson LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

69. Defendant Knickerbocker St Holdings LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

70. Defendant 54 Lewis LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

71. Defendant 57-59 Grand St LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

72. Defendant A & M Park Place Enterprises LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

73. Defendant 65 KENT AVENUE LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

74. Defendant 654 Park Place LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

75. Defendant 69 Stockholm Holdings LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

76. Defendant 690 Prospect Pl LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

77. Defendant 694 Franklin Avenue LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

78. Defendant 697 Prospect Pl LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

79. Defendant 71 Wilson LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

80. Defendant 82 Jefferson LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

81. Defendant 871 Grand LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

82. Defendant Y & M Management LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

83. Defendant 90 Wilson LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

84. Defendant 916 MADISON ST LLC is a Seller under the Agreement and a New York limited liability company having an office at 199 Lee Avenue, #693, Brooklyn, New York 11211.

85. Defendant Yoel Goldman is an individual with an address at c/o All Year Management LLC, 199 Lee Avenue, #693, Brooklyn, New York 11211. Upon information and belief, Mr. Goldman is a resident of Kings County.

JURISDICTION AND VENUE

86. This court has personal jurisdiction over each Seller pursuant to CPLR 301 because each Seller is a New York limited liability company with its principal place of business in New York State. The court has personal jurisdiction over Mr. Goldman pursuant to CPLR 301 because he is an individual who resides in New York State.

87. This court further has personal jurisdiction over each Seller because they contractually consented to jurisdiction in the Courts of the State of New York. The Agreement states in Section 25.15, in relevant part, “Seller and Purchaser hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of New York and federal courts sitting in the State of New York as the venue of any action or proceeding arising out of or relating to this Agreement . . .”

88. Venue is proper within this judicial county pursuant to CPLR 503 and 509 because the principal place of business of each Seller entity is located in Kings County, Mr. Goldman resides in Kings County, and because Purchaser designates Kings County as the place of trial.

FACTUAL ALLEGATIONS

Purchaser Agrees to Purchase Property from Seller

89. The parties to the Agreement negotiated it in or about February 2020.

90. The Agreement of Purchase and Sale was effective March 5, 2020.

91. Seller was selling various property rights, and interests in Brooklyn, New York (collectively, the “Property” or “Properties”).

92. Seller’s principal, Mr. Goldman, is a real estate developer, and upon information and belief owns real estate companies, including Seller.

Purchaser Pays a Down Payment, with the Balance to Be Paid at Closing

93. Pursuant to Section 2.1 of the Agreement, Purchaser agreed to pay \$344,000,000.00 for the Property (the “Purchase Price”). Schedule A thereto sets forth the allocation of the Purchase Price among each individual Seller.

94. Section 2.2 of the Agreement sets forth a schedule for payment of the Purchase Price.

95. Section 2.2.1 of the Agreement provides that within one business day of March 5, 2020, Purchaser shall pay Seller \$15,000,000 as a down payment (the “Down Payment”).

96. Section 2.2.2 of the Agreement provides that Purchaser shall pay the balance of the Purchase Price on the closing date of May 5, 2020 (the “Closing Date”). Paragraph 3.1 of the Agreement states that the closing shall occur at 10:00 A.M. New York local time on May 5, 2020 (the “Closing”).

Mr. Goldman Personally Guarantees the Down Payment

97. Mr. Goldman personally guaranteed the return of the Down Payment. Section 10.3 of the Agreement states: “In the event that, pursuant to the terms of this Agreement, Purchaser is entitled to the return of the Down Payment, the return of the Down Payment is personally guaranteed by Yoel Goldman.”

98. On the Agreement’s signature Page, Mr. Goldman signed the agreement as for himself “solely with respect to Section 10.3.”

The Agreement Enumerates Seller’s Representations and Obligations

99. Section 7 of the Agreement sets forth Seller’s representations. Section 7.1 of the Agreement provides that each of the representations in Section 7 must be “true and correct as of the date hereof and shall be true and correct in all material respect as of the Closing.”

100. In Section 7.1.5 of the Agreement, Seller made representations about the accuracy of the leases in the Portfolio. Section 7.1.5 states:

Schedule 7.1.5 attached hereto is a true, correct and complete list of all existing leases, licenses and other agreements pertaining to the occupancy and/or use of the commercial premises in the Property or any portion thereof that Seller is a party to and/or binding upon Seller, and all amendments thereto (collectively, the “**Commercial Leases**”). None of the tenants under any of the Leases are employees or immediate or extended family members of Seller, any Seller Related Party or Property Manager (as hereinafter defined), other than superintendents employed by the Property Manager that are occupying units at the Properties. All Leases are in writing and there are no oral agreements between Seller and any of the tenants under the Leases modifying any of the Leases or otherwise with respect to the Property. Seller has delivered to Purchaser true, correct and complete copies of all of the Commercial Leases (including, without limitation, all modifications, supplements, and amendments thereto) and to Seller’s knowledge, Seller has delivered to Purchaser true, correct and complete copies of all of other Leases, including, without limitation, all modifications, supplements and amendments thereto. At Closing, the Leases shall be assigned to Purchaser.

(emphasis in original).

