

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Dean George Pappas, as the
Executor of the Estate of William Egan, and
Dean George Pappas, individually,

Plaintiffs,

-against-

B & G Holding Co.
d/b/a B & G Holding Company, and
Eugene Leogrande

Defendants.

Index No. 35136/2020E

**AMENDED VERIFIED
ANSWER WITH
COUNTERCLAIM**

Defendants B &G HOLDING CO. d/b/a B & G Holding Company, and Eugene
Leogrande (together the “Defendants”), by and through their undersigned counsel, responds to
the Complaint herein as follows:

1. Defendants admit the allegations in paragraph 1.
2. Defendants admit the allegations in paragraph 2.
3. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 3.
4. Defendants admit the allegations in paragraph 4.
5. Defendants admit the allegations in paragraph 5.
6. Paragraph 6 of the Complaint is a statement of the basis for jurisdiction and venue to which no response is required. To the extent it is deemed to contain allegations, they are denied.
7. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 7.
8. Defendants deny the allegations in paragraph 8.
9. Defendants deny the allegations in paragraph 9.

10. Defendants deny the allegations in paragraph 10.
11. Defendants deny the allegations in paragraph 11.
12. Defendants deny the allegations in paragraph 12.
13. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 13.
14. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 14.
15. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 15.
16. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 16.
17. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 17.
18. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 18.
19. Defendants deny the allegations in paragraph 19.
20. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 20.
21. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 21.
22. Defendants deny the allegations in paragraph 22.
23. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 23.

24. Defendants deny the allegations in paragraph 24.
25. Defendants deny the allegations in paragraph 25.
26. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 26.
27. Defendants admit the allegations in paragraph 27.
28. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 28.
29. Defendants deny the allegations in paragraph 29 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.
30. Defendants deny the allegations in paragraph 30 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.
31. Defendants deny the allegations in paragraph 31 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.
32. Defendants deny the allegations in paragraph 32 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.
33. Defendants deny the allegations in paragraph 33 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

34. Defendants deny the allegations in paragraph 34 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

35. Defendants deny the allegations in paragraph 35 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

36. Defendants deny the allegations in paragraph 36 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

37. Defendants deny the allegations in paragraph 37 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

38. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 38.

39. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 39.

40. Defendants deny the allegations in paragraph 40 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

41. Defendants deny the allegations in paragraph 41 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

42. Defendants deny the allegations in paragraph 42.

43. Defendants deny the allegations in paragraph 43 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

44. Defendants deny the allegations in paragraph 44 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

45. Defendants deny the allegations in paragraph 45 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

46. Defendants deny the allegations in paragraph 46 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

47. Defendants deny the allegations in paragraph 47 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

48. Defendants deny the allegations in paragraph 48 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

49. Defendants deny the allegations in paragraph 49 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

50. Defendants deny the allegations in paragraph 50 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

51. Defendants deny the allegations in paragraph 51 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

52. Defendants deny the allegations in paragraph 52 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

53. Defendants deny the allegations in paragraph 53 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

54. Defendants deny the allegations in paragraph 54 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

55. Defendants deny the allegations in paragraph 55 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

56. Defendants deny the allegations in paragraph 56 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

57. Defendants deny the allegations in paragraph 57 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

58. Defendants deny the allegations in paragraph 58 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

59. Defendants deny the allegations in paragraph 59 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

60. Defendants deny the allegations in paragraph 60 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

61. Defendants deny the allegations in paragraph 61 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

62. Defendants deny the allegations in paragraph 62 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

63. Defendants deny the allegations in paragraph 63 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

64. Defendants deny the allegations in paragraph 64 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

65. Defendants deny the allegations in paragraph 65 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

66. Defendants deny the allegations in paragraph 66 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

67. Defendants deny the allegations in paragraph 67 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

68. Defendants deny the allegations in paragraph 68 to the extent that the interpretation, characterization, summary or other reference to the Partnership Agreement differs from its plain text and meaning.

69. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 69.

70. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 70.

71. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 71.

72. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 72.

73. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 73.

74. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 74.

75. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 75.

76. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 76.

77. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 77.

78. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 78.

79. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 79.

80. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 80.

81. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 81.

82. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 82.

83. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 83.

84. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 84.

85. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 85.

86. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 86.

87. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 87.

88. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 88.

89. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 89.

90. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 90.

91. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 91.

92. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 92.

93. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 93.

94. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 94.

95. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 95.

96. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 96.

97. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 97.

98. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 98.

99. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 99.

100. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 100.

101. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 101.

102. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 102.

103. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 103.

104. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 104.

105. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 105.

106. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 106.

107. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 107.

108. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 108.

109. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 109.

110. Defendants deny the allegations in paragraph 110.

111. Defendants deny the allegations in paragraph 111.

112. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 112.

113. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 113.

114. Defendants deny the allegations in paragraph 114.

115. Defendants deny the allegations in paragraph 115.

116. Defendants deny the allegations in paragraph 116.

117. Defendants deny the allegations in paragraph 117.

118. Defendants deny the allegations in paragraph 118.

119. Defendants deny the allegations in paragraph 119.

120. Defendants deny the allegations in paragraph 120.

121. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 121.

122. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 122.

123. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 123.

124. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 124.

125. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 125.

126. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 126.

127. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 127.

128. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 128.

129. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 129.

130. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 130.

131. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 131.

132. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 132.

133. Defendants deny the allegations in paragraph 133.

134. Defendants deny the allegations in paragraph 134.

135. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 135.

136. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 136.

137. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 137.

138. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 138.

139. Defendants the allegations in paragraph 139.

140. Defendants deny the allegations in paragraph 140.

141. Defendants deny the allegations in paragraph 141.

142. Defendants deny the allegations in paragraph 142.

143. Defendants deny the allegations in paragraph 143.

144. Defendants deny the allegations in paragraph 144.

145. Defendants deny the allegations in paragraph 145.

146. Defendants deny the allegations in paragraph 146.

- 147. Defendants deny the allegations in paragraph 147.
- 148. Defendants deny the allegations in paragraph 148.
- 149. Defendants deny the allegations in paragraph 149.
- 150. Defendants deny the allegations in paragraph 150.
- 151. Defendants deny the allegations in paragraph 151.
- 152. Defendants deny the allegations in paragraph 152.
- 153. Defendants deny the allegations in paragraph 153.
- 154. Defendants deny the allegations in paragraph 154.
- 155. Defendants deny the allegations in paragraph 155.
- 156. Defendants deny the allegations in paragraph 156.
- 157. Defendants deny the allegations in paragraph 157.
- 158. Defendants deny the allegations in paragraph 158.

RESPONSE TO THE FIRST CAUSE OF ACTION

159. Defendants repeat and re-allege each and every response previously recited as if set forth in full.

160. The first cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

161. The first cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

162. The first cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

163. The first cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

164. The first cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

165. The first cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

166. The first cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

167. The first cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

168. The first cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

169. The first cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

170. The first cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

RESPONSE TO THE SECOND CAUSE OF ACTION

171. Defendants repeat and re-allege each and every response previously recited as if set forth in full.

172. Defendants deny knowledge and information sufficient form a belief as to the truth of the allegations in paragraph 172.

173. Defendants deny the allegations in paragraph 173.

174. Defendants deny the allegations in paragraph 174.

175. Defendants deny the allegations in paragraph 175.

176. Defendants deny the allegations in paragraph 176.

177. Defendants deny the allegations in paragraph 177.

178. Defendants deny the allegations in paragraph 178.

179. Defendants deny the allegations in paragraph 179.

180. Defendants deny the allegations in paragraph 180.

181. Defendants deny the allegations in paragraph 181.

182. Defendants deny the allegations in paragraph 182.

183. Defendants deny the allegations in paragraph 183.

184. Defendants deny the allegations in paragraph 184.

185. Defendants deny the allegations in paragraph 185.

186. Defendants deny the allegations in paragraph 186.

187. Defendants deny the allegations in paragraph 187.

188. Defendants deny the allegations in paragraph 188.
189. Defendants deny the allegations in paragraph 189.
190. Defendants deny the allegations in paragraph 190.
191. Defendants deny the allegations in paragraph 191.
192. Defendants deny the allegations in paragraph 192.
193. Defendants deny the allegations in paragraph 193.
194. Defendants deny the allegations in paragraph 194.
195. Defendants deny the allegations in paragraph 195.
196. Defendants deny the allegations in paragraph 196.
197. Defendants deny the allegations in paragraph 197.
198. Defendants deny the allegations in paragraph 198.
199. Defendants deny the allegations in paragraph 199.
200. Defendants deny the allegations in paragraph 200.

