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RONI, LLC, ESHEL PROPERTIES, LLC, GILI HOLDINGS LLC, KRR INVESTMENTS, LLC, Assignees, and A.G. DOR INVESTMENTS LLC, BANAGA LLC, MORDECHAI GOLDENBERG, ELORY LLC, ELUNGER, INC., HOD INTERNATIONAL EQUITIES LLC, JOSSIFOFF LLC, KALINA & SONS LLC, KARSH N DYAZ LLC, LYDGAT, LLC, MAZELDIK LLC, RISING STAR, LLC, ROKCOM LLC, S.I. DAR LLC, SBGR LLC, SINTRA REAL-ESTATE LLC, TAMR LLC, TATIVA FINANCE LTD., WASTED DREAMS, LLC, YALI, LLC, YORAM BAUMANN LLC, ELI UNGER, JEOSHUA DOR, EREZ ZENOV, NIR KRIEL, EYAL SCHIFF, OVED SASON, AZARIA JOSSIFOFF, URI KALINA, ZVI KARSH, RON BAHAT, YEHUDA KEREN, JACOB PERRY, SHALOM PAPIR, RAFI RACHMAN, AMOS LASKER, ELI MOR, YORAM DAR, SHLOMO MASHAIACH, EYTAN STIBBE, RON GUTTMAN, PNINA GOLDBERG, SHUKI WEISS, ILAN CALIC, and YORAM BAUMANN,
as Assignors,

Plaintiffs,

- against -

RACHEL L. ARFA, ALEXANDER SHPIGEL, GADI ZAMIR, LAWRENCE A MANDELKER, in his Official capacity as Court-Appointed Temporary Receiver pursuant to CPLR Art. 64 of HARLEM HOLDINGS, LLC, HARLEM ACQUISITION LLC, AMERICAN ELITE PROPERTIES, INC., MINTZ, LEVIN, COHN, FERRIS, GLOVSKY & POPEO, P.C., JEFFREY A. MOERDLER, EDWARD LUKASHOK, AUBREY REALTY CO., AUBREY REALTY, LLC, 42nd STREET REALTY, LLC, TAMMAZ REALTY, LLC and ELUL ACQUISITION, LLC.

Defendants.
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Index No. 601224/07

AMENDED COMPLAINT

Plaintiffs, by their attorneys, Balber Pickard Maldonado & Van Der Tuin, PC, for their Complaint against Defendants, allege as follows:

Parties

1. Roni, LLC (“Roni”) is a limited liability company organized pursuant to the laws of Delaware and qualified to do business in New York. It owns¹:

- (a) by original acquisition,
 - (i) a 4.7619% membership interest in West 162nd Street and Academy Street LLC (“162 LLC”);
 - (ii) a 3.75% membership interest in 546-552 West 146th Street LLC (“146 LLC”);
 - (iii) a 6.25% interest in 2000 Davidson Ave. LLC (“Davidson LLC”);
 - (iv) a 2.6600% interest in 522-536 West 147th Street LLC (“147 LLC”);
 - (v) a 1.8993% interest in 100-102 East 124th Street Package LLC (“124 LLC”);
 - (vi) a 25% interest in Harlem I LLC;
 - (vii) a 25% interest in Harlem II LLC; and
- (b) by assignment
 - (i) the claims of A.G. Dor Investments LLC, as an investor in and owner of a 12.5% membership interest in Harlem I LLC, against these defendants;
 - (ii) the claims of Jossifoff LLC, as an investor in and owner of a 12.5% membership interest in Harlem I LLC, against these defendants;

¹ The membership percentages enumerated below do not reflect the effect of the “put” later exercised by certain holders of the membership interests in the LLCs.

- (iii) the claims of Lydgat, LLC, as an investor in and owner of a 25% membership interest in Harlem I LLC, against these defendants; and
- (c) by assignment
 - (i) the claims of A.G. Dor Investments LLC, as an investor in and owner of a 12.5% membership interest in Harlem II LLC, against these defendants;
 - (ii) the claims of Jossifoff LLC, as an investor in and owner of a 12.5% membership interest in Harlem II LLC, against these defendants;
 - (iii) the claims of Lydgat, LLC, as an investor in and owner of a 25% membership interest in Harlem II LLC, against these defendants.