101. In Section 7.1.6 of the Agreement, Seller made several representations concerning the truth of the rent rolls. Section 7.1.6 states:

The rental amount, rental arrears, security deposit and other information concerning the Leases as set forth on the Rent Roll attached hereto as **Exhibit C** (the “**Rent Roll**”) is accurate as of the date set forth therein or, if no date is set forth therein as of the date hereof, and there are no Leases of any space in the Real Property other than those set forth therein and any subleases or subtenancies. With respect to the commercial premises in the Property, Seller has no knowledge of any such subleases or subtenancies or any other license or other rights of persons claiming by, through or under the Tenants, other than as set forth on the Rent Roll. All of the Leases are in full force and effect and, except as otherwise set forth in the Rent Roll, the rents set forth therein are being billed on a current basis. The Rent Roll accurately sets forth all security deposits held by Seller with respect to the Leases and indicates whether such security deposits are provided as cash security or by letter of credit. No Tenant has an option to purchase the Property or, except as set forth on the Rent Roll, lease any other premises in the Property. **Exhibit C** provides a true and correct schedule of the rent arrears due and owing by the Tenants. Seller makes no representation as to the continued occupancy of any of the tenants or that any of the Leases will remain in effect after the date hereof. Seller has neither received nor delivered any written notice from or to any of the Tenants under the Leases asserting that either Seller or any such tenant is in default under any of the respective Leases (other than defaults that have been cured in all material respects). All of the Leases are, as of the Effective Date only, in full force and effect in accordance with their respective terms unless otherwise listed herein, and none of the Leases have, prior to the Effective Date, been modified or amended. Except as set forth on the Rent Roll: (i) no tenant has paid any rent, fees or other charges for more than one month in advance; (ii) no tenant is a parent, subsidiary or affiliate of Seller; (iii) other than as listed on **Schedule 7.1.8**, there are no pending summary proceedings for the eviction of any tenant under the Leases there are no pending proceedings or pending written claims by any tenant against Seller for offsets against rent or additional rent, rent abatements or for damages or other redress, and no tenant has delivered written notice to Seller that such tenant is disputing the amount of additional rent, escalation payments or percentage rent due pursuant to such tenant’s Lease; or the commencement date or the rent commencement date under its Lease, which dispute remains unresolved; (iv) to Seller’s knowledge, other than for non-payment of rent, no event has occurred and is continuing which, with the giving notice or passage of time, or both, would constitute a material default by a Tenant under a Lease; (v) no Tenant has delivered written notice of its termination of its Lease (or the surrender of any space demised thereunder) or of its intention to so terminate its Lease or surrender any space currently demised under its Lease; (vi) except for collateral assignments of leases and rents in connection with a mortgage on the Property which assignments will be terminated at Closing, Seller has not given any other outstanding assignment, pledge or encumbrance of its interest in the Leases or the rents payable thereunder; and (vii) all of the renewal,

extension and expansion options and rights of first offer or first refusal to lease additional space are as set forth in the relevant Leases.

(emphasis in original)

102. In Section 7.1.28 of the Agreement, Seller represented that “[t]o the best of Seller’s knowledge none of the written information provided by Seller to Purchaser relating to the Properties is false or material misleading.”

103. Section 8.1.7 of the Agreement states that at Closing, Seller shall deliver to Purchaser, for each of the Properties, a “recertification as of the Closing Date of Seller’s representations and warranties set forth in this Agreement in the form of Exhibit J, duly executed by Seller.”

The Agreement Confers Additional Obligations on Seller

104. In addition to the representations set forth in Section 7, the Agreement enumerates several other obligations of Seller.

105. Section 17.1.2(c) of the Agreement provides that between the date of the Agreement and the Closing, Seller may not amend or modify any residential lease without Purchaser’s consent. Section 17.1.2(c) states:

With respect to any residential apartment unit at the Real Property . . . **Except as provided herein, Seller shall not amend or modify any Lease, except as may be required by law or in connection with the settlement of any litigation, without the prior written consent of Purchaser, which Purchaser may grant or withhold in its sole and absolute discretion, for any or no reason;** provided that Seller may terminate the Lease of any Tenant that is in monetary or material non-monetary default in its obligations pursuant to its Lease. (emphasis added).

106. Section 17.1.3 of the Agreement states that between the date of the Agreement and the Closing, Seller may not amend or modify any commercial lease without Purchaser’s consent. Section 17.1.3 states:

With respect to the portions of the Property used (or intended for use) for commercial purposes; Seller agrees that it shall not enter into any Lease affecting

the Property after the Effective Date, or any amendment of any existing Lease, **without Purchaser's consent, which Purchaser may grant or withhold in its sole and absolute discretion** . . . (emphasis added).

107. Section 22 of the Agreement requires the parties to cooperate in providing documents and to each other in furtherance of the purposes of the Agreement. Section 22 states:

The parties each agree to do such other and further acts and things, and to execute and deliver such instruments and documents (not creating any obligations additional to those otherwise imposed by this Agreement) **as either may reasonably request from time to time**, whether at or after the Closing, in furtherance of the purposes of this Agreement. . . . (emphasis added).

108. Section 9.5 of the Agreement states that Seller shall deliver tenant estoppel certificates. Section 9.5 states:

Notwithstanding anything to the contrary contained herein, Seller shall use commercially reasonable efforts to deliver to Purchaser at least seven (7) Business Days prior to the Closing Date originals (or copies certified by Seller to be true, correct and complete) of estoppel certificates (each a "**Tenant Estoppel Certificate**" and collectively the "**Tenant Estoppel Certificates**") from each of the Tenants of commercial premises in the Property, each of which (i) shall be in the form of **Exhibit M** annexed to this Agreement or in such other form as shall be required pursuant to the applicable Lease, (ii) shall be dated and shall be effective no earlier than the date that is thirty (30) days prior to the closing Date, (iii) shall not disclose any information or contain any certifications that vary from the information contained in the Leases and in the Rent Roll annexed hereto as **Exhibit C**, (iv) shall not claim that the landlord under the applicable Lease is required to perform any work in or to the Tenant's demised premises, or any other portion of the Property, other than as disclosed on **Schedule 7.1.25** annexed to this Agreement, and (v) shall not disclose any information or contain any certifications claiming or alleging that the landlord is in material breach or default of any of its default obligations under the applicable Lease and/or which claim or allege that the Tenant is entitled to terminate its Lease, receive any abatement or credit against rent, or make or claim any offset against rent. In the event Seller is unable to deliver a Tenant Estoppel Certificate from any Tenant of commercial premises in the Property, Seller shall deliver an estoppel certificate (each a "**Seller Estoppel Certificate**") and collectively the "**Seller Estoppel Certificates**") in the form attached hereto as **Exhibit N** which shall in that event be executed and delivered by Seller for such Tenant or Tenants. Under no circumstances shall delivery of Tenant Estoppel Certificates be a condition to Purchaser's obligation to close.

