

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

HARLAN GOLDBERG and H GOLD LLC,

*Plaintiffs,*

vs.

BESPOKE REAL ESTATE LLC, BESPOKE LUXURY  
MARKETING LLC, BESPOKE REAL ESTATE  
FLORIDA LLC, and PMG RESIDENTIAL, LLC,

*Defendants.*

Index No.:

**COMPLAINT**

**JURY TRIAL  
DEMANDED**

Plaintiffs HARLAN GOLDBERG and H GOLD LLC (“Plaintiffs”), by their attorneys, ADAM LEITMAN BAILEY, P.C., complaining of Defendants BESPOKE REAL ESTATE LLC, BESPOKE LUXURY MARKETING LLC, BESPOKE REAL ESTATE FLORIDA LLC, and PMG RESIDENTIAL, LLC (collectively, “Defendants”), hereby allege as follows:

**PRELIMINARY STATEMENT**

1. This is an action by Plaintiffs, an employee of a real estate brokerage and the employee’s wholly owned company through which he transacts business, to recover commissions owed to them on sales of high-end residential real estate in Florida. The brokerage, Defendant Bespoke Real Estate Florida LLC (“Bespoke Florida”), branded itself as dealing only in properties worth in excess of \$10,000,000, yet stinted Plaintiffs on their share of the lucrative commissions Bespoke Florida received from transacting in such properties, in the transactions which Plaintiffs had made possible through their efforts.

**PARTIES**

2. Plaintiff Harlan Goldberg (“Goldberg”) is a natural person.
3. Plaintiff H Gold LLC (“Gold”) is a limited liability company.
4. Goldberg is the sole owner and member of Gold.

5. Prior to in or about April 2019, and from in or about June 2020 to the present, Goldberg has been a real estate broker duly licensed by the Department of Business and Professional Regulation of the State of Florida to broker real estate transactions in the state of Florida.

6. At all relevant times, Goldberg has transacted all of his real estate brokerage business through Gold, and has received, through Gold, the commissions he earned on real estate transactions.

7. Defendant Bespoke Real Estate LLC (“Bespoke RE”) is a limited liability company formed under the laws of the State of New York, with a principal place of business in the State of New York.

8. Defendant Bespoke Luxury Marketing LLC (“Bespoke Marketing”) is a limited liability company formed under the laws of the State of New York, with a principal place of business in the State of New York.

9. Defendant Bespoke Real Estate Florida LLC (“Bespoke Florida”) is a limited liability company.

10. Bespoke RE and Bespoke Florida are real estate brokerage firms that represent both buyers and sellers in residential real estate transactions. They represent both buyers and sellers. They participate only in deals in which the sale price is \$10 million or greater. Thus, they appeal to a wealthy clientele.

11. Bespoke RE and Bespoke Florida are related entities. They share common ownership and common management.

12. Bespoke Marketing ostensibly serves as the marketing arm for Bespoke RE and Bespoke Florida. It ostensibly performs marketing services for Bespoke RE and Bespoke Florida.

It shares common ownership and common management with Bespoke RE and Bespoke Florida. Bespoke Marketing, Bespoke RE, and Bespoke Florida are related entities. (Collectively, Bespoke RE, Bespoke Florida, and Bespoke Marketing are the “Bespoke Entities.”)

13. Bespoke RE and Bespoke Marketing, the first Bespoke Entities formed, were formed prior to 2019, in the State of New York.

14. Bespoke Florida was formed in or about March 2020.

15. Cody Vichinsky (“C. Vichinsky”) is a natural person who is, upon information and belief, a founding partner, and the president, of the Bespoke Entities.

16. C. Vichinsky resides in the State of New York.

17. Zachary Vichinsky (“Z. Vichinsky”) is a natural person who, upon information and belief, a founding partner, and the CEO and managing member, of the Bespoke Entities. (Collectively, C. Vichinsky and Z. Vichinsky are the “Vichinskys.”)

18. Upon information and belief, Defendant PMG Residential, LLC (“PMG Residential”) is a limited liability company.

19. PMG Residential is being named as a defendant herein solely as a nominal defendant as a stakeholder.

### **Venue**

20. Venue as to the claims asserted herein is proper in this county because the Goldberg Agreement, as that term is defined below, provides for the courts located in the County of New York to be the exclusive venue of any action in New York state courts for all matters arising out of, in connection with, or relating to the Goldberg Agreement. (See Exhibit 1, Goldberg Agreement, p. 5, ¶ 13.)

21. In addition, the Bespoke Entities’ main offices are in the State of New York.

## **Background**

### **Plaintiffs' Employment with the Bespoke Entities**

22. In or about April 2019, Plaintiffs began working for Bespoke RE and Bespoke Marketing pursuant to a written agreement that Goldberg signed on April 4, 2019 (Exhibit 1 hereto) (the “Goldberg Agreement”).

23. The Goldberg Agreement was between Bespoke RE and Bespoke Marketing on the one side, and Goldberg and Gold on the other. (Exhibit 1, Goldberg Agreement, p. 1.)

24. Exhibit A to the Goldberg Agreement provides for compensation to Plaintiffs. (Exhibit 1, Goldberg Agreement, Exhibit A, pp. 7-8.) This compensation includes commissions, the terms of which are set forth in Exhibit B to the Goldberg Agreement. (*See id.*, Compensation ¶ 2 [citing Exhibit B]; Exhibit 1, Goldberg Agreement, Exhibit B [setting forth categories of transactions eligible for commissions; “Milestones,” or circumstances in which each category applies; compensation amounts and percentages; compensation method; and obligations].) It also includes a fixed annual salary of \$150,000, to be paid out in installments every two weeks. (Exhibit 1, Goldberg Agreement, Exhibit A p. 7, Compensation ¶ 1(A).)

25. The compensation to Plaintiffs, under the Goldberg Agreement, has always been paid to Gold.

26. In or about March 2021, Goldberg became the president of Bespoke Florida.

27. Goldberg’s responsibilities as president of Bespoke Florida included managing Bespoke Florida’s office in Miami Beach, Florida (“Miami Beach Office”), and the procurement of buyers and/or sellers for residential real estate transactions brokered by Bespoke Florida.

28. When Goldberg became the president of Bespoke Florida, Gold ceased receiving compensation from Bespoke RE and Bespoke Marketing, and began receiving compensation from Bespoke Florida.

29. In 2022, Gold received a Form 1099-NEC reflecting the compensation Plaintiffs had received in 2021 for Goldberg's work pursuant to the Goldberg Agreement. This Form 1099-NEC (the "Form 1099-NEC") listed, as the "Payer," "Bespoke Real Estate Florida LLC." (Exhibit 2 hereto, Form 1099-NEC.)

30. The Form 1099-NEC encompassed all compensation that Goldberg or Gold received for any work they performed for any of the Bespoke Entities in 2021.

31. Bespoke Florida's payment of commissions and salary to Gold, and its issuance of a 1099-NEC to Gold, constituted a modification of the Goldberg Agreement to add Bespoke Florida as an additional contracting party on the side of Bespoke RE and Bespoke Marketing.

32. In or about March 2021, Goldberg began procuring buyers and sellers, on behalf of Bespoke Florida, for transactions involving real property in the state of Florida.

33. The Goldberg Agreement does not reference Bespoke Florida, which had not yet been formed as of the time of the Goldberg Agreement, or Goldberg's role as president thereof.