2. Eshel Properties, LLC (“Eshel”) is a limited liability company organized pursuant to the laws of Delaware and qualified to do business in New York. It owns:

- (a) by original acquisition,
 - (i) a 12.5% interest in 146 LLC;
 - (ii) a 10.640% interest in 147 LLC;
- (b) by assignment,
 - (i) the claims of Lydgat, LLC as an investor in and owner of a 3.750% interest in 146 LLC;
 - (ii) the claims of Rising Star, LLC as an investor in and owner of a 25% interest in 146 LLC;
 - (iii) the claims of SBGR LLC as an investor in and owner of a 12.5% interest in 146 LLC; and
 - (iv) the claims of Yoram Baumann LLC as an investor in and owner of a 12.5% interest in 146 LLC.

3. Gili Holdings LLC ("Gili") is a limited liability company organized pursuant to the laws of Delaware and qualified to do business in New York. It owns:

- (a) by original acquisition,
 - (i) a 23.8096% interest in 162 LLC;
 - (ii) a 10% interest in 146 LLC;
 - (iii) a 10% interest in Davidson LLC;
 - (iv) a 12.750% interest in 147 LLC; and
- (b) by assignment,
 - (i) the claims of Kalina & Sons LLC as an investor in and owner of a 12.5% interest in Davidson LLC;
 - (ii) the claims of Karsh N Dyaz LLC as an investor in and owner of a 5% interest in Davidson LLC;
 - (iii) the claims of Lydgat, LLC as an investor in and owner of a 6.25% interest in Davidson LLC;
 - (iv) the claims of Mazeldik LLC as an investor in and owner of a 6.25% interest in Davidson LLC;
 - (v) the claims of Rising Star, LLC as an investor in and owner of a 25% interest in Davidson LLC;
 - (vi) the claims of SBGR LLC as an investor in and owner of a 10% interest in Davidson LLC;
 - (vii) the claims of Wasted Dreams, LLC, as an investor in and owner of a 12.5% interest in Davidson LLC;
- (c) by assignment,

- (i) the claims of A.G. Dor Investments LLC as an investor in and owner of a 11.9048% interest in 162 LLC;
- (ii) the claims of Dr. Mordechai Goldenberger as an investor in and owner of a 11.9048% interest in 162 LLC;
- (iii) the claims of Lydgat, LLC as an investor in and owner of a 16.6667% interest in 162 LLC;
- (iv) the claims of Rising Star, LLC as an investor in and owner of a 14.2857% interest in 162 LLC; and
- (v) the claims of Tativa Finance Ltd., as an investor in and owner of a 9.5238% interest in 162 LLC.

4. KRR Investments, LLC ("KRR") is a limited liability company organized pursuant to the laws of Delaware and qualified to do business in New York. It owns:

- (a) by original acquisition,
 - (i) a 19.130% interest in 147 LLC;
 - (ii) a 14.2450% interest in 124 LLC;
- (b) by assignment,
 - (i) the claims of Banaga LLC as an investor in and owner of a 6.38% interest in 147 LLC;
 - (ii) the claims of Lydgat, LLC as an investor in and owner of a 2.66% interest in 147 LLC;
 - (iii) the claims of Rising Star, LLC as an investor in and owner of a 21.28% interest in 147 LLC;

- (iv) the claims of Wasted Dreams, LLC, as an investor in and owner of a 10.64% interest in 147 LLC;
 - (v) the claims of Yali, LLC as an investor in and owner of a 4.26% interest in 147 LLC; and
- (c) by assignment,
- (i) the claims of Elunger, Inc. as an investor in and owner of a 5.6980% interest in 124 LLC;
 - (ii) the claims of Elory LLC as an investor in and owner of a 4.7483% interest in 124 LLC;
 - (iii) the claims of HOD International Equities LLC as an investor in and owner of a 9.4967% interest in 124 LLC;
 - (iv) the claims of Lydgat, LLC as an investor in and owner of a 1.8993% interest in 124 LLC;
 - (v) the claims of Rising Star, LLC as an investor in and owner of a 13.2953% interest in 124 LLC;
 - (vi) the claims of Rokcom LLC as an investor in and owner of a 9.4967% interest in 124 LLC;
 - (vii) the claims of SBGR LLC as an investor in and owner of a 4.7483% interest in 124 LLC;
 - (viii) the claims of S.I. Dar LLC as an investor in and owner of a 4.7483% interest in 124 LLC;
 - (ix) the claims of Sintra Real-Estate LLC as an investor in and owner of a 18.9934% interest in 124 LLC; and

(x) the claims of TAMR LLC as an investor in and owner of a 4.7483% interest in 124 LLC.