RESPONSE TO THE THIRD CAUSE OF ACTION

201. Defendants repeat and re-allege each and every response previously recited as if set forth in full.

202. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

203. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

204. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

205. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

206. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

207. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

208. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

209. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

210. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

211. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

212. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

213. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

214. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

215. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

216. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

217. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

218. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

219. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

220. The third cause of action was dismissed and its dismissal was affirmed by the Appellate Division, First Department. As such this allegation does not require a response, however to the extent any allegations are set forth, they are denied.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

221. Plaintiffs lacks standing to assert the claims in their Complaint.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

222. Plaintiffs Complaint fails to state a legally cognizable claim against the Defendants upon which relief can be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

223. Plaintiffs are not entitled to the relief sought because the relief sought by Plaintiffs violate the terms and conditions of the Partnership Agreement. Specifically, the Partnership Agreement sets forth the mandatory method to calculate and account for a deceased Partner's interest in the Partnership, which is to be paid out to the deceased Partner's Estate. Plaintiffs are entitled only to an accounting conducted in the manner set forth in the Partnership Agreement and to receive the resultant monetary value of the deceased Partner's interest as determined by said accounting.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

224. Defendants reserve the right to supplement or plead additional affirmative defenses up to the time of trial.

**AS AND FOR A FIRST COUNTERCLAIM
SPECIFIC PERFORMANCE**

225. Defendants repeat and re-allege each and every response previously recited as if set forth in full.

226. Eugene Leogrande is an individual residing in the State of New York and is the surviving partner of B & G Holding Co. d/b/a B & G Holding Company (“B&G”).

227. William Egan (“Mr. Egan”) is the deceased former partner of Mr. Leogrande in B&G.

228. B&G was formed as a general partnership under the laws of the State of New York.

229. Upon information and belief, the source being Dean George Pappas, Dean George Pappas (“Mr. Pappas”) is the executor and personal representative of the Estate of William Egan (the “Estate”).

230. On or about October 16, 1991, Mr. Egan and Mr. Leogrande formed a general partnership under the name B & G Holding Co. d/b/a B & G Holding Company.

231. B&G was formed for the purpose of buying, selling, constructing, leasing, and developing real estate.

232. On or about September 24, 1993, B&G filed its Article of Co-Partnership.

The Partnership Agreement

233. On or about June 15, 1994, Mr. Leogrande and Mr. Egan entered into B&G’s partnership agreement (the “Partnership Agreement”). (Exhibit “A”).

234. On or about April 1, 2013, Mr. Leogrande and Mr. Egan made their first amendment to the Partnership Agreement, which modified the valuation method of the Partnership Agreement’s buy/sell provisions to account for the mortgage on real property owned by the partnership. By its express terms, the 2013 amendment did not alter any other provisions of the

Partnership Agreement, all of which remained in full force and effect. (Exhibit “A” at pp. 22-23 [numbered “1” and “2” and appearing at the end of the document]). Following the 2013 amendment, the Partnership Agreement was not subsequently amended.

235. Paragraph 2.A. of the Partnership Agreement states. “No Shareholder shall sell, transfer, pledge, hypothecate, negotiate, assign, mortgage, or otherwise dispose of or encumber (hereinafter “Transfer”) any of his Shares, except in accordance with the terms and conditions set forth in this Agreement. No Partner shall sell, transfer, pledge, hypothecate, negotiate, assign, mortgage or otherwise dispose of or encumber any off his interest in the Partnership, except in accordance with this Agreement.” (Exhibit “A” ¶¶ 2.A.)

236. The Partnership Agreement then states the mandatory procedure for any lifetime Transfers of partnership interest. (Exhibit “A” ¶ 2.B.-G.)

237. In relevant part, the Partnership Agreement required an “Electing Partner”, meaning a partner desiring to make a lifetime Transfer his partnership interest, to give the other partner (“Non-Electing Partner”) notice of his intention to Transfer his partnership interest. This notice would automatically trigger the Non-Electing Partner’s option to purchase the Electing Partner’s partnership interest upon terms set forth in the Partnership Agreement. (Exhibit “A” ¶ 2.B-G.)