(emphasis in original).

Conditions to the Closing

109. Section 9.2.1 of the Agreement provides the conditions to be fulfilled by Seller in order for Purchaser to be required to close. Section 9.2.1 states:

Notwithstanding anything to the contrary contained herein, the obligation of Purchaser to close title and pay the Purchase Price in accordance with this Agreement is expressly conditioned upon the fulfillment by and as of the Closing Date of each of the conditions listed below, provided that Purchaser, at its election, evidenced by notice delivered to Seller at or prior to the Closing, may waive all or any of such conditions (in Purchaser's sole and absolute discretion): . . . Seller shall have executed and delivered to Purchaser all of the documents required to be delivered by Seller at Closing and shall have taken all other action required of Seller on the Closing Date and shall not be in material breach or material default of any of Seller's covenants under this Agreement relating to the period prior to the Closing Date.

110. Section 9.2.2 of the Agreement provides the conditions triggering Purchaser's obligation to close. Section 9.2.2 states:

Notwithstanding anything to the contrary contained herein, the obligation of Purchaser to close title and pay the Purchase Price in accordance with this Agreement is expressly conditioned upon the fulfillment by and as of the Closing Date of each of the conditions listed below, provided that Purchaser, at its election, evidenced by notice delivered to Seller at or prior to the Closing, may waive all or any of such conditions (in Purchaser's sole and absolute discretion): . . . All representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the Closing Date; provided however, a representation or warranty shall not be deemed to have been breached if the representation or warranty (which was true when made) shall have become untrue after the date hereof by reason of changed facts, conditions or circumstances which were not caused by Seller's breach of any of its covenants under this Agreement, and otherwise are not prohibited by the terms of this Agreement, and occur in the ordinary course of business.

(emphasis in original).

Purchaser's Remedies in the Event of Default

111. Sections 9.3 and 10.2 of the Agreement provides Purchaser's remedies in the event of Seller's default. Namely, both Sections permit Purchaser to elect to terminate the Agreement and seek the return of its Down Payment.

112. Section 9.3 provides:

If, on the Closing Date, any of the conditions to Purchaser's obligation to proceed to Closing, as provided in Section 9.2 is [sic] not fulfilled and such conditions are not waived by Purchaser, then Purchaser shall elect (in its sole and absolute discretion) as its sole and exclusive recourse and remedy to: (a) terminate this Agreement, in which event Seller shall refund to Purchaser the Down Payment and thereafter neither party to this Agreement shall have any further right or obligation hereunder except for rights and obligations that expressly survive the termination of this Agreement, provided that if any of the conditions to Purchaser's obligation to proceed to Closing is not fulfilled solely with respect to a particular Property or Properties, Purchaser's right to terminate pursuant to the herein Section 9.3(a) shall be solely with regards to the applicable Property or applicable Properties, in which event the Purchase Price shall be reduced by an amount equal to the Purchase Price allocated to the affected Property or Properties only, and Purchaser and Seller shall be released from any further liability hereunder as to the affected Property except with respect to those provisions that expressly survive the expiration or sooner termination of this Agreement and the Agreement shall remain in full force and effect with regards to the remaining Properties; or (b) waive the failure of such conditions and proceed to the Closing pursuant to the terms of this Agreement, or (c) if the failure of such conditions shall result from Seller's willful breach of this Agreement, to pursue Purchaser's remedy set forth in Section 10.2 of this Agreement to seek specific performance of Seller's covenants and other obligations pursuant to this Agreement.

113. Section 10.2 provides:

Subject to the provisions of Section 4.3 and Section 9.3, if Seller shall default in the performance of Seller's obligations under this Agreement and Purchaser is ready, willing, and able to close in accordance with the terms, provisions and conditions of this Agreement and the Closing does not occur as a result of Seller's default, Purchaser's sole and exclusive remedy shall be, and Purchaser shall be entitled, to either (a) terminate this Agreement and receive the Down Payment from Seller, and the parties hereto shall be released from any further liability to each other hereunder, except for those obligations and liabilities that are expressly stated to survive termination of this Agreement, or (b) seek specific performance of Seller's obligations hereunder, provided that any such action for specific performance must be commenced within thirty (30) days after the then-scheduled Closing Date, or (c) if the nature of Seller's default is such that Purchaser is unable to obtain specific performance of Seller's obligations under this Agreement, Purchaser shall be entitled to seek damages from Seller for its default, provided that any such action for damages must be commenced within sixty (60) days after the then-scheduled Closing Date and the amount of damages recoverable from Seller shall not exceed an amount equal to the result of subtracting from the revenue or other consideration received by Seller in connection with the transaction that caused such default the Purchase Price set forth in this Agreement (as same may be

reduced due to Purchaser's termination of this Agreement with respect to individual Properties for reasons other than such Seller default).

114. Section 25.14 of the Agreement also contains a prevailing party attorneys' fees provision:

If any actions is brought by either party against the other in connection with or arising out of this Agreement or any of the documents and instruments delivered in connection herewith or in connection with the transactions contemplated hereby, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred in connection with the prosecution or defense of such action.

Seller Fails to Provide Information to Purchaser

115. Purchaser timely paid the \$15,000,000 Down Payment to Seller.

116. As explained above, the portfolio of Properties is large, and in order to justify the purchase price of nearly \$350 million, Purchaser expected significant rental revenue derived from the Properties.

117. Subsequent to the date of the Agreement, the COVID-19 pandemic hit New York. On March 20, 2020, Governor Andrew Cuomo issued the "New York on PAUSE" executive order ordering shelter-in-place restrictions for the state. Governor Cuomo followed up with several subsequent executive orders.