5. Roni, Eshel, Gili and KRR are hereinafter collectively the "Plaintiffs."

6. The following parties, the "Assignor Plaintiffs," have assigned all of their claims arising from their investments in the Property LLCs and the Properties, as defined below, including the causes of action asserted in this action, to Plaintiffs Roni, LLC, Eshel Properties, LLC, Gili Holdings, LLC, and KRR Investments, LLC, but appear herein pursuant to the Court's order dated August 4, 2008:

Eli Mor, principal of Roni, LLC,

Nir Kriel principal of Eshel Properties, LLC,

Eyal Schiff as principal of Gili Holdings, LLC,

Yehuda Keren as principal of KRR Investments, LLC,

A.G. Dor Investments LLC, and its principal Jeoshua Dor,

Banaga LLC, and its principal Ron Bahat,

Mordechai Goldenberg,

Elory LLC and its principal Erez Zenov,

Elunger, Inc. and its principal Eli Unger,

HOD International Equities LLC, and its principal Oved Sason,

Jossifoff LLC, and its principal Azaria Jossifoff,

Kalina & Sons LLC, and its principals Uri Kalina and Matan Kalina,

Karsh N Dyaz LLC, and its principal Zvi Karsh,

Lydgat, LLC, and its principal Jacob Perry,

Mazeldik LLC, and its principal Shalom Papir,

Rising Star, LLC and its principal Rafi Rachman,
Rokcom LLC, and its principal Amos Lasker,
S.I. Dar LLC, and its principal Yoram Dar,
SBGR LLC, and its principal Shlomo Mashaiach,
Sintra Real-Estate LLC, and its principal Eytan Stibbe,
TAMR LLC and its principal Ron Guttman,
Tativa Finance Ltd., and its principal Pnina Goldberg,
Wasted Dreams, LLC, and its principal Shuki Weiss,
Yali, LLC, and its principal Ilan Calic,
Yoram Baumann LLC, and its principal Yoram Baumann.

7. 146 LLC, West 162 LLC, Davidson LLC, West 147 LLC, East 124 LLC, Harlem I LLC and Harlem II LLC are collectively the "Property LLCs". The real property owned by each of the Property LLCs is a "Property" or collectively "the Properties."

8. Plaintiffs own, by original acquisition or by assignment², 100% of the membership interests in 162 LLC, 87.5% of the membership interests in 146 LLC, 93.75% of the membership interests in Davidson LLC, 95.74% of the membership interests in 147 LLC, 98.1007% of the membership interests in 124 LLC, 75% of the membership interests in Harlem I LLC and 75% of the membership interests in Harlem II LLC.

9. Plaintiffs are also equitably entitled, for the reasons set forth below, to the 7.1425% membership interest in 162 LLC, the 7.5% membership interest in 146 LLC, the 6.25% membership interest in Davidson LLC, the 5.3% membership interest in 147 LLC, the 4.0838%

² This calculation of percentage ownership interests includes the effect of the "Put" by Harlem Holdings of its membership interests back to all Property LLCs except Davidson LLC, Harlem I LLC, and Harlem II, LLC.

membership interest in 124 LLC, the 25% membership interest in Harlem I LLC, and the 25% membership interest in Harlem II LLC, claimed by defendant Harlem Holdings, LLC.

10. Defendant Rachel L. Arfa (“Arfa”) is a natural person, the wife of Defendant Alexander Shpigel, an organizer of each of the Property LLCs and a promoter of the Property LLCs (and the Property acquisitions described below) to the investors who formed the “Investor LLCs” (defined below) that now own the Property LLCs. Arfa is, upon information and belief, a resident of the City and State of New York. Arfa, upon information and belief, has a financial or ownership interest in one or more of defendants “Harlem Holdings,” “Harlem Acquisition,” “AmElite,” “42nd Street Realty,” “Tammaz,” and “Elul” (as each term is hereinafter defined.)

11. Defendant Alexander Shpigel (“Shpigel”) is a natural person, the husband of Defendant Arfa, an organizer of each of the Property LLCs and a promoter of the Property LLCs (and the Property acquisitions described below) to the investors who formed the Investor LLCs that now own the Property LLCs. Shpigel was also a co-manager of each of the Property LLCs, together with Defendants Gadi Zamir and Harlem Holdings, LLC, from the time of their formation until in or about November 2005. Shpigel is, upon information and belief, a resident of the City and State of New York. Shpigel, upon information and belief, has a financial or ownership interest in one or more of defendants Harlem Holdings, Harlem Acquisition, AmElite, 42nd Street Realty, Tammaz, and Elul.