34. Although the Goldberg Agreement separates out commissions owed by property location and type of service provided, nothing in the Goldberg Agreement addresses transactions involving real property in the state of Florida, as at issue in this case. Therefore, any such transactions are outside the scope of the Goldberg Agreement and must be the subject of a new oral agreement.

35. Beginning when Goldberg began procuring, on behalf of Bespoke Florida, buyers and sellers for transactions involving real property in the state of Florida, Bespoke Florida paid Gold commissions on such transactions.

36. Goldberg's procurement, on behalf of Bespoke Florida, of buyers and sellers for transactions involving real property in the state of Florida, and Bespoke Florida's payment to Gold

of commissions on such transactions, constituted a modification of the Goldberg Agreement such that it encompassed commission payments to Gold for such performance by Goldberg (the “Florida Modification”).

### **The Override Agreement**

37. When Bespoke Florida’s Miami Beach Office first opened in early 2021, Z. Vichinsky promised Plaintiffs, through Goldberg, that they would receive a ten percent (10%) override on the commissions received on all transactions that were brokered through the Miami Beach Office, *i.e.*, they would receive ten percent (10%) of the total commissions paid to Bespoke Florida on all transactions, regardless of whether Plaintiffs had any personal involvement in such transactions (the “Override Agreement”).

38. The Override Agreement was repeated several times to Plaintiffs, through Goldberg, by officers of Bespoke Florida, including both Z. Vichinsky and Kayt Gray Schadley (“Gray”), who was and is the Vice President of Client Services for the Bespoke Entities and the broker of record in Florida for Bespoke Florida, between early 2021 and September 2022.

39. The Override Agreement constitutes a valid modification of the Goldberg Agreement and Florida Modification and a contractual obligation thereunder.

40. Plaintiffs have performed all of their obligations under the Goldberg Agreement and Florida Modification.

41. Between the first time the Override Agreement was first made and Bespoke Florida’s termination of Goldberg, as discussed below, the Miami Beach Office brokered multiple transactions that had, during that period, gone to contract.

42. During that period, the Miami Beach Office brokered at least two transactions on which Plaintiffs did not receive a brokerage commission, which had gone to contract. Even

assuming *arguendo* Plaintiffs were not entitled to a brokerage commission on those transactions, they were still entitled to a 10% override pursuant to the Override Agreement.

43. Nevertheless, Bespoke Florida has never paid to Plaintiffs any monies pursuant to the Override Agreement.

#### **Goldberg Brokers the Waldorf Transaction**

44. The Waldorf Astoria Residences Miami (“Waldorf”) is a high-end residential development being constructed in Miami, Florida.

45. In 2021, Goldberg, as president of Bespoke Florida, learned of the Waldorf while researching upcoming new developments in Miami.

46. In 2021, Goldberg contacted PMG Downtown Developers, LP (“PMG Downtown”), the developer of the Waldorf, in an attempt to obtain, on behalf of Bespoke Florida, the right to sell units thereof.

47. Goldberg obtained, for Bespoke Florida, the semi-exclusive right to sell eight specified units within the Waldorf (the “Listed Waldorf Units”).

48. Goldberg learned of the existence of units within the Waldorf, other than the Listed Waldorf Units, that had not yet been sold (“Unlisted Waldorf Units”).

49. The Unlisted Waldorf Units included Unit 8802 and the “Lanai Unit,” which consisted of two penthouses, *i.e.*, PH 101 and PH 102, which were to be located on the 90th floor of the Waldorf. (Collectively, Unit 8802 and the “Lanai Unit” are the “Waldorf Transaction Units.”)

50. Goldberg called several contacts in the real estate sales industry in an effort to find potential purchasers for the Waldorf Transaction Units.

51. One contact suggested, as a possible purchaser, Jake Vogel (“J. Vogel”), who had a Miami listing with Goldberg.

52. Goldberg and his sales contact at PMG Downtown made a Zoom presentation to J. Vogel to persuade him to purchase one of the Waldorf Transaction Units.

53. After the presentation, J. Vogel declined to purchase any of the Waldorf Transaction Units.

54. Goldberg then discussed, with a contact, other potential purchasers of Waldorf Transaction Units. The contact mentioned, as a possibility, J. Vogel's father, Steven Vogel ("S. Vogel").

55. PMG Downtown had earlier informed Goldberg that the Lanai Unit had been sold. However, Goldberg saw that the Lanai Unit, which was one of a kind within the Waldorf and would have a huge amount of outdoor space, had significant value.

56. Goldberg called his sales contact at PMG Downtown and asked about the status of the Lanai Unit. The sales contact informed Goldberg that the Lanai Unit was not yet sold, but it had been contracted to be sold to a would-be purchaser in Switzerland.

57. Goldberg asked his sales contact at PMG Downtown and asked if the contract could be withdrawn and Goldberg could offer the Lanai Unit to Goldberg's potential buyer.

58. Goldberg's sales contact at PMG Downtown told Goldberg that they would do so for Goldberg, but Goldberg had to get his potential buyer to buy quickly.

59. In or about early October 2021, Goldberg telephoned S. Vogel. Goldberg told S. Vogel about the Waldorf and about the Lanai Unit. Prior to Goldberg's call, S. Vogel had not known about the Lanai Unit, or even about the Waldorf as a whole.

60. Prior to being first contacted by Goldberg, S. Vogel had not contacted Bespoke Florida or requested that Bespoke Florida search for a property for him to acquire.



61. During this first phone call between Goldberg and S. Vogel, S. Vogel expressed interest in the Lanai Unit.

62. Within approximately one week of the first phone call between Goldberg and S. Vogel, an in-person meeting was held at PMG Downtown's office in Miami, Florida, among S. Vogel, Goldberg, and Goldberg's sales contact at PMG Downtown. Goldberg set up this meeting and invited S. Vogel, who lived in Palm Beach, Florida, to it. While at this meeting, Goldberg showed S. Vogel, within PMG Downtown's office's "Experience Center," an artistic rendering of what the Lanai Unit would look like when complete, which further piqued S. Vogel's interest. At this meeting, Goldberg also discussed with S. Vogel the possibility of purchasing additional units at the Waldorf, including Unit 8802. S. Vogel expressed interest in purchasing Unit 8802 as well.

63. During this first in-person meeting with S. Vogel, Goldberg curated a lunch with PMG Downtown's in-house sales team, and ordered the delivery of some of S. Vogel's favorite dishes from a well-known Miami restaurant.

64. Over a period of months, lasting until February 2022, Goldberg negotiated with PMG Downtown, on behalf of S. Vogel, the purchase of the Lanai Unit and Unit 8802 to S. Vogel and his wife, Caroline Vogel ("C. Vogel") (collectively, S. Vogel and C. Vogel are "the Vogels").

65. In the course of negotiations, Goldberg managed to obtain for the Vogels a price reduction for the Waldorf Transaction Units in the millions of dollars. He also obtained for the Vogels direct access, via Zoom meetings, to the architect of the Waldorf.

66. During the course of these negotiations, Goldberg curated two more in-person lunches with S. Vogel at PMG Downtown's sales office.

67. Goldberg then had several more lunches, in Palm Beach, with the Vogels, where Goldberg discussed opportunities at the Waldorf and how great a deal it would be.

68. On or about January 18, 2022, final terms were agreed to for the Vogels' purchase of the Waldorf Transaction Units, including the price for each unit.