118. In the days preceding the anticipated closing, in light of the global COVID-19 pandemic and the widespread news of tenant defaults, Purchaser heard that, upon information and belief, Seller was providing discounts or concessions to tenants without Purchaser's consent. Accordingly, Purchaser asked Seller (1) to update its "data room" with current information about any concessions made by Seller to tenants without Purchaser's consent and (2) whether Seller had taken reasonable steps to mitigate any losses. Indeed, in order to ensure the value of its investment, Purchaser reasonably sought assurances that Seller had fulfilled all of its obligations under the Agreement and that Seller's representations were true as of the closing.

119. It was imperative for Purchaser to ensure that Seller's representations were true and complete and would remain so, and that Seller was fulfilling its obligations under the Agreement, particularly those concerning rents. Purchaser wanted to ensure that it was getting what it had paid for, and that Seller was not negotiating rent abatements with tenants behind Purchaser's back.

120. Accordingly, on or about April 21, 2020, Purchaser asked Seller for information on the status of operations of the Property by the close of business on April 24, 2020, including: 1) updated current Rent Roll for April 2020, including April collections and tenant rent arrears; 2) copies of all default notices and/or written and/or email correspondence from and to any tenants with respect to offsets, lease terminations, rent collections, rent abatement requests, and/or with respect to any tenant's inability or request to stop paying or reduce rent; 3) copies of any other default notice sent or received from or to any of the tenants; copies of all Tenant Estoppel Certificates sent to the commercial tenants, as well as copies of any signed Tenant Estoppel Certificate received by Seller; 4) information relating to any written or verbal agreements with any tenant with respect to the waiver, postponement, or reduction of rent; and 5) any tenant eviction proceedings instituted since March 1, 2020.

121. Purchaser requested the accurate rent and lease information in order to assess the cash flow from the Property.

122. Purchaser requested the Tenant Estoppel Certificates – which apply to the commercial space at the Properties – in order to give comfort to Purchaser that the commercial leases at the Property were in full force and effect. According to the Rent Roll, the commercial space at the Property alone generated over \$88,000 in rent per month, a significant amount.

123. In breach of the Agreement, Seller never provided the information sought by Purchaser.

124. Instead, on or about April 24, 2020, Purchaser received a telephone call from Martin Bodek. Upon information and belief, Martin Bodek and Henry Bodek are advisors to Seller. Martin Bodek told Purchaser that the information sought by Purchaser would be conveyed by April 27, 2020.

125. However, despite Mr. Bodek's assurances, Seller never provided Purchaser with the additional information requested by Purchaser on April 21, 2020.

126. The only additional information provided by Seller was a sixty-eight page PDF provided on or about April 24, 2020. The PDF was entitled "Seller Estopples [sic]." The PDF included one Seller Estoppel Certificate (not a Tenant Estoppel Certificate) for one commercial tenant at one of the Properties in the portfolio. The PDF repeated the same four-page Seller Estoppel Certificate seventeen times, without providing any other information about any other commercial tenant. Moreover, in an apparent effort to avoid disclosure, that one Seller Estoppel Certificate only included information about rent paid through March 31, 2020; it provided no information for April 2020. In other words, the information in the Seller Estoppel Certificate was worthless.

127. The one Seller Estoppel Certificate that Seller provided on April 24, 2020 also violated the requirement in Section 9.5 that estoppel certificates must be "dated and shall be effective no earlier than the date that is thirty (30) days prior to the Closing Date." The Seller Estoppel Certificate was dated as of April 1, 2020, which was more than thirty days prior to the May 5, 2020 Closing Date.

Seller Makes Rent Deals without Purchaser's Consent

128. On or about April 24, 2020, Mr. Bodek additionally informed Purchaser that in light of the global COVID-19 pandemic, 99% of tenants had asked Seller for rent breaks, and that Seller

had agreed, without Purchaser's consent, to enter into lease modifications with many tenants to revise such tenants' rent.

129. Seller never sought Purchaser's consent – and Purchaser never provided consent – to such rent breaks or lease modifications.

Seller Has Breached the Agreement

130. Purchaser was ready, willing, and able to close in accordance with the terms, provisions, and conditions of the Agreement. Yet Seller made material misrepresentations and defaulted in the performance of its obligations under the Agreement. Seller's conduct described above – entering into rent breaks without Purchaser's knowledge or consent -- breached several representations and obligations of the Agreement, including:

a. Seller's representations in Section 7.1.5 of the Agreement that as of the Closing Date "Seller had delivered to Purchaser true, correct and complete copies of all of the Commercial Leases (including, without limitation, all modifications, supplements and amendments thereto)" and that "Seller has delivered to Purchaser true, correct and complete copies of all of other [sic] Leases, including, without limitation, all modifications, supplements and amendments thereto."

b. Seller's representations in Section 7.1.6 of the Agreement that of the Closing Date, "[a]ll of the Leases are in full force and effect and, except as otherwise set forth in the Rent Roll, the rents set forth therein are being billed on a current basis."

c. Seller's representation in Section 7.1.28 of the Agreement that as of the Closing Date, "[t]o the best of Seller's knowledge none of the written information provided by Seller to Purchaser relating to the Properties is false or materially misleading."

d. The requirement in Section 8.1.7 of the Agreement that Seller deliver at Closing a “recertification as of the Closing Date of Seller’s representations and warranties set forth in this Agreement.”

e. The requirement in Section 9.2.1 of the Agreement that “Seller shall have executed and delivered to Purchaser all of the documents required to be delivered by Seller at Closing and shall have taken all other action required of Seller on the Closing Date and shall not be in material breach or material default of any of Seller’s covenants under this Agreement relating to the period prior to the Closing Date.”

f. The requirement in Section 9.2.2 of the Agreement that “[a]ll representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the Closing Date.”

g. The requirement in Section 17.1.2(c) of the Agreement that between the date of the Agreement and the Closing Date, “Seller shall not amend or modify any Lease, except as may be required by law or in connection with the settlement of any litigation, without the prior written consent of Purchaser.”

h. The requirement in Section 17.1.3 of the Agreement that between the date of the Agreement and the Closing Date, “[w]ith respect to the portions of the Property used (or intended for use) for commercial purposes; Seller agrees that it shall not enter into . . . any amendment of any existing Lease, without Purchaser’s consent.”

i. The requirement in Section 22 of the Agreement that “[t]he parties each agree to do such other and further acts and things, and to execute and deliver such instruments and documents (not creating any obligations additional to those otherwise imposed by this Agreement)

as either may reasonably request from time to time, whether at or after the Closing, in furtherance of the purposes of this Agreement.”