12. Defendant Gadi Zamir (“Zamir”) is a natural person, an organizer of each of the LLCs and a promoter of the Property LLCs (and the Property acquisitions described below) to the investors who formed the Investor LLCs that now own the Property LLCs. Zamir was also a co-manager of each of the Property LLCs, together with Defendants Shpigel and

Harlem Holdings, LLC, from the time of their formation until in or about November 2005, and the sole manager of each of the Property LLCs from in or about November 2005, through and including August 2006. Zamir is, upon information and belief, a resident of the City and State of New York. Zamir, upon information and belief, has a financial or ownership interest in one or more of defendants Harlem Holdings, Harlem Acquisition, AmElite, 42nd Street Realty, Tammaz, and Elul.

13. Defendant Harlem Holdings LLC (“Harlem Holdings”) is, upon information and belief, a limited liability company organized pursuant to the laws of the State of New York, for whom Lawrence A. Mandelker, Esq. was appointed temporary receiver pursuant to CPLR Art. 64 by order of this Court dated February 22, 2006. Harlem Holdings is wholly owned, directly or indirectly, by Defendants Arfa, Shpigel and Zamir. Harlem Holdings was a co-manager of the Property LLCs, together with Defendants Shpigel and Zamir, from the time of their formation until in or about November 2005.

14. Defendant Harlem Acquisition LLC (“Harlem Acquisition”) is, upon information and belief, a limited liability company organized on or about November 30, 2004 pursuant to the laws of the State of New York. Harlem Acquisition, upon information and belief, is wholly owned, directly or indirectly, by Defendants Arfa, Shpigel and Zamir. Harlem Acquisition was purported to be used by Defendants to acquire the 124 LLC and 162 LLC Properties.

15. Defendant American Elite Properties Inc. (“AmElite”) is, upon information and belief, a corporation organized pursuant to the laws of the State of New York. AmElite is, upon information and belief, wholly owned, directly or indirectly by defendants Arfa, Shpigel and Zamir. AmElite acted as a disclosed promoter and undisclosed real estate

broker in one or more of the Property acquisitions, for which AmElite received, directly or indirectly, substantial disclosed promotional payments and undisclosed brokerage payments.

16. Defendant Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C. (“Mintz Levin”) is, upon information and belief, a professional corporation organized pursuant to the laws of the State of Massachusetts and qualified to do business in the State of New York for the practice of law, with a principal office in Boston, Massachusetts. Mintz Levin has purported to represent the Property LLCs, the member investors, Defendants Arfa, Shpigel, Zamir, Harlem Holdings and Harlem Acquisition and other entities owned or controlled by Defendants in transactions and disputes related to the business and investments of the Property LLCs. Mintz Levin, upon information and belief, organized and has a financial interest in one or more of defendants 42nd Street Realty, Tammaz and Elul.

17. Defendant Jeffrey A. Moerdler (“Moerdler”) is a natural person and, upon information and belief, has at all relevant times been licensed to practice law in the State of New York. Moerdler is, upon information and belief, a member of Mintz Levin and was the attorney at Mintz Levin principally involved in and responsible for the representation of the Property LLCs, the member investors, Defendants Arfa, Shpigel, Zamir, Harlem Holdings and Harlem Acquisition, and other entities owned or controlled by Defendants in transactions and disputes related to the business and investments of the Property LLCs.

18. Defendant Edward Lukashok (“Lukashok”) is a natural person and, upon information and belief, has at all relevant times been licensed to practice law in the State of New York. Lukashok has purported to represent the Property LLCs, the member investors, Defendants Arfa, Shpigel, Zamir and Harlem Holdings and other entities owned or controlled by Defendants in transactions and disputes related to the business and investments of the Property

LLCs. Lukashok, upon information and belief, organized and has a financial interest in one or more of defendants Aubrey Realty, 42nd Street Realty, Tammaz Realty and Elul.

19. Defendants Aubrey Realty Co. and Aubrey Realty LLC (collectively, “Aubrey”) are, upon information and belief, a “d/b/a” for Defendant Lukashok and are owned and controlled by Lukashok. Aubrey has purported to act as a real estate broker in one or more of the transactions by which Property LLCs acquired Properties, for which Aubrey received, directly or indirectly, substantial payments.