69. On January 25, 2022, Goldberg met the Vogels in person in Palm Beach, and over lunch the Vogels signed a contract to purchase the Waldorf Transaction Units (such contract being the "Waldorf Contract"). At this lunch, S. Vogel was still discussing with Goldberg the terms of the Waldorf Contract, but Goldberg managed to persuade S. Vogel to sign the Waldorf Contract.

70. Under the Waldorf Contract, the Vogels purchased Unit 8802 for \$9,000,000, and PH 101 and PH 102 in the Lanai Unit for \$17,000,000 each, comprising a total of \$43,000,000 (the "Waldorf Transaction").

71. Under Florida law, a purchaser of a unit in a new real estate development may cancel the contract within fifteen (15) days of signing.

72. In early February 2022, S. Vogel was having misgivings about the Waldorf Contract, expressing concerns that the Waldorf Transaction Units were not the right place to purchase, and that the price was too high.

73. S. Vogel sent text messages to Goldberg expressing these concerns. Goldberg was, at the time of these text messages, attending a wedding in Connecticut.

74. To save the Waldorf Transaction, Goldberg, instead of returning to Florida, went from Connecticut to New York City and took a plane from there to Chicago, Illinois, where S. Vogel and his family were temporarily staying while S. Vogel was attempting to sell a penthouse unit he owned. Goldberg did so at his own expense.

75. Goldberg visited S. Vogel and his family in Chicago for approximately four or five days.

76. During this period, Goldberg viewed the unit in Chicago that S. Vogel desired to sell, met with the interior designer, and discussed with S. Vogel listing it.

77. During this period, Goldberg got to know S. Vogel and met his family, and they established a bond of trust.

78. This trust enabled Goldberg to save the Waldorf Transaction. Goldberg was able to persuade S. Vogel to complete the Waldorf Transaction if the deposit schedule under the Waldorf Transaction were amended. Goldberg then succeeded in negotiating with PMG Downtown a deposit schedule for the Waldorf Transaction that differed, in terms of dates and amounts, from any other deposit schedule in any other sale PMG Downtown had made of any units in the Waldorf. This amended deposit schedule (“Amended Deposit Schedule”) was executed in the form of addenda to the contracts to purchase each of the Waldorf Transaction Units. The Vogels and PMG Downtown executed these addenda.

79. The Vogels completed the Waldorf Transaction because of the Amended Deposit Schedule. In the absence of the Deposit Schedule Addenda that Goldberg negotiated, S. Vogel would have cancelled the Waldorf Transaction.

80. Subsequent to the sale to the Vogels, Goldberg and S. Vogel have had a multitude of conversations, and meetings, and Goldberg has been invited to multiple events held by the Vogels, including C. Vogel’s birthday party.

#### **Commissions to Bespoke Florida Under the Waldorf Transaction**

81. The Waldorf Transaction was brokered pursuant to three separate co-broker agreements, one for each of the individual units, between PMG Residential as the “Listing Broker” and Bespoke Florida as the “Cooperating Broker” (the “Co-Broker Agreements”). (Exhibit 3 hereto, Co-Broker Agreements.)

82. The Co-Broker Agreements provided that Bespoke Florida would receive from PMG Residential, as its commission on the Waldorf Transaction, eight percent (8%) of the total unit purchase price for Unit 8802 (Exhibit 3, Co-Broker Agreements, first page), and seven percent (7%) of the total unit purchase prices for PH 101 and PH 102 (*id.*, fifth and ninth pages).

83. Given the purchase prices under the Waldorf Contract, Bespoke Florida was to receive eight percent (8%) of \$9,000,000, or \$720,000, on the sale of Unit 8802, and seven percent (7%) of \$34,000,000, or \$2,380,000, on the sale of the Lanai Unit, for a total commissions amount of \$3,100,000.

84. The Co-Broker Agreements provided that the commissions to Bespoke Florida would be payable in two installments:

- (a) Fifty percent (50%), upon thirty days after the later of (i) the closing of PMG Downtown's construction loan with respect to the Waldorf, and (ii) the Vogels' payment to PMG Downtown of an earnest money deposit equal to or exceeding 20% of the purchase price set forth in the applicable sales agreement (Exhibit 3, Co-Broker Agreements, first page ¶ 1(a)(i), fifth page ¶ 1(a)(i), and ninth page ¶ 1(a)(i)); and
- (b) Fifty percent (50%), upon thirty days after the later of (i) one year following closing of PMG Downtown's construction loan with respect to the Waldorf, and (ii) the Vogels' payment to PMG Downtown of an earnest money deposit equal to or exceeding thirty percent (30%) of the purchase price set forth in the applicable sales agreement (Exhibit 3, Co-Broker Agreements, first page ¶ 1(a)(ii), fifth page ¶ 1(a)(ii), and ninth page ¶ 1(a)(ii)).

**Bespoke Florida Agreed to Pay Plaintiffs 60% of Bespoke Florida's Commission on the Waldorf Transaction**

85. The Waldorf Transaction was a unique type of transaction for Bespoke Florida, because Goldberg had procured both the seller, since the Waldorf Transaction Units had not been listed for sale with Bespoke Florida, and the purchaser, since the Vogels had not previously asked Bespoke Florida to find them a property to purchase.

86. Accordingly, Gray agreed that Waldorf Transaction was different from the others, and merited a greater percentage commission to Plaintiffs.

87. Gray agreed with Goldberg, and told him orally, in person in the boardroom of the Miami Beach Office, prior to April 2022, that Bespoke Florida would pay Plaintiffs a commission on the Waldorf Transaction in the amount of sixty percent (60%) of the total commissions that Bespoke Florida received in connection with the Waldorf Transaction, and informed Goldberg as such. Such agreement constituted a modification of the Goldberg Agreement and Florida Modification (the "Waldorf Modification").

88. Gray confirmed to Goldberg, at a meeting in April 2022 ("April 2022 Meeting") in Goldberg's office at the Miami Beach Office, that Bespoke Florida would pay Plaintiffs a commission on the Waldorf Transaction of sixty percent (60%) of the total commissions Bespoke Florida received on the Waldorf Transaction..

**Bespoke Florida's Reneging on the Waldorf Modification**

89. Subsequent to the April 2022 Meeting, Kaitlyn Magro ("Magro"), the controller of the Bespoke Entities, informed Goldberg that Bespoke Florida would instead pay Plaintiffs only \$707,650 in commissions on the Waldorf Transaction.

90. Upon information and belief, the Vogels have paid to PMG Downtown, in connection with the Waldorf Transaction, an earnest money deposit of at least fifty percent (50%)

of the purchase prices set forth in the sales agreements applicable to each of the units sold in the Waldorf Transaction.

91. Upon information and belief, PMG Downtown's construction loan with respect to the Waldorf closed in or about November 2022.

92. PMG Residential has not yet paid to Bespoke Florida any portion of the commissions due on the Waldorf Transaction.

93. Under the Goldberg Agreement, Florida Modification, and Waldorf Modification, Plaintiffs are not entitled to payment of commissions on any transaction, including but not limited to the Waldorf Transaction, until after Bespoke Florida has been paid on that transaction.

#### **The Asia Transaction**

94. After S. Vogel had contracted in the Vogel Transaction, he asked Goldberg to assist him in selling an apartment he owned in Miami, Florida, in a building known as "Asia" (the "Asia Apartment").