131. As a result of the above-described breaches of the Agreement, Purchaser elected to terminate the Agreement pursuant to Sections 9.3 and 10.2 of the Agreement and elected to receive the Down Payment back from Seller, as is its right under the Agreement.

132. On May 4, 2020, Purchaser sent a termination notice to Seller stating that Purchaser was electing to terminate the Agreement. The termination notice demanded that Seller return the Down Payment. Seller has refused to return the Down Payment to Purchaser, further breaching the Agreement.

FIRST CAUSE OF ACTION
(Breach of Contract Against Seller)

133. Purchaser repeats and realleges every preceding allegation as if fully set forth herein.

134. Purchaser and Seller are both parties to the Agreement.

135. Seller has breached its representations and its obligations in the Agreement:

a. Seller represented in Section 7.1.5 of the Agreement that as of the Closing Date “Seller had delivered to Purchaser true, correct and complete copies of all of the Commercial Leases (including, without limitation, all modifications, supplements and amendments thereto)” and that “Seller has delivered to Purchaser true, correct and complete copies of all of other [sic] Leases, including, without limitation, all modifications, supplements and amendments thereto.” Seller had orally told Purchaser that it had given rent breaks to certain tenants, but it did not provide Purchaser with copies of such amendments or modifications.

b. Seller represented in Section 7.1.6 of the Agreement that of the Closing Date, “[a]ll of the Leases are in full force and effect and, except as otherwise set forth in the Rent

Roll, the rents set forth therein are being billed on a current basis.” Seller told Purchaser that it modified some tenants’ rent, and as such the rents as set forth in the Rent Roll were not being billed on a current basis.

c. Seller represented in Section 7.1.28 of the Agreement that as of the Closing Date, “[t]o the best of Seller’s knowledge none of the written information provided by Seller to Purchaser relating to the Properties is false or materially misleading.” Seller provided Purchaser with, *inter alia*, the Rent Roll in writing. Seller told Purchaser that it modified some tenants’ rent, and as such the Rent Roll – which did not account for such modifications – was false or materially misleading.

d. Seller agreed in Section 8.1.7 of the Agreement to deliver at Closing a “recertification as of the Closing Date of Seller’s representations and warranties set forth in this Agreement.” It was impossible for Seller to recertify the representations in Sections 7.1.5, 7.1.6, and 7.1.28 of the Agreement, and as such Seller could not meet this requirement.

e. Seller agreed in Section 9.2.1 of the Agreement that as a condition to Closing, “Seller shall have executed and delivered to Purchaser all of the documents required to be delivered by Seller at Closing and shall have taken all other action required of Seller on the Closing Date and shall not be in material breach or material default of any of Seller’s covenants under this Agreement relating to the period prior to the Closing Date.” Seller had not and could not deliver to Purchaser the recertification of Seller’s representations and warranties set forth in Section 8.1.7. Seller also breached or defaulted on Sections 9.5, 17.1.2(c), 17.1.3, and 22 of the Agreement with respect to the period prior to the Closing Date because it modified leases without the written consent of Purchaser and failed to provide required information to Purchaser.

f. Seller agreed in Section 9.2.2 of the Agreement that “[a]ll representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the Closing Date.” As described above, the representations and warranties in Sections 7.1.5, 7.1.6, and 7.1.28 of the Agreement were not true and correct as of the Closing Date.

g. Seller agreed in Section 17.1.2(c) of the Agreement that between the date of the Agreement and the Closing Date, with respect to residential leases “Seller shall not amend or modify any Lease, except as may be required by law or in connection with the settlement of any litigation, without the prior written consent of Purchaser.” Seller admitted to Purchaser that it had modified residential leases without the prior written consent of Purchaser.

h. Seller agreed in Section 17.1.3 of the Agreement that between the date of the Agreement and the Closing Date, “[w]ith respect to the portions of the Property used (or intended for use) for commercial purposes; Seller agrees that it shall not enter into . . . any amendment of any existing Lease, without Purchaser’s consent.” Seller admitted to Purchaser that it had modified commercial leases without the prior written consent of Purchaser.

i. Seller agreed in Section 22 of the Agreement that “[t]he parties each agree to do such other and further acts and things, and to execute and deliver such instruments and documents (not creating any obligations additional to those otherwise imposed by this Agreement) as either may reasonably request from time to time, whether at or after the Closing, in furtherance of the purposes of this Agreement.” Purchaser sought certain information from Seller. Seller failed to provide the requested information, despite multiple requests.

136. The foregoing all constitute independent breaches of the Agreement

137. These breaches have not been and cannot be cured.

138. Pursuant to the terms of the Agreement, Purchaser complied with all of its obligations under the Agreement, including delivering to Seller the Down Payment of \$15,000,000, and is not in breach of the Agreement.

139. Pursuant to Sections 9.3 and 10.2 of the Agreement, on May 4, 2020 Purchaser provided notice to Seller that Purchaser was electing to terminate the Agreement and receive the \$15,000,000 Down Payment from Seller. Purchaser demanded the return of the \$15,000,000 Down Payment from Seller. Contrary to its obligations under the Agreement, Seller failed to pay the \$15,000,000 Down Payment to Purchaser.