20. Defendant 42nd Street Realty, LLC (“42nd Street Realty”) is, upon information and belief, a limited liability company organized pursuant to the laws of the State of New York. 42nd Street Realty, upon information and belief, is wholly owned, directly or indirectly, by Defendants Arfa, Shpigel, Zamir, Mintz Levin and/or Lukashok. 42nd Street Realty, although it was not licensed to do so, purported to act as a real estate broker of the transactions by which Property LLCs acquired Properties, for which 42nd Street Realty received, directly or indirectly, substantial payments.

21. Defendant Tammaz Realty, LLC (“Tammaz”) is, upon information and belief, a limited liability company organized pursuant to the laws of the State of New York. Tammaz, upon information and belief, is wholly owned, directly or indirectly, by Defendants Arfa, Shpigel, Zamir, Mintz Levin and/or Lukashok. Tammaz, although it was not licensed to do so, purported to act as a real estate broker in one or more of the transactions by which Property LLCs acquired Properties, for which Tammaz received, directly or indirectly, substantial payments.

22. Defendant Elul Acquisition, LLC (“Elul”) is, upon information and belief, a limited liability company organized pursuant to the laws of the State of New York. Elul, upon

information and belief, is wholly owned, directly or indirectly, by Defendants Arfa, Shpigel, Zamir, Mintz Levin and/or Lukashok. Elul, although it was not licensed to do so, purported to act as a real estate broker in one or more of the transactions by which Property LLCs acquired Properties, for which Elul received, directly or indirectly, substantial payments.

Solicitation of Investors and Organization of Property LLCs

23. During the period mid-2002 through early 2005, defendants Arfa, Shpigel and Zamir, directly and through their wholly-owned companies Harlem Holdings and AmElite, (collectively the “Promoters”) solicited investors in Israel to invest in the acquisition of multi-family residential properties in Harlem and The Bronx and organized the Property LLCs to own the investment properties.

24. Arfa, Shpigel and Zamir solicited the control and use of funds from overseas investors who had little or limited knowledge of New York real estate or United States laws, customs or business practices with respect to real estate or investments. In representing to these investors that they had particular experience and expertise in these matters, and in playing upon the cultural identities and friendship of the members of the Assignor Plaintiffs, Arfa, Shpigel and Zamir assumed positions of trust, confidence and fiduciary duty to the investor-members of Assignor Plaintiffs.

25. These activities resulted in the formation of the seven Property LLCs. Plaintiffs in this action are, or through assignment of claims by the Assignor Plaintiffs represent, the substantial majority in interest of the Israeli investors solicited by defendants for this investment scheme and who, through domestic LLCs or corporations (collectively, the “Investor LLCs”), became members of the Property LLCs.

26. The pattern and structure of each investment was the same, with few variations in detail:

(i) Arfa designed and supervised the structure of the investments and entities; Shpigel used personal relationships in Israel to locate investors; Zamir looked for and negotiated contracts to purchase properties and guided those investors who inspected properties; Harlem Holdings contracted for property acquisitions, held a minority interest in the Property LLCs on behalf of Arfa, Shpigel and Zamir, and subsequently served as a co-manager, with Shpigel and Zamir of the Property LLCs.

(ii) Harlem Holdings entered into assignable contracts with property owners to acquire a property with a low downpayment and an extended period of time until closing was required. Upon information and belief, the downpayment funds were largely advanced by individual investors or by Richard Steinwurtzel, a former law partner of Arfa. Upon information and belief, defendants did not use their own funds to make downpayments or close the transactions.

(iii) Deviating from the pattern, the contract to purchase the properties ultimately acquired by 124 LLC and 162 LLC, was made by Harlem Acquisition, rather than Harlem Holdings, even though Harlem Acquisition did not exist as of the date of the contract.

(iv) Shpigel and AmElite, concurrently with the negotiation of contracts for properties by Zamir and Harlem Holdings or Harlem Acquisition, solicited investors in Israel through personal relationships. Each individual investor was required by the Promoters to form a U.S. corporation or LLC, the Investor LLCs, to hold their Property LLC interest.

(v) Prior to closing on a property acquisition, and in some instances prior to the execution of contracts for purchase of the Properties, the investors were required to deposit

their funds into accounts in the U.S. controlled by the Promoters or into the attorney trust accounts of defendant Lukashok or defendant Mintz Levin, who the Promoters represented would protect the interests of the investors.

(vi) At closing, the contracts were assigned to the Property LLCs, title to the properties was conveyed from the sellers to the respective Property LLC, and the seller was paid with the investor funds and bank mortgage loans.