238. Mr. Leogrande and Mr. Egan also set terms to plan for the death of a partner during the term of the Partnership. Paragraph 4.A of the Partnership Agreement states:

“The death of a Shareholder or Partner shall constitute an offer of the personal representative of such deceased Shareholder’s or Partner’s estate to sell all of his Shares or Partnership Interest held by the estate of the deceased Shareholder in the Corporations and Interest in the Partnership.” (Exhibit “A” p. 7, ¶ 4.A)

239. Paragraph 4.A of the Partnership Agreement requires the surviving shareholder/partner to elect to purchase the deceased partner's partnership interest from the deceased partner's estate, within twelve months from the date of death of the deceased partner.

240. Paragraph 4.C then states that the "Purchase Price and terms of payment for any Shares and Partnership Interest purchase pursuant to this paragraph 4 shall be provided in paragraphs 5 and 6." (Exhibit "A" p. 7, ¶ 4.C.).

241. Paragraph 5.A of the Partnership Agreement reflects that the Purchase Price, in the event of an Offer to sell, shall be the "Stipulated Value" of the shares and partnership interest, and in the case of the death or disability of a shareholder or partner, then the Purchase Price shall be the greater of the "Stipulated Value" or the amount of life insurance proceeds received by the surviving partner/shareholder. (Exhibit "A" p. 7, ¶ 5.A.)

242. The term "Stipulated Value" is then defined in Paragraph 5.B. of the Partnership Agreement. Specifically, if the partners had executed a "Certificate of Valuation" within one-year before the date on which the value was to be determined, then the surviving partner would use that stated amount as the "Total Value" of the partnership and related corporations. (Exhibit "A" ¶ 5.B(i)) The "Stipulated Value", which would be the Purchase Price, would be calculated by multiplying the "Total Value" of the partnership, reflected in the "Certificate of Valuation", by the percentage ownership of the deceased partner. (Exhibit "A" ¶ 5.B(iii)).

243. Mr. Leogrande and Mr. Egan also agreed to a method of calculating the "Total Value" if a "Certificate of Valuation" did not exist or was not made within one-year before the date on which the value was to be determined. In that instance, the Partnership Agreement states that the "Total Value" of B&G "shall be determined by computing the actual gross rental from the total of all assets owned by the Corporations and Partnership for the twelve (12) months immediate[ly] preceding the valuation date and multiplying said gross rents for said twelve (12)

month period by a multiple of eight (8). The result shall become the Stipulated Value.” (Exhibit “A” ¶ 5.B(ii))

244. Following the methodology recited in Paragraphs 5.B(i),(ii),(iii), the Stipulated Value would then be determined in the same way as if a “Certificate of Valuation” existed (multiplying the calculated “Total Value” by the percentage ownership of the deceased partner).

245. The amendment to the Partnership Agreement states that the Stipulated Value be reduced by the net of any outstanding mortgages on properties owned by the partnership. (Exhibit “A” pp. 21,22 [numbered pp. 1 and 2 at the end of the exhibit]).

246. Paragraph 6 of the Partnership Agreement, titled “Terms of Payment”, sets forth acceptable methods of payment of the Purchase price and that closing on the buy-out of the deceased partner’s ownership interests was to occur within thirty days following the expiration of the last applicable option period (for the surviving shareholder to elect to purchase the ownership interest of the deceased partner), or the date of the appointment of the personal representatives of the estate of the deceased Shareholder or Partner, “as the case may be.” (Exhibit “A” ¶ 6.A(i))

247. Importantly, the Partnership Agreement contained several recitals intended to be called upon when, as here, the judgment of the Partners B&G, and the signatories to the Partnership Agreement was ever improperly questioned.

248. Paragraph 5.C. of the Partnership Agreement states the following mutual acknowledgment:

“The Shareholders and Partners acknowledge that they have determined the Purchase Price based on a careful consideration by them of the value which is to be attributed to the Shares and Partnership [i]n accordance with this Agreement, and that they have expressly determined that no other value, whether fixed by any other method or formula or otherwise, would reflect an accurate value for the Shares and Partnership Interested being valued in connection with a purchase of Shares and Partnership Interest hereunder.” (Exhibit “A” ¶ 5.C)

249. The Partnership Agreement contemplated its termination based upon certain occurrences and provides for the survival of the obligations of the parties. (Exhibit “A” ¶ 10.) By including this language in the Partnership Agreement, the parties bound themselves to performance thereunder and ensured that their intended agreements would not be disturbed by subsequent events that may cause the agreement to terminate.