140. The foregoing actions and inaction by Seller constitutes a breach of the Agreement.

141. As a direct and proximate result of Seller's breach of contract, Purchaser has been damaged in an amount to be determined at trial, but believed to be in excess of \$15,000,000, for failure to return the Down Payment upon termination of the Agreement.

142. In addition, pursuant to Section 25.14 of the Agreement, Purchaser is owed its reasonable attorneys' fees and expenses incurred in connection with Purchaser's prosecution of this litigation.

SECOND CAUSE OF ACTION
(Declaratory Judgment)

143. Purchaser repeats and realleges every preceding allegation as if fully set forth herein.

144. Purchaser and Seller are both parties to the Agreement.

145. Seller failed to satisfy the conditions precedent to Purchaser's obligation to close on the transaction contemplated by the Agreement for the following independent reasons:

a. Seller represented in Section 7.1.5 of the Agreement that as of the Closing Date "Seller had delivered to Purchaser true, correct and complete copies of all of the Commercial

Leases (including, without limitation, all modifications, supplements and amendments thereto)” and that “Seller has delivered to Purchaser true, correct and complete copies of all of other [sic] Leases, including, without limitation, all modifications, supplements and amendments thereto.” Seller orally told Purchaser that it had given rent breaks to certain tenants, but it did not provide Purchaser with copies of such amendments or modifications.

b. Seller represented in Section 7.1.6 of the Agreement that of the Closing Date, “[a]ll of the Leases are in full force and effect and, except as otherwise set forth in the Rent Roll, the rents set forth therein are being billed on a current basis.” Seller told Purchaser that it modified some tenants’ rent, and as such the rents as set forth in the Rent Roll were not being billed on a current basis.

c. Seller represented in Section 7.1.28 of the Agreement that as of the Closing Date, “[t]o the best of Seller’s knowledge none of the written information provided by Seller to Purchaser relating to the Properties is false or materially misleading.” Seller provided Purchaser with, *inter alia*, the Rent Roll in writing. Seller told Purchaser that it modified some tenants’ rent, and as such the Rent Roll – which did not account for such modifications – was false or materially misleading.

d. Seller agreed in Section 8.1.7 of the Agreement to deliver at Closing a “recertification as of the Closing Date of Seller’s representations and warranties set forth in this Agreement.” It was impossible for Seller to recertify the representations in Sections 7.1.5, 7.1.6, and 7.1.28 of the Agreement, and as such Seller could not meet this requirement.

e. Seller agreed in Section 9.2.1 of the Agreement that as a condition to Closing, “Seller shall have executed and delivered to Purchaser all of the documents required to be delivered by Seller at Closing and shall have taken all other action required of Seller on the

Closing Date and shall not be in material breach or material default of any of Seller's covenants under this Agreement relating to the period prior to the Closing Date." Seller had not and could not deliver to Purchaser the recertification of Seller's representations and warranties set forth in Section 8.1.7. Seller also breached or defaulted on Sections 9.5, 17.1.2(c), 17.1.3, and 22 of the Agreement with respect to the period prior to the Closing Date because it modified leases without the written consent of Purchaser and failed to provide required information to Purchaser.

f. Seller agreed in Section 9.2.2 of the Agreement that "[a]ll representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the Closing Date." As described above, the representations and warranties in Sections 7.1.5, 7.1.6, and 7.1.28 of the Agreement were not true and correct as of the Closing Date.

g. Seller agreed in Section 17.1.2(c) of the Agreement that between the date of the Agreement and the Closing Date, with respect to residential leases "Seller shall not amend or modify any Lease, except as may be required by law or in connection with the settlement of any litigation, without the prior written consent of Purchaser." Seller admitted to Purchaser that it had modified residential leases without the prior written consent of Purchaser.

h. Seller agreed in Section 17.1.3 of the Agreement that between the date of the Agreement and the Closing Date, "[w]ith respect to the portions of the Property used (or intended for use) for commercial purposes; Seller agrees that it shall not enter into . . . any amendment of any existing Lease, without Purchaser's consent." Seller admitted to Purchaser that it had modified commercial leases without the prior written consent of Purchaser.

i. Seller agreed in Section 22 of the Agreement that "[t]he parties each agree to do such other and further acts and things, and to execute and deliver such instruments and documents (not creating any obligations additional to those otherwise imposed by this Agreement)

as either may reasonably request from time to time, whether at or after the Closing, in furtherance of the purposes of this Agreement.” Purchaser sought certain information from Seller. Seller failed to provide the requested information, despite multiple requests.

146. These breaches have not been and cannot be cured.

147. Pursuant to the terms of the Agreement, Purchaser complied with all of its obligations under the Agreement, including delivering to Seller the Down Payment of \$15,000,000, and is not in breach of the Agreement.

148. Pursuant to Sections 9.3 and 10.2 of the Agreement, on May 4, 2020 Purchaser provided notice to Seller that Purchaser was electing to terminate the Agreement and receive the \$15,000,000 Down Payment from Seller. Purchaser demanded the return of the \$15,000,000 Down Payment from Seller. Contrary to its obligations under the Agreement, Seller failed to pay the \$15,000,000 Down Payment to Purchaser.

149. An actual and justiciable controversy currently exists as to whether Purchaser validly terminated the Agreement and is entitled to the return of the \$15,000,000 Down Payment from Seller.

150. A declaration is therefore necessary to resolve the above-described issues.

151. Purchaser is entitled to a declaration that it has validly terminated the Agreement and is entitled to the return of its \$15,000,000 Down Payment from Seller.

THIRD CAUSE OF ACTION
(Breach of Contract Against Yoel Goldman)

152. Purchaser repeats and realleges every preceding allegation as if fully set forth herein.

153. Yoel Goldman is a party to the Agreement with respect to Section 10.3 thereof, which states: “In the event that, pursuant to the terms of this Agreement, Purchaser is entitled to

the return of the Down Payment, the return of the Down Payment is personally guaranteed by Yoel Goldman.”