(vii) Lukashok acted as counsel to the Property LLCs, investors and Promoters with respect to the Harlem I, Harlem II, and Davidson LLC property acquisitions, and continued thereafter as co-counsel with respect to the 146, LLC, 147 LLC, 162 LLC and 124 LLC transactions.

(viii) Mintz Levin and Moerdler acted as counsel to the Property LLCs, investors and Promoters with respect to the 146 LLC, 147 LLC, 162 LLC and 124 LLC property acquisitions, the continuing legal matters of all Property LLCs and the sale of the properties owned by all Property LLCs except Davidson LLC in August, 2006.

(ix) Operating Agreements for the Property LLCs were prepared by the Promoters and counsel – Lukashok or Mintz Levin – and signed by the investors in some, but not all, of the transactions after the transactions closed.

(x) Post-closing, non-party companies owned by the Promoters were hired by the managers of the Property LLCs – Shpigel, Zamir and Harlem Holdings – to manage the real estate, perform maintenance and repair or improvements to the real estate and broker apartment rentals at inflated fees.

27. Pursuant to the aforesaid scheme,

(i) Harlem I LLC acquired its Property on or about October 4, 2002, for a purchase price of \$1,180,000.

(ii) Harlem II LLC acquired its Property on or about March 28, 2003, for a purchase price of \$1,600,000.

(iii) Davidson LLC acquired its Property on or about August 12, 2003, for a purchase price of \$5,875,000.

(iv) 147 LLC acquired its Property on or about February 26, 2004, for a purchase price of \$5,975,000.

(v) 146 LLC acquired its Property on or about May 19, 2004, for a purchase price of \$5,400,000.

(vi) 162 LLC acquired its Property on or about February 25, 2005, for a purchase price of \$4,850,000.

(vii) 124 LLC acquired its Property on or about February 25, 2005, for a purchase price of \$12,900,000.

28. As promoters and organizers of the LLCs and the acquisition of the Properties, defendants Arfa, Shpigel and Zamir disclosed to some but not all investors that they would be paid "Acquisition Fees" of approximately 1.5% - 2.5% of the purchase price of Properties for their services in connection with the acquisition of the Properties, which Acquisition Fees would be paid out of the funds of the LLCs contributed by the investors or borrowed from lenders in connection with the acquisition of the Properties.

29. Upon information and belief, the aforesaid Acquisition Fees paid to Arfa, Shpigel and Zamir, or their controlled companies, totaled hundreds of thousands of dollars.

30. Arfa, Shpigel and Zamir also disclosed that companies controlled by them would manage the Properties, after acquisition, for 6% of rents and would provide renovation or maintenance services at cost.

31. Arfa, Shpigel and Zamir represented to investors that they would profit only upon sale or refinance of the Properties from the equity interest in the Property LLCs that they acquired and from a disclosed "Upside" bonus that varied among the several Property LLCs and investors.

32. Arfa, Shpigel and Zamir did not disclose to investor members of the Property LLCs that they, directly or through companies controlled by them or the attorney-defendants, would and did solicit and receive substantial additional payments from the sellers of the Properties, characterized as brokerage fees, in connection with the acquisition of the Properties and that the purchase price of the properties would be substantially increased on account of these payments to them.

33. Arfa, Shpigel and Zamir did not disclose to the Assignor Plaintiffs that they, directly or through companies controlled by them, would and did solicit and receive substantial additional payments from mortgage brokers in connection with obtaining bank loans for the acquisition of the Properties, characterized as finders fees or brokerage fees, and that costs incurred to acquire the properties would be substantially increased on account of these payments to them.

34. Arfa, Shpigel and AmElite repeatedly advised investors, including but not limited to Assignor-Plaintiffs Mor, Kriel, Keren, Perry, Calic, Schiff and Stivve , that they were not taking or being paid any fees other than the disclosed Acquisition Fees in connection with the organization of the LLCs and acquisition of the Properties.

35. Defendants Arfa, Shpigel and AmElite also represented to investors, including but not limited to Assignor-Plaintiffs Mor, Kriel, Keren, Perry, Calic, Schiff, Zeno and Unger that they were investing their own funds in the Property LLCs and would not obtain any profits unless and until the Properties were refinanced or sold and all investors thereby profited.

36. With respect to all Property LLCs, except Harlem I LLC and Davidson LLC, written promotional materials were provided to some, but not all, investors, which purported to show the costs of acquisition of the Properties and the use of the investors' funds, but which failed to disclose the brokerage commissions or finders fees to be taken by the Promoters.