250. Further, Paragraph 16 of the Partnership Agreement states:

“This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns of the parties hereto; provided, however, that the provisions of this paragraph shall not alter the provisions contained in the Agreement restricting assignment of Shares.” (Exhibit “A” ¶ 16).

251. Paragraph 11 of the Partnership Agreement states that the terms contained therein represent the entire agreement of the Partners of B&G, that any prior agreements were cancelled, and that the Partnership Agreement may not be changed, modified, amended, discharged, abandoned or terminated orally, but only by an instrument in writing, signed by the parties sought to be charged thereby. (Exhibit “A” ¶ 11).

The Death of Mr. Egan

252. Mr. Egan died on April 29, 2020. Pursuant to Paragraph 4.A. of the Partnership Agreement, Mr. Egan’s death constituted an offer of his personal representative of his Estate to sell all of his Partnership Interest held by the Estate (“Egan’s Interest”). (Exhibit “A” ¶ 4.A).

253. In accordance with the Partnership Agreement, on June 10, 2020, counsel for Mr. Leogrande, James J. Matusiak, Esq., sent notice to Mr. Pappas of Mr. Leogrande’s election to purchase Egan’s Interest in B&G pursuant to the Partnership Agreement. (Exhibit “B” ¶ 4) The

June 10, 2020 letter also informed Mr. Pappas of the method of calculating the Purchase Price, as per the Partnership Agreement, the resulting Purchase Price and enclosed a proposed purchase agreement. (Exhibit “B” ¶ 5).

254. On or about July 10, 2020, Mr. Allan J. Ahearne, Jr. Esq., counsel for Plaintiffs, sent Mr. Matusiak a letter informing Mr. Matusiak that he was the attorney for the Estate of William Egan and that he was in the process of reviewing the file. (Exhibit “C”).

255. Thereafter, several letters were exchanged by the attorneys. On or about July 29, 2020, Mr. Matusiak sent a letter to Mr. Ahearne reiterating Mr. Leogrande’s election pursuant to the Partnership Agreement to purchase Mr. Egan’s ownership interest in B&G and at the price calculated using the method described in the Partnership Agreement. (Exhibit “D”).

256. Despite Mr. Leogrande satisfying his obligations under the Partnership Agreement by tendering the offer to purchase Egan's Interest, Plaintiffs refused to abide by the terms of the Partnership Agreement and sell Mr. Leogrande Egan’s Interest at the Purchase Price called for in the Partnership Agreement.

257. Instead Plaintiffs falsely claim that they are entitled to receive a much larger amount based upon a methodology foreign to the Partnership Agreement.

258. Plaintiffs continue to falsely assert that they are not bound by the terms of the Partnership Agreement which state that the death of Mr. Egan is deemed an offer to sell the Egan Interest at a price determined through the methodology set forth in the Partnership Agreement.

259. The Partnership Agreement was a valid agreement that binds Plaintiffs to perform the obligations thereunder.

260. After Mr. Egan’s death, Mr. Leogrande satisfied all of his obligations under the Partnership Agreement necessary to elect to purchase Egan’s Interest, within the time period set forth in the Partnership Agreement.

261. Plaintiffs have refused to close and deliver Egan's interest, and accept the Purchase Price calculated using the mandatory methodology as set forth in the Partnership Agreement.

262. Mr. Leogrande remains ready willing and able to perform his obligations under the Partnership Agreement by purchasing Egan's Interest pursuant to the valuation method contained therein.

263. Mr. Leogrande does not have adequate remedy of law.

264. Mr. Leogrande respectfully requests that this Court issue an Order directing the Plaintiffs to sell Egan's Interest to Mr. Leogrande pursuant to the terms and conditions set forth in the Partnership Agreement.

WHEREFORE, Defendants respectfully requests that this Honorable Court issue an order:

- A. Dismissing the Complaint in its entirety;
- B. Directing Plaintiffs to sell the Egan Interest to Eugene Leogrande pursuant to the terms set forth in the Partnership Agreement; and
- C. For such other relief as the Court deems just and proper.

Dated: January 17, 2023
Hauppauge, New York

PIANA & GIOE, LLC

By: _____/s
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