154. Purchaser is entitled to the return of the Down Payment as a result of the following breaches by Seller:

a. Seller represented in Section 7.1.5 of the Agreement that as of the Closing Date “Seller had delivered to Purchaser true, correct and complete copies of all of the Commercial Leases (including, without limitation, all modifications, supplements and amendments thereto)” and that “Seller has delivered to Purchaser true, correct and complete copies of all of other [sic] Leases, including, without limitation, all modifications, supplements and amendments thereto.” Seller orally told Purchaser that it had given rent breaks to certain tenants, but it did not provide Purchaser with copies of such amendments or modifications.

b. Seller represented in Section 7.1.6 of the Agreement that of the Closing Date, “[a]ll of the Leases are in full force and effect and, except as otherwise set forth in the Rent Roll, the rents set forth therein are being billed on a current basis.” Seller told Purchaser that it modified some tenants’ rent, and as such the rents as set forth in the Rent Roll were not being billed on a current basis.

c. Seller represented in Section 7.1.28 of the Agreement that as of the Closing Date, “[t]o the best of Seller’s knowledge none of the written information provided by Seller to Purchaser relating to the Properties is false or materially misleading.” Seller provided Purchaser with, *inter alia*, the Rent Roll in writing. Seller told Purchaser that it modified some tenants’ rent, and as such the Rent Roll – which did not account for such modifications – were false or materially misleading.

d. Seller agreed in Section 8.1.7 of the Agreement to deliver at Closing a “recertification as of the Closing Date of Seller’s representations and warranties set forth in this Agreement.” It was impossible for Seller to recertify the representations in Sections 7.1.5, 7.1.6, and 7.1.28 of the Agreement, and as such Seller could not meet this requirement.

e. Seller agreed in Section 9.2.1 of the Agreement that as a condition to Closing, “Seller shall have executed and delivered to Purchaser all of the documents required to be delivered by Seller at Closing and shall have taken all other action required of Seller on the Closing Date and shall not be in material breach or material default of any of Seller’s covenants under this Agreement relating to the period prior to the Closing Date.” Seller had not and could not deliver to Purchaser the recertification of Seller’s representations and warranties set forth in Section 8.1.7. Seller also breached or defaulted on Sections 9.5, 17.1.2(c), 17.1.3, and 22 of the Agreement with respect to the period prior to the Closing Date because it modified leases without the written consent of Purchaser and failed to provide required information to Purchaser.

f. Seller agreed in Section 9.2.2 of the Agreement that “[a]ll representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the Closing Date.” As described above, the representations and warranties in Sections 7.1.5, 7.1.6, and 7.1.28 of the Agreement were not true and correct as of the Closing Date.

g. Seller agreed in Section 17.1.2(c) of the Agreement that between the date of the Agreement and the Closing Date, with respect to residential leases “Seller shall not amend or modify any Lease, except as may be required by law or in connection with the settlement of any litigation, without the prior written consent of Purchaser.” Seller admitted to Purchaser that it had modified residential leases without the prior written consent of Purchaser.

h. Seller agreed in Section 17.1.3 of the Agreement that between the date of the Agreement and the Closing Date, “[w]ith respect to the portions of the Property used (or intended for use) for commercial purposes; Seller agrees that it shall not enter into . . . any amendment of any existing Lease, without Purchaser’s consent.” Seller admitted to Purchaser that it had modified commercial leases without the prior written consent of Purchaser.

i. Seller agreed in Section 22 of the Agreement that “[t]he parties each agree to do such other and further acts and things, and to execute and deliver such instruments and documents (not creating any obligations additional to those otherwise imposed by this Agreement) as either may reasonably request from time to time, whether at or after the Closing, in furtherance of the purposes of this Agreement.” Purchaser sought certain information from Seller. Seller failed to provide the requested information, despite multiple requests.

155. Pursuant to Sections 9.3 and 10.2 of the Agreement, on May 4, 2020 Purchaser provided notice to Seller that Purchaser was electing to terminate the Agreement and receive the \$15,000,000 Down Payment from Seller. Purchaser demanded the return of the \$15,000,000 Down Payment from Seller. Contrary to its obligations under the Agreement, Seller failed to pay the \$15,000,000 Down Payment to Purchaser.

156. Section 10.3 of the Agreement requires Mr. Goldman to personally guarantee payment of the \$15,000,000 Down Payment. Mr. Goldman has failed to pay the \$15,000,000 Down Payment to Purchaser.

157. Mr. Goldman’s failure to comply with Section 10.3 of the Agreement constitutes a breach of the Agreement.

158. As a direct and proximate result of Mr. Goldman's breach of his guaranty obligation in the Agreement, Purchaser has been damaged in an amount to be determined at trial, but believed to be in excess of \$15,000,000.

FOURTH CAUSE OF ACTION
(Foreclosure of Vendee's Lien)

159. Purchaser repeats and realleges every preceding allegation as if fully set forth herein.

160. Purchaser delivered to Seller the Down Payment of \$15,000,000.

161. Purchaser is entitled to the return of the Down Payment as a result of the following breaches by Seller:

a. Seller represented in Section 7.1.5 of the Agreement that as of the Closing Date "Seller had delivered to Purchaser true, correct and complete copies of all of the Commercial Leases (including, without limitation, all modifications, supplements and amendments thereto)" and that "Seller has delivered to Purchaser true, correct and complete copies of all of other [sic] Leases, including, without limitation, all modifications, supplements and amendments thereto." Seller orally told Purchaser that it had given rent breaks to certain tenants, but it did not provide Purchaser with copies of such amendments or modifications.