95. Goldberg, while employed by Bespoke Florida, arranged for Bespoke Florida to list the Asia Apartment for sale.

96. The Asia Apartment was listed for a sale price between \$4,000,000 and \$5,000,000.

97. The Bespoke Entities' business model provides for listing only of units for sale at a price of over \$10,000,000.

98. To avoid acting contrary to the Bespoke Entities' business model, Z. Vichinsky took the listing for the Asia Apartment away from Goldberg and gave it to a subordinate of Goldberg's at Bespoke Florida, Luiza Chiminacio ("Chiminacio"), for Chiminacio to sell through her former employer, another real estate brokerage firm.

99. The Asia Apartment was ultimately sold through this other brokerage firm.

100. Goldberg was the procuring cause of the Asia Transaction.

101. On the night before the closing on the sale of the Asia Apartment (the “Asia Transaction”), the transaction almost collapsed, but Goldberg, through his personal intervention, was able to persuade the Vogels to complete the deal. There was a dispute over whether an expensive painting believed to still be in the Asia Apartment was included in the Asia Transaction, and the Vogels threatened not to close in the event the purchasers did not furnish them with such painting, but Goldberg was able to determine that such painting was, in fact, already in the Vogels’ possession, and the painting in the Asia Apartment was a different painting.

102. At the closing on the Asia Transaction on or about August 22, 2022, payment of a commission was made to Chiminacio’s former employer as the ostensible brokerage firm, which, in turn, paid part of this amount to Bespoke Florida.

103. As far as S. Vogel was aware, Goldberg was the broker involved in the Asia Transaction on the seller’s side.

104. Goldberg was not paid the full commission he otherwise would have received, had the Asia Transaction been brokered by Bespoke Florida in accordance with the listing for the Asia Property, of which Goldberg was the procuring cause.

### **The Parkland Transaction**

105. While employed by Bespoke Florida, Goldberg received, from a friend, the name of a couple, Chris Murphy (“Murphy”) and Tina Broderon (“Broderon”), who were interested in purchasing real property in Florida.

106. Goldberg also procured a listing of real property in a new development, located at 7493 Knight Street, Parkland, FL 33067 (the “Parkland Property”).

107. Goldberg presented the Parkland Property to Murphy and Broderon.

108. While Plaintiffs were employed by Bespoke Florida, Murphy and Broderon contracted to purchase the Parkland Property (the “Parkland Transaction”).

109. Murphy and Broderon closed on the Parkland Transaction on or about December 10, 2022.

110. Goldberg was the procuring cause of the Parkland Transaction, having obtained both the seller and the purchasers of the Parkland Property for Bespoke Florida.

111. Upon information and belief, Bespoke Florida received a commission of approximately \$5,000-\$7,500 on the Parkland Transaction.

112. Bespoke Florida has not paid to Plaintiffs any portion of the commission Bespoke Florida received on the Parkland Transaction.

**The Bespoke Entities as a Single Integrated Enterprise and as Joint Employers**

113. The Bespoke Entities function as a single integrated enterprise and as joint employers.

114. All three of the Bespoke Entities have the same owners, and many of the same officers.

115. The officers of Bespoke RE and of Bespoke Florida are the same persons in the same offices.

116. Z. Vichinsky is a founding partner, and the CEO, of all three of the Bespoke Entities.

117. Z. Vichinsky is the chief decision-maker of all three of the Bespoke Entities.

118. C. Vichinsky is a founding partner, and the president, of Bespoke RE and Bespoke Florida.

119. Michael Cantwell (“Cantwell”) is a founding partner, and the Chief Marketing Officer and Chief Creative Officer, of all three of the Bespoke Entities.

120. Gray is the Vice President of Client Services of all three of the Bespoke Entities.

121. Magro is the controller of all three of the Bespoke Entities.



122. The Bespoke Entities disregard distinctions between each individual company among them, and other corporate formalities.

123. For example, the Goldberg Agreement permitted payment of Plaintiffs' salary to be made from any of Bespoke RE or Bespoke Marketing's "company or affiliated entity accounts." (Exhibit 1, Goldberg Agreement, Exhibit A p. 7, Compensation ¶ 1(A).)

124. Bespoke RE has a web site, [www.bespokerealestate.com](http://www.bespokerealestate.com). This web site does not distinguish between Bespoke RE and Bespoke Florida, although it refers to the sale of properties in both New York State and in Florida, and to separate offices located in New York State ("New York Office") and Miami Beach, Florida (Miami Beach Office).

125. Until approximately a year and a half ago, Bespoke RE and Bespoke for years shared the same office space in the New York Office, with the same administrative assistant answering phones for both of them.

126. One officer of Bespoke Entities, Gray, has had control over hiring employees of all Bespoke Entities, regardless of the company or office at which they worked. For example, she prepared the contracts for employees working out of the New York Office, including but not limited to Jarret Willis ("Willis"), a licensed real estate sales associate, and employees working out of the Miami Beach Office, including but not limited to Goldberg and Chiminacio.

127. All payroll for the Bespoke Entities is run out of one office, the New York Office.

128. All employee records for all employees of the Bespoke Entities are maintained in one office, the New York Office.

129. One officer, Joseph De Sane ("De Sane"), the managing director of Bespoke RE and Bespoke Florida, oversees all real estate transactional work in all of the offices of Bespoke RE and Bespoke Florida.

130. De Sane receives an override on all real estate transactions made by all of the offices of Bespoke RE and Bespoke Florida.

131. The Bespoke Entities also share officers and employees between individual companies and their respective offices.

132. For example, from early 2021 to the present, Z. Vichinsky has spent most of the year working out of Bespoke Florida's Miami Beach Office, but between in or about June 2021 and in or about August 2021, and again between in or about June 2022 and in or about August 2022, Z. Vichinsky worked out of Bespoke RE's New York Office. Even while working out of the Miami Beach Office, Z. Vichinsky frequently visits the New York Office.

133. Gray also frequently shuttled between the Miami Beach Office and New York Office, before moving to Cincinnati approximately a year and a half ago.

134. Beginning with the inception of the Miami Beach Office in early 2021, the Bespoke Entities required Goldberg to visit the New York Office twice per month, to meet there with the Vichinskys and Cantwell, and with Bespoke RE's employees with regard to real estate transactions and with Bespoke Marketing's employees with regard to marketing.

135. The Bespoke Entities consistently move lower-ranking employees from one office to another. Ira Hasson ("Hasson"), a business development manager with the Bespoke Entities, and Carter Young, a concierge with the Bespoke Entities, work most of the year out of Bespoke Florida's Miami Beach Office, but during the summers work out of Bespoke RE's New York Office.

136. Willis was employed by Bespoke RE. From in or about April 2021 to in or about September or October of 2021 and from in or about April 2022 to in or about mid-December 2022, Willis worked at the New York Office on real estate transactions in New York State brokered by

Bespoke RE. On the other hand, from in or about September or October of 2021 to in or about April of 2022, he was moved to the Miami Beach Office and worked on deals in Florida brokered by Bespoke RE during that period.

137. The Bespoke entities had Lauren Canetti (“Canetti”), a Bespoke RE employee in the New York Office, work from there on real estate transactions in Florida, which ordinarily would have been within Bespoke Florida’s purview. The Bespoke Entities also had Canetti frequently visit the Miami Beach Office.

138. Employees with Bespoke RE located at the New York Office assist employees with Bespoke Florida located at the Miami Beach Office. For example, Anastasia Gromova, a Bespoke RE employee at the New York Office, has assisted Judith Pucknat, a Bespoke Florida employee at the Miami Beach Office, with selling Florida property listings. In addition, Bespoke RE employees at the New York Office ask Bespoke Florida employees at the Miami Beach office to assist them in marketing listings in the New York market, and Bespoke Florida employees at the Miami Beach office ask Bespoke RE employees at the New York Office to assist them in marketing listings in the Florida markets.