37. Upon information and belief, Defendant Lukashok purported to act as attorney for 147 LLC, Davidson LLC, Harlem I LLC, and Harlem II LLC, and their investors, in the foregoing acquisition of Properties by the Property LLCs and, as attorney, owed the Property LLCs and the investors the duties of complete loyalty, full disclosure and unconflicted zealous representation mandated by applicable ethical rules and his role as an attorney and fiduciary.

38. Upon information and belief, defendant Lukashok acted as both attorney and broker on the property acquisitions of 147 LLC, Davidson LLC, Harlem I LLC and Harlem II LLC in violation of applicable attorney ethical rules.

39. Upon information and belief, Defendants Moerdler and Mintz Levin purported to act as attorneys for 146 LLC, 147 LLC, 162 LLC, and 124 LLC, and their investors, in the acquisition of properties by these Property LLCs, and in subsequent activities of these LLCs, and represented Davidson LLC and its investors in post-acquisition activities, including but not limited to preparation of an operating agreement among the investors, managers and Davidson LLC. As attorney, Moerdler and Mintz Levin owed these Property LLCs and

investors the duties of complete loyalty, full disclosure and unconflicted zealous representation mandated by applicable ethical rules and their role as a fiduciary.

**Secret Commissions and Fees Paid to Defendants
In Connection With Property Acquisitions**

40. In connection with each of the property acquisitions alleged at paragraph 27 above, defendants Arfa, Shpigel, Zamir, Lukashok, Moerdler and Mintz Levin, directly or indirectly through defendants Harlem Holdings, Harlem Acquisition, AmElite, Aubrey, 42nd Street Realty, Tammaz and/or Elul received payments from Property sellers, sometimes characterized as brokerage fees, and shares of real estate brokerage or mortgage brokerage fees paid to third-party brokers (collectively the “Secret Commissions”).

41. Upon information and belief, as detailed more specifically below, these Secret Commissions were in excess of \$6.5 million.

42. Payment of the Secret Commissions to defendants caused the Property LLCs to pay, collectively, in excess of \$6.5 million more in purchase prices and brokerage fees for their properties than were actually demanded or received by the sellers and third-party brokers.

43. The foregoing Secret Commissions were paid, directly or indirectly, and in addition to the disclosed Acquisition Fees of hundreds of thousands of dollars, to Arfa, Shpigel and/or Zamir. Indeed the Secret Commissions inflated the disclosed Acquisition Fees because the Secret Commissions inflated the purchase prices for the Property acquisitions.

44. Upon information and belief, the capital contributions made by defendant Harlem Holdings to acquire membership interests in the Property LLCs were funded not with the money of Arfa, Shpigel, Zamir or AmElite, but with a portion of the Secret Commissions on

each acquisition transaction; Harlem Holdings' equity interests are therefore directly traceable to defendants' wrongful Secret Commissions.

45. Defendants Lukashok, Moerdler and Mintz Levin knew of the Secret Commissions being paid by the Property sellers, real estate brokers and/or mortgage brokers to Defendants Arfa, Shpigel, Zamir, Harlem Holdings, Harlem Acquisition, AmElite, Aubrey, 42nd Street, Tammaz and Elul, but failed to disclose these facts to their clients, the Property LLCs and their investor members.

46. Defendants Lukashok and Mintz Levin accepted custody in trust accounts of the funds of the investor-members of the Property LLCs and were obligated to fully and accurately disclose and account for the use and disbursement of these funds to the investor-members for whom the funds were held.

47. Upon information and belief, Defendants Mintz Levin, Moerdler and Lukashok structured the LLC Properties acquisitions in a manner to conceal the Secret Commissions paid to the Defendants, to the detriment of their clients, the Property LLCs and their investor members.

48. Upon information and belief, defendants Mintz Levin, Moerdler and Lukashok organized and/or owned the defendant companies to whom the Secret Commissions were paid – Aubrey, 42nd Street Realty, Tammaz and Elul; negotiated and drafted the brokerage agreements with sellers of the Properties; funneled payments of Secret Commissions through their firm's bank accounts, and took other steps to plan and carry out the scheme to collect the Secret Commissions.