b. Seller represented in Section 7.1.6 of the Agreement that of the Closing Date, "[a]ll of the Leases are in full force and effect and, except as otherwise set forth in the Rent Roll, the rents set forth therein are being billed on a current basis." Seller told Purchaser that it modified some tenants' rent, and as such the rents as set forth in the Rent Roll were not being billed on a current basis.

c. Seller represented in Section 7.1.28 of the Agreement that as of the Closing Date, "[t]o the best of Seller's knowledge none of the written information provided by Seller to

Purchaser relating to the Properties is false or materially misleading.” Seller provided Purchaser with, *inter alia*, the Rent Roll in writing. Seller told Purchaser that it modified some tenants’ rent, and as such the Rent Roll – which did not account for such modifications – was false or materially misleading.

d. Seller agreed in Section 8.1.7 of the Agreement to deliver at Closing a “recertification as of the Closing Date of Seller’s representations and warranties set forth in this Agreement.” It was impossible for Seller to recertify the representations in Sections 7.1.5, 7.1.6, and 7.1.28 of the Agreement, and as such Seller could not meet this requirement.

e. Seller agreed in Section 9.2.1 of the Agreement that as a condition to Closing, “Seller shall have executed and delivered to Purchaser all of the documents required to be delivered by Seller at Closing and shall have taken all other action required of Seller on the Closing Date and shall not be in material breach or material default of any of Seller’s covenants under this Agreement relating to the period prior to the Closing Date.” Seller had not and could not deliver to Purchaser the recertification of Seller’s representations and warranties set forth in Section 8.1.7. Seller also breached or defaulted on Sections 9.5, 17.1.2(c), 17.1.3, and 22 of the Agreement with respect to the period prior to the Closing Date because it modified leases without the written consent of Purchaser, and failed to provide required information to Purchaser.

f. Seller agreed in Section 9.2.2 of the Agreement that “[a]ll representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the Closing Date.” As described above, the representations and warranties in Sections 7.1.5, 7.1.6, and 7.1.28 of the Agreement were not true and correct as of the Closing Date.

g. Seller agreed in Section 17.1.2(c) of the Agreement that between the date of the Agreement and the Closing Date, with respect to residential leases “Seller shall not amend

or modify any Lease, except as may be required by law or in connection with the settlement of any litigation, without the prior written consent of Purchaser.” Seller admitted to Purchaser that it had modified residential leases without the prior written consent of Purchaser.

h. Seller agreed in Section 17.1.3 of the Agreement that between the date of the Agreement and the Closing Date, “[w]ith respect to the portions of the Property used (or intended for use) for commercial purposes; Seller agrees that it shall not enter into . . . any amendment of any existing Lease, without Purchaser’s consent.” Seller admitted to Purchaser that it had modified commercial leases without the prior written consent of Purchaser.

i. Seller agreed in Section 22 of the Agreement that “[t]he parties each agree to do such other and further acts and things, and to execute and deliver such instruments and documents (not creating any obligations additional to those otherwise imposed by this Agreement) as either may reasonably request from time to time, whether at or after the Closing, in furtherance of the purposes of this Agreement.” Purchaser sought certain information from Seller. Seller failed to provide the requested information, despite multiple requests.

162. Pursuant to Sections 9.3 and 10.2 of the Agreement, on May 4, 2020 Purchaser provided notice to Seller that Purchaser was electing to terminate the Agreement and receive the \$15,000,000 Down Payment from Seller. Purchaser demanded the return of the \$15,000,000 Down Payment from Seller. Contrary to its obligations under the Agreement, Seller failed to pay the \$15,000,000 Down Payment to Purchaser.

163. Purchaser is entitled to receive from Seller the sum of \$15,000,000, no part of which has been paid notwithstanding Purchaser’s demand, which sum should be adjudged to be a vendee’s lien upon the Property.

164. No other action or proceeding has been brought to recover Purchaser’s claims.

165. The vendee's lien described herein has not been paid, waived, cancelled, or discharged.

166. No action has been brought by Purchaser for foreclosure of the lien described in this action, nor has Purchaser been made party defendants in any action brought for foreclosure of another lien or mortgage against the Property.

167. Seller is the owner of and is in possession of the Property.

168. By virtue of the foregoing, the Property should be directed to be sold at foreclosure to satisfy Purchaser's lien, and that out of the proceeds of such sale, Purchaser be paid the Down Payment, and if the proceeds of such sale are insufficient to satisfy Purchaser's lien in full, Purchaser should have judgment against Seller and Goldman for any deficiency.

169. **WHEREFORE**, Purchaser respectfully demands judgment against Seller as follows:

- (a) On Purchaser's First Cause of Action, for an order requiring Seller to return the \$15,000,000 Down Payment;
- (b) On Purchaser's Second Cause of Action, for a declaration that Purchaser has validly terminated the Agreement and is entitled to the return of its \$15,000,000 Down Payment from Seller;
- (c) On Purchaser's Third Cause of Action, for an order requiring Yoel Goldman to return the \$15,000,000 Down Payment;
- (d) On Purchaser's Fourth Cause of Action, that Purchaser has a valid and subsisting lien upon the interest of Seller in the Property in the sum of \$15,000,000; adjudging and determining the equities of the parties to this action; adjudging that Purchaser's lien on the Property is prior to any lien claimed by Seller; directing that the interest

of Seller in the Property be sold in foreclosure to satisfy Purchaser's lien and the proceeds applied after payment of the expenses of sale to the payment of the lien; awarding to Purchaser against Seller and Goldman any deficiency remaining; and adjudging that Seller and all persons claiming under it subsequent to the filing of a notice of pendency in this action, and every person whose conveyance or encumbrance is subsequent or subsequently recorded, filed or docketed, be forever barred and foreclosed of all right, claim, lien, equity of redemption or other interest in Property or any part thereof;

- (e) Reasonable attorneys' fees and costs, pursuant to Section 25.14 of the Agreement; and
- (f) Such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 19, 2021

Respectfully submitted,

MEISTER SEELIG & FEIN LLP

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75 LLC*