139. In internal presentations and discussions, officers and employees of the Bespoke Entities refer to the New York Office as the “mother ship,” and the Miami Beach Office as a subordinate office.

140. Many of the financial aspects of Bespoke Florida’s Miami Beach Office are dependent upon Bespoke RE’s New York Office.

141. For example, “deal sheets” on transactions in Florida real property, such as the Waldorf Transaction, can only be originated at the New York Office.

142. Similarly, “DocuSigns” – documents, in connection with real estate transactions, that can be signed electronically – may only be created at the New York Office.

143. Upon information and belief, Bespoke Florida does not even have a bank account in Florida. Prior to direct deposit being an optional means for the transfer of monies, in order to deposit checks it received, the Miami Beach Office needed to send them physically to the New York Office to be deposited. Upon information and belief, all transactions of the Miami Beach Office were banked through the New York Office.

144. Accordingly, the Bespoke Entities should be treated as a single integrated enterprise and a single employer, and as joint employers, such that each of the Bespoke Entities shares the liabilities of the others.

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

##### **(Declaratory Judgment as to Waldorf Transaction Commissions)**

145. Plaintiffs repeat and reiterate each and every allegation set forth above as if fully set forth herein.

146. Plaintiffs performed in accordance with the Goldberg Agreement, Florida Modification, and Waldorf Modification, in effectuating the Waldorf Transaction.

147. At all times since prior to when he began working on the Waldorf Transaction, the Goldberg has been a real estate broker duly licensed to broker real estate transactions in the State of Florida.

148. Under the Goldberg Agreement, Florida Modification, and Waldorf Modification, Plaintiffs had a valid and binding contract with the Bespoke Entities.

149. Plaintiffs have performed all of their obligations under the Goldberg Agreement, Florida Modification, and Waldorf Modification.

150. Plaintiffs were the procuring cause of the Waldorf Transaction.

151. Plaintiffs are entitled, under the Goldberg Agreement, Florida Modification, and Waldorf Modification, to receive sixty percent (60%) of the commissions to be received by Bespoke Florida under the Co-Broker Agreements, or \$1,860,000.

152. In the event that Bespoke Florida were not to pay to Plaintiffs sixty percent (60%) of the commissions Bespoke Florida were to receive under the Co-Broker Agreements, as it has informed Plaintiffs it intends to do, Bespoke Florida would breach the Goldberg Agreement as modified by the Florida Modification and Waldorf Modification.

153. In the alternative, assuming *arguendo* that the Waldorf Modification did not modify the Goldberg Agreement and Florida Modification to require that Plaintiffs receive a sixty percent (60%) commission on the Waldorf Transaction, Plaintiffs are entitled to a fair and reasonable commission for having procured the Waldorf Transaction, and to a commission that reflects the customary rate in the community in which the Waldorf is located at the time when the Waldorf Transaction was procured, and the customary percentage amount of a commission under such circumstances is sixty percent (60%) of the commission that Bespoke Florida is to receive under the Co-Broker Agreements, or \$1,860,000.

154. In the alternative to a contract claim, assuming *arguendo* that the Waldorf Modification did not modify the Goldberg Agreement and Florida Modification to require that Plaintiffs receive a sixty percent (60%) commission on the Waldorf Transaction, were Bespoke Florida to receive the commissions for the Waldorf Transaction under the Co-Broker Agreement, and not pay to Plaintiffs a sixty percent (60%) commission on the Waldorf Transaction, Plaintiffs would have a claim for unjust enrichment against the Bespoke Entities in that:

- (a) Plaintiffs conferred a benefit upon Bespoke Florida by procuring the Waldorf Transaction, and the payment of \$3,100,000 in commissions to Bespoke Florida;
- (b) Such commissions would enrich Bespoke Florida;
- (c) At the expense of Plaintiffs, who had expended extraordinary efforts to procure the Waldorf Transaction for Bespoke Florida, only not to receive compensation commensurate with those efforts; and
- (d) It would be against equity and good conscience for Bespoke Florida to retain the commissions for the Waldorf Transaction under the Co-Broker Agreement without paying to Plaintiffs sixty percent (60%) of same.

155. In the alternative to a contract claim, assuming *arguendo* that the Waldorf Modification did not modify the Goldberg Agreement and Florida Modification to require that Plaintiffs receive a sixty percent (60%) commission on the Waldorf Transaction, were Bespoke Florida to receive the commissions for the Waldorf Transaction under the Co-Broker Agreement, and not pay to Plaintiffs a sixty percent (60%) commission on the Waldorf Transaction, Plaintiffs would have a claim for promissory estoppel against the Bespoke Entities in that:

- (a) Bespoke Florida's promise to Plaintiffs of a sixty percent (60%) commission on the Waldorf Transaction was a clear and ambiguous promise;
- (b) Plaintiffs reasonably and foreseeably relied on Bespoke Florida's promises to their detriment by working for Bespoke Entities and by not seeking other employment opportunities;

- (c) Bespoke Entities reasonably and foreseeably expected that Plaintiffs would act, or refrain from acting, in reliance upon Bespoke Florida's promises;
- (d) Plaintiffs were injured by such reliance, in that Bespoke Florida did not pay them their promised commissions.

156. In the alternative to a contract claim, assuming *arguendo* that the Waldorf Modification did not modify the Goldberg Agreement and Florida Modification to require that Plaintiffs receive a sixty percent (60%) commission on the Waldorf Transaction, were Bespoke Florida to receive the commissions for the Waldorf Transaction under the Co-Broker Agreement, and not pay to Plaintiffs a sixty percent (60%) commission on the Waldorf Transaction, Plaintiffs would have a claim for quantum meruit against the Bespoke Entities in that:

- (a) Plaintiffs performed, in good faith, their services in procuring the seller and purchaser in the Waldorf Transaction;
- (b) Bespoke Florida, the person to whom such services were rendered, accepted such services by brokering the Waldorf Transaction;
- (c) Plaintiffs expected compensation for their services in procuring the Waldorf Transaction; and
- (d) The reasonable value of the services rendered by Plaintiff was that which Gray arrived at and promised to Plaintiffs, *i.e.*, sixty percent (60%) of the commissions Bespoke Florida was to receive in connection with the Waldorf Transaction.

157. Bespoke Entities have taken the position that Plaintiffs are entitled to commissions, from the amount to be received by Bespoke Florida under the Co-Broker Agreements, in the amount of only \$707,650. However, the position of Bespoke Entities is incorrect.

158. PMG Residential presently holds the funds which are the subject of the dispute between Plaintiffs and the Bespoke Entities, and is therefore a stakeholder with respect to this declaratory judgment action.

159. There is a justiciable controversy among Plaintiffs, Bespoke Entities, and PMG Residential with regard to the proper allocation of the total commissions payable on the Waldorf Transaction.

160. There is no adequate remedy at law.

161. Plaintiffs are entitled to a declaratory judgment against the Bespoke Entities holding that Plaintiffs are entitled to \$1,860,000 in commissions in connection with the Waldorf Transaction.

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

#### **(Injunctive Relief Against Bespoke Florida and PMG Residential)**

162. Plaintiffs repeat and reiterate each and every allegation set forth above as if fully set forth herein.

163. The Vogels have already paid to PMG Downtown an earnest money deposit in the amount equal to, or exceeding, 20% of the purchase prices of each of the units that are the subject of the Waldorf Transaction, and did so at least thirty (30) days prior to the date of this complaint.