49. Upon information and belief, defendants Lukashok, Moerdler and Mintz Levin failed to disclose the Secret Commissions to the Property LLCs and their investor

members because Lukashok, Moerdler and Mintz Levin also represented and gave preference to the conflicting interests of defendants Arfa, Shpigel and Zamir, due to the fact that Lukashok, Moerdler and Mintz Levin received and retained shares of the Secret Commissions, and/or because Arfa, Shpigel and Zamir caused the Property LLCs to pay excessive and unreasonable legal fees to Lukashok, Moerdler and Mintz Levin that would not have been paid but for their active assistance in obtaining and disguising the Secret Commissions for defendants Arfa, Shpigel and Zamir.

Details Regarding Defendants' Scheme

50. Defendants continue to resist Plaintiffs' efforts to ascertain the details as to how Defendants implemented their scheme to obtain the Secret Commissions. To date, Plaintiffs have been able to best piece together the details of Defendants' scheme as it relates to the transactions whereby 124 LLC, 162 LLC and 147 LLC acquired the Properties referred to in paragraph 27, ante, (the "124 Properties", the "162 Properties" and the "147 Properties", respectively).

51. Defendants' desire and efforts to keep the scheme as to the commissions secret, however, is clear.

(i) In the 147 LLC property acquisition, the seller's closing statement - which would not go to investors - specifically lists brokerage fees paid to Massy Knakal (\$247,917), defendant Aubrey Realty (\$412,500) and defendant American Elite Properties (\$137,500). On the other hand, in the contract of sale, which had a possibility of ending up in the hands of the investors (and which was signed by Gadi Zamir on behalf of Harlem Holdings as purchaser and identified Edward Lukashok as attorney for the purchaser), the line for the identity of the brokers on the transaction is blank or whited out.

(ii) In an e-mail dated August 14, 2004, responding to advice from Moerdler as to the status of his and Lukashok's work to structure the commission transactions for the acquisition of the 124 LLC and 162 LLC properties, defendant Arfa specifically warned Moerdler: "Please note the agreements between Aubrey and us are strictly confidential and maintained only by Gadi and myself, and now you. Copies should not go to anyone else in the office."

(iii) Then, after the February 2005 closing of the 124 LLC and 162 LLC transactions, Moerdler deleted from the draft closing statements all reference to the commission agreements with defendants Elul and Tammaz.

124 Properties and 162 Properties

52. 124 LLC acquired the four 124 Properties for a total purchase price of \$12,900,000. As part of the same transaction, 162 LLC acquired the two 162 Properties for a total purchase price of \$4,850,000.

53. The transaction by which 124 LLC and 162 LLC acquired their Properties also involved the sale of certain properties not at issue in this action to LLCs owned and controlled and/or managed by defendants Arfa and Shpigel. The description of payments made to Defendants set forth in the paragraphs below reflects only those payments that correspond to the 124 Properties and 162 Properties acquisitions, unless otherwise noted.

54. The original contract of sale for the 124 and 162 Properties acquisitions was dated as of August 2004, and showed Harlem Holdings as the Purchaser of the Properties.

55. The original contract also provided that GFI Realty Services ("GFI") and Aubrey were the sole real estate brokers with respect to the acquisition transactions.

56. The executed contract, however, has handwritten annotations and cross-outs (a) changing the date to September 8, 2004; (b) changing the Purchaser to Harlem Acquisition; and (c) substituting Tammaz and Elul as the named brokers instead of Aubrey (which was deleted).

57. But Harlem Acquisition was not even formed until two months later, in November 2004.

58. Similarly, Tammaz was organized only as of August 19, 2004, and its registration statement identified defendant Lukashok as its agent for service of process.

59. Finally, Elul was not organized until September 18, 2004, and its registration statement identified Mintz Levin as its agent for service of process.

60. The contract was executed by Zamir on behalf of Harlem Acquisition.

61. Also on or about September 8, 2004, Harlem Acquisition (via Zamir) and Tammaz and Elul (via Lukashok) entered into brokerage agreements with the sellers whereby Tammaz and Elul (which were not licensed real estate brokers) would each receive \$1,350,000 for purported real estate brokerage fees for the acquisition transactions. Of this amount, on information and belief, a combined \$2,387,966 was attributable to the 124 and 162 Properties acquisitions.

62. The closing of these acquisitions took place on February 25, 2005.

63. At the closing, (or at least "as of" the closing date) the following additional documents were executed:

(a) Harlem Acquisition (via Zamir), entered into an amendment of the contract of sale dated as of February 25, 2005.

(b) Harlem Acquisition (via Zamir) and Tammaz and Elul (via Lukashok) entered into amended brokerage commission agreements with the sellers, whereby Tammaz and Elul were to receive purported brokerage