164. The closing of PMG Downtown's construction loan with respect to the Waldorf has occurred, and did so at least thirty (30) days prior to the date of this complaint.

165. Thus, at least fifty percent (50%) of the commissions due to Bespoke Florida in accordance with the Co-Broker Agreements is due now.

166. PMG Residential has not yet released to Bespoke Florida any part of the commissions due on the Waldorf Transaction.



167. PMG Residential thus presently holds the funds payable to Bespoke Florida as commissions in connection with the Waldorf Transaction (the “Waldorf Commission Funds”).

168. The Waldorf Commission Funds are a specific, identifiable fund.

169. The funds owed to Plaintiffs in connection with the Waldorf Transaction are part of that specific, identifiable Waldorf Commission Funds.

170. Plaintiffs are threatened with an imminent violation of their right to full commissions on the Waldorf Transaction, in that Bespoke Florida has indicated that it will not pay them such full commissions once it receives the Waldorf Commission Funds.

171. Bespoke Florida, through Z. Vichinsky, has threatened to use any funds it receives in connection with the Waldorf Transaction to finance threatened litigation against Goldberg and others, rather than pay commissions owed to Goldberg and others.

172. Upon information and belief, the Bespoke Entities are in financial distress, and are in the process of attempting to terminate leases they have to property in the Hamptons in New York State, and the Bespoke Entities’ owners are attempting to sell their interests in the Bespoke Entities.

173. Under the aforesaid circumstances, in the event PMG Residential releases to Bespoke Florida the Waldorf Commission Funds, the Bespoke Entities will dissipate such funds without paying to Plaintiffs the portion thereof owed to them.

174. This threat of dissipation represents serious and irreparable harm to Plaintiffs in the event that PMG Residential is not enjoined from releasing the Waldorf Commission Funds to Bespoke Florida.

175. There is no adequate remedy at law.

176. The equities are balanced in Plaintiffs’ favor.

177. Accordingly, Plaintiffs are entitled to imposition of a permanent injunction prohibiting PMG Residential from releasing to Bespoke Florida the Waldorf Commission Funds, and any other funds to which Bespoke Florida may become entitled to under the Co-Broker Agreements, including but not limited to those payable by reason of the Vogels making additional payments to PMG Downtown in connection with the Waldorf Transaction.

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

**(Breach of Contract Against Bespoke Entities)**

178. Plaintiffs repeat and reiterate each and every allegation set forth above as if fully set forth herein.

179. Plaintiffs performed in accordance with the Goldberg Agreement, Florida Modification, and Override Agreement, in procuring, *inter alia*, the Asia Transaction and the Parkland Transaction.

180. At all times since prior to when he began working on the Waldorf Transaction, the Asia Transaction, and the Parkland Transaction, Goldberg has been a real estate broker duly licensed to broker real estate transactions in the State of Florida.

181. Under the Goldberg Agreement, Florida Modification, Waldorf Modification, and Override Agreement, Plaintiffs had a valid and binding contract with the Bespoke Entities.

182. Plaintiffs have performed all of their obligations under the Goldberg Agreement, Florida Modification, Waldorf Modification, and Override Agreement.

183. Plaintiffs were the procuring cause of the Waldorf Transaction, Asia Transaction, and Parkland Transaction.

184. Bespoke Entities have breached the Goldberg Agreement and Florida Modification by not paying Plaintiffs their full commission in connection with the Asia Transaction.

185. Bespoke Entities have breached the Goldberg Agreement and Florida Modification by not paying Plaintiffs any commission in connection with the Parkland Transaction.

186. Bespoke Entities have breached the Override Agreement by not paying Plaintiffs any override in connection with the Asia Transaction, Parkland Transaction, and possibly other transactions of which Plaintiffs are not presently aware.

187. Plaintiffs have been injured by Bespoke Entities' breach of the Goldberg Agreement and Florida Modification, in that Plaintiffs have not received monies to which they are entitled.

188. Plaintiffs have been injured by Bespoke Entities' breach of the Override Agreement, in that Plaintiffs have not received monies to which they are entitled.

189. Plaintiffs are entitled to damages in an amount to be determined at trial.

190. In addition to damages, Plaintiffs seek an accounting and examination of Bespoke Entities' books and records to determine what Plaintiffs were paid according to the Goldberg Agreement and/or Florida Modification and/or Waldorf Modification and/or Override Agreement, a determination of commissions owed but not yet paid on the Asia Transaction and Parkland Transaction, and the amount of commissions owed to Plaintiffs that Plaintiffs are not yet aware of. The amounts owed are believed to be in excess of \$1,000,000.

#### **AS AND FOR A FOURTH CAUSE OF ACTION**

##### **(Promissory Estoppel Against the Bespoke Entities)**

191. Plaintiffs repeat and reiterate each and every allegation set forth above as if fully set forth herein.

192. Statements by Bespoke Florida, through Z. Vichinsky and Gray, to Goldberg that Plaintiffs would be receive a ten percent (10%) override on the commissions received on all

transactions that were brokered through the Miami Beach Office, *i.e.*, the Override Agreement, constituted a clear and definite promise.

193. Plaintiffs reasonably and foreseeably relied upon the Override Agreement by remaining employed by Bespoke Florida at the Miami Beach Office and not seeking other employment opportunities.

194. Plaintiffs were injured by their reliance on the Override Agreement, in that Bespoke Florida did not pay them their override on commissions promised thereunder.

195. Plaintiffs are entitled to damages in an amount to be determined at trial.

196. In addition to damages, Plaintiffs seek an accounting and examination of Bespoke Entities' books and records to determine what Plaintiffs were paid according to the Override Agreement, and a determination of commissions owed but not yet paid to Plaintiffs pursuant to the Override Agreement.

#### **AS AND FOR A FIFTH CAUSE OF ACTION**

##### **(Unjust Enrichment Against the Bespoke Entities)**

197. Plaintiffs repeat and reiterate each and every allegation set forth above as if fully set forth herein.

198. In the alternative to a contract cause of action with regard to the Override Agreement, the Bespoke Entities have been unjustly enriched by receiving Plaintiffs' services without paying Plaintiffs pursuant to the Override Agreement, or for the Asia Transaction or the Parkland Transaction.

199. Bespoke Entities have been enriched by Plaintiffs' conduct with regard to the Override Agreement, Asia Transaction, and Parkland Transaction, in that Plaintiffs procured purchasers and/or sellers for properties in Florida for Bespoke Florida, on which transactions Bespoke Florida has received payment of commissions, and in that Goldberg has managed the

Miami Beach Office, enabling Bespoke Florida to receive commissions on additional transactions conducted by brokers and other sales representatives whom Goldberg supervised.

200. Bespoke Entities have been enriched at Plaintiffs' expense with regard to the Override Agreement, in that Plaintiffs performed the work necessary to obtain the commissions for Bespoke Florida, but Bespoke Florida did not compensate Plaintiffs for that work in accordance with the Override Agreement.

201. Bespoke Entities have been enriched at Plaintiffs' expense with regard to the Asia Transaction and Parkland Transaction, in that Plaintiffs performed the work necessary to obtain the commissions for Bespoke Florida, but Bespoke Florida did not pay commissions to Plaintiffs for those transactions in accordance with the Goldberg Agreement and Florida Modification.

202. It is against equity and good conscience to permit Bespoke Entities to retain the portions of the commissions payable to Plaintiffs pursuant to the Override Agreement and/or on the Asia Transaction and Parkland Transaction.

203. Plaintiffs have been injured by the unjust enrichment of Bespoke Entities, in that Plaintiffs have not received the commissions owed to them pursuant to the Override Agreement and/or on the Asia Transaction and Parkland Transaction.

204. Plaintiffs are entitled to damages in an amount to be determined at trial.

205. In addition to damages, Plaintiffs seek an accounting and examination of Bespoke Entities' books and records to determine what Plaintiffs were paid according to the Override Agreement, and a determination of commissions owed but not yet paid to Plaintiffs pursuant to the Override Agreement and on the Asia Transaction and Parkland Transaction.

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

**(Quantum Meruit Against Bespoke Entities)**

206. Plaintiffs repeat and reiterate each and every allegation set forth above as if fully set forth herein.

207. In the alternative to a contract cause of action with regard to the Override Agreement, Asia Transaction, and Parkland Transaction, Plaintiffs are entitled to recover their share of profits from business they generated for Bespoke Florida, pursuant to the doctrine of quantum meruit.

208. Plaintiffs performed, in good faith, their services under the Goldberg Agreement and Florida Modification and the Override Agreement, by procuring purchasers and/or sellers for properties in Florida for Bespoke Florida, including but not limited to the Asia Transaction and the Parkland Transaction and in that Goldberg has managed the Miami Beach Office, enabling Bespoke Florida to receive commissions on additional transactions conducted by brokers and other sales representatives whom Goldberg supervised.

209. Bespoke Florida, the person to which Plaintiffs rendered such services, accepted such services by brokering transactions generated by the Miami Beach Office, including but not limited to the Asia Transaction and the Parkland Transaction, and by accepting commissions paid pursuant to such transactions.

210. Plaintiffs expected compensation for their services under the Override Agreement, in the form of the 10% of commissions to which they were entitled under the Override Agreement.

211. Plaintiffs expected compensation for their services in connection with the Asia Transaction and the Parkland Transaction, in the amounts commensurate with the percentages of the commissions received by Bespoke Florida that Plaintiffs were paid on similar transactions on which they had procured sellers and/or buyers for Bespoke Florida.

212. Plaintiffs have been injured financially.

213. Plaintiffs are entitled to damages in an amount to be determined at trial.

214. In addition to damages, Plaintiffs seek an accounting and examination of Bespoke Entities' books and records to determine what Plaintiffs were paid according to the Override Agreement, and a determination of commissions owed but not yet paid to Plaintiffs pursuant to the Override Agreement and on the Asia Transaction and Parkland Transaction.

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

**(New York Labor Law § 740, Against Bespoke Entities)**

215. Plaintiffs repeat and reiterate each and every allegation set forth above as if fully set forth herein.

216. Goldberg was an employee of Bespoke Entities.

217. In the alternative, Goldberg was an independent contractor employed by Bespoke Entities.

218. The Bespoke Entities racially discriminated against Willis, a licensed real estate sales associate at Bespoke RE who is African American, by various means. (For a more detailed Charge of Discrimination that Goldberg has filed with the United States Equal Employment Opportunity Commission ("EEOC"), and a more detailed Employment Discrimination Complaint Form that Willis has filed with the New York State Division of Human Rights ("DHR"), detailing the discrimination against Goldberg and Willis by the Bespoke Entities, please go to the following link: <https://www.alblawfirm.com/goldberg-v-bespoke/>. When right to sue letters are received from the EEOC and DHR, a more detailed discrimination lawsuit will be filed against the Bespoke Entities.)

219. The Bespoke Entities discriminated against Willis in that, beginning in or about July 2021, Hasson, an employee of Bespoke Florida who is white, contacted Willis's clients and

demanded that they deal with the Bespoke Entities through him rather than Willis. (This is the “Hasson Client Interference.”)

220. The Bespoke Entities discriminated against Willis in that on many occasions, from in or about March 2021 to in or about September 2022, the Vichinskys, in the presence of Willis, told Willis that he was stupid, knew nothing about the real estate industry, and messed everything up. (This is the “Unfounded Willis Criticism.”) In fact, Willis was the Bespoke Entities’ star employee, and had generated significant amounts of commissions to the Bespoke Entities to his vast network of personal connections.

221. The Bespoke Entities discriminated against Willis, a real estate salesperson, in that Bespoke RE would not permit Willis to show to prospective buyers, by himself, properties that he was attempting to sell. This was contrary to industry practice; contrary to common sense, in that, in many cases, Willis had past familiarity with the properties being sold from having visited them as a friend of the properties’ owners; and, upon information and belief, was done so that Willis, as an African American, would not be the public-facing face of Bespoke RE. (This is the “Discriminatory Selling Restriction.”)

222. At both Bespoke Florida’s Miami Beach Office, and Bespoke RE’s New York Office, officers and employees of Bespoke Entities disparaged Willis in racist terms. An employee at the New York Office orally called Willis a “nigger” on a daily basis, and sent him text messages calling him a “nigger” or a variation on that word. This employee was never terminated for such conduct, nor, apparently, was she disciplined therefor. The Vichinskys, and other officers and employees of Bespoke Entities at both offices, frequently called Willis “Jafar,” in comparison to the manipulative, brown-skinned villain of the same name in the movie “Aladdin.” (This conduct is the “Hostile Work Environment.”)



223. In or about late April 2022, Bespoke RE stripped Willis of his title of Vice President of Bespoke Parallel, a division of the Bespoke Entities, in which Willis's role was to develop relationships with other realtors physically located in geographic areas in which the Bespoke Entities did not have a significant presence. (This is the "Discriminatory Demotion.") Bespoke RE replaced Willis in this role with Hasson, who at the time had less than a year's worth of experience in the real estate industry. Bespoke RE attempted to rationalize this by claiming that Willis had performed poorly, but, as noted above, Willis had generated considerable commissions for Bespoke RE.

224. Goldberg reasonably believed that the Bespoke Entities' treatment of Willis, including the Hasson Client Interference, Unfounded Willis Criticism, Discriminatory Selling Restriction, Hostile Work Environment, and Discriminatory Demotion (collectively, the "Bespoke Discriminatory Acts"), were activities, policies, and practices of the Bespoke Entities that were in violation of federal and state civil rights laws.

225. Goldberg disclosed the Hasson Client Interference to supervisors of the Bespoke Entities, *i.e.*, the Vichinskys and Gray.

226. Goldberg told Gray that the Hasson Client Interference was discriminatory, as well as unacceptable and a firing offense.

227. Goldberg disclosed, to a supervisor within the Bespoke Entities, the Hasson Client Interference, Unfounded Willis Criticism, Discriminatory Selling Restriction, Hostile Work Environment, and Discriminatory Demotion. Goldberg did so in August 2022, by disclosing each of those to counsel who was representing Goldberg in a commissions dispute with Bespoke Entities, and such counsel, in turn, disclosed each of those to counsel to the Bespoke Entities. (This is the "August 2022 Disclosure.")

228. Goldberg objected to the Hasson Client Interference, Unfounded Willis Criticism, Discriminatory Selling Restriction, Hostile Work Environment, and Discriminatory Demotion.

229. On or about September 22, 2022, the month after the August 2022 Disclosure, the Bespoke Entities terminated Plaintiffs' employment with them, by email from Z. Vichinsky (the "Termination").

230. Upon information and belief, the Termination was effectuated because of the August 2022 Disclosure, and because Goldberg had objected to the Hasson Client Interference, Unfounded Willis Criticism, Discriminatory Selling Restriction, Hostile Work Environment, and Discriminatory Demotion.

231. The Termination was an adverse employment action against Goldberg, discriminating against him for having exercised his rights under New York Labor Law § 740 ("LL § 740"), and constituted a retaliatory action within the meaning of LL § 740.

232. Upon information and belief, Bespoke Florida's denial to Goldberg of commissions to which he was entitled (the "Commission Denials") occurred because of the August 2022 Disclosure, and because Goldberg had objected to the Hasson Client Interference, Unfounded Willis Criticism, Discriminatory Selling Restriction, Hostile Work Environment, and Discriminatory Demotion.

233. The Commission Denials were an adverse employment action against Goldberg, discriminating against him for having exercised his rights under LL § 740, and constituted a retaliatory action within the meaning of LL § 740.

234. The Termination and Commission Denials constituted violations of LL § 740.

235. The Bespoke Entities' violations of LL § 740 were willful, malicious, and wanton.

236. Goldberg has been unable, despite reasonable efforts, to find comparable employment.

237. As a result of the Termination and Commission Denials, Goldberg has been denied employment; has lost wages, benefits, and promotional activities; and has incurred damages thereby.

238. Because the Bespoke Entities form a single integrated enterprise and employer, and act as joint employers, the Bespoke Discriminatory Acts are considered to have been the acts of Bespoke Florida and Bespoke Marketing as well as Bespoke RE.

239. Because the Bespoke Entities form a single integrated enterprise and employer, and act as joint employers, the Termination and Commission Denials are considered to have been the acts of Bespoke RE and Bespoke Marketing as well as Bespoke Florida, and to have been as retaliation for Goldberg's having disclosed, and objected to, the Bespoke Discriminatory Acts.

240. Pursuant to LL §§ 740(4) and (5), Goldberg is entitled to recover from Bespoke Entities lost wages; the value of lost benefits; interest on lost wages and benefits; and punitive damages, in a total amount to be determined at trial, but in any event no less than \$15,000,000, together with a civil penalty of an amount not to exceed ten thousand dollars, and reasonable costs, disbursements, and attorney fees incurred in the prosecution of this action.

**WHEREFORE,** Plaintiffs demand judgment as follows:

- A. On the First Cause of Action, against Bespoke Entities, a declaratory judgment holding that Plaintiffs are entitled to \$1,860,000 in commissions in connection with the Waldorf Transaction;
- B. On the Second Cause of Action, imposition of a permanent injunction prohibiting PMG Residential from releasing to Bespoke Florida the Waldorf Commission

Funds, and any other funds to which Bespoke Florida may become entitled to under the Co-Broker Agreements, including but not limited to those payable by reason of the Vogels making additional payments to PMG Downtown in connection with the Waldorf Transaction;

- C. On the Third Cause of Action, against Bespoke Entities, awarding Plaintiffs damages in an amount to be determined at trial, and an accounting and examination of Bespoke Entities' books and records to determine what Plaintiffs were paid according to the Goldberg Agreement and/or Florida Modification and/or Waldorf Modification and/or Override Agreement, a determination of commissions owed but not yet paid on the Asia Transaction and Parkland Transaction, and the amount of commissions owed to Plaintiffs that Plaintiffs are not yet aware of;
- D. On the Fourth Cause of Action, against Bespoke Entities, awarding Plaintiffs damages in an amount to be determined at trial, together with an accounting and examination of Bespoke Entities' books and records to determine what Plaintiffs were paid according to the Override Agreement, and a determination of commissions owed but not yet paid to Plaintiffs pursuant to the Override Agreement;
- E. On the Fifth Cause of Action, against Bespoke Entities, awarding Plaintiffs damages in an amount to be determined at trial, together with an accounting and examination of Bespoke Entities' books and records to determine what Plaintiffs were paid according to the Override Agreement, and a determination of commissions owed but not yet paid to Plaintiffs pursuant to the Override Agreement and on the Asia Transaction and Parkland Transaction;

- F. On the Sixth Cause of Action, against Bespoke Entities, awarding Plaintiffs damages in an amount to be determined at trial, together with an accounting and examination of Bespoke Entities' books and records to determine what Plaintiffs were paid according to the Override Agreement, and a determination of commissions owed but not yet paid to Plaintiffs pursuant to the Override Agreement and on the Asia Transaction and Parkland Transaction; and
- G. On the Seventh Cause of Action, against Bespoke Entities, awarding Goldberg lost wages; the value of lost benefits; interest on lost wages and benefits; and punitive damages, in a total amount to be determined at trial, but in any event no less than \$15,000,000, together with a civil penalty of an amount not to exceed ten thousand dollars, and reasonable costs, disbursements, and attorney fees incurred in the prosecution of this action;
- H. Together with interest, costs and disbursements of this action, and such other and further relief which may seem to the Court to be just and proper.

Dated: New York, New York  
March 21, 2023

Yours, etc.,

ADAM LEITMAN BAILEY, P.C.

By: 

Adam Leitman Bailey, Esq.

Brandon M. Zlotnick, Esq.

One Battery Park Plaza, Eighteenth Floor

New York, NY 10004

(212) 825-0365

*Attorneys for Plaintiffs Harlan Goldberg  
and H Gold LLC*

# **EXHIBIT 1**

## INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement (the "Agreement") is effective as of April 2<sup>nd</sup> 2019 (the "Effective Date"), by and between Bespoke Real Estate LLC, a New York limited liability company ("Bespoke Real Estate", and Bespoke Luxury Marketing LLC a limited liability company ("Bespoke Marketing") and together with Bespoke Real Estate, "Bespoke", "Company", or "BRE") having an office at 903 Montauk Highway, Water Mill New York 11976 and H GOLD LLC, and Harlan Goldberg (together, "Contractor") having an address at 3330 NW 190TH ST APT 2410, Miami Florida 33180.

1. **INDEPENDENT CONTRACTOR.** Subject to the terms and conditions of this Agreement, Bespoke hereby engages Contractor as an independent contractor, and not as an employee, to perform the services set forth herein. Contractor hereby accepts such engagement.

2. Contractor accepts and agrees to be engaged on the terms and conditions set out in this Agreement, and agrees to be subject to the general supervision, advice and direction of Bespoke and Bespoke's supervisory personnel. Contractor shall perform all duties as are customarily performed by a Contractor/Consultant in a similar position. Contractor shall also perform all other duties Bespoke may assign to Contractor from time to time.

### 3. DUTIES, TERM, AND COMPENSATION.

(a) Contractor's duties, term of engagement, compensation and provisions for payment thereof shall be as set forth in Exhibit A attached hereto and made a part hereof, which may be amended or supplemented in writing from time to time upon agreement of the parties. As part of this Agreement, Contractor shall also perform other responsibilities as reasonably directed by Bespoke and accepted by Contractor, which acceptance shall not be unreasonably conditioned, delayed or withheld.

(b) Contractor shall not have the right to make any contracts or commitments for or on behalf of Bespoke without first obtaining the express written consent of Bespoke.

(c) Contractor shall be fully responsible to determine the method, details, and means of performing the work to be performed for Bespoke. Bespoke shall not control the manner or determine the method of accomplishing Contractor's services. However, Bespoke may exercise broad general powers of supervision and control over the results of work performed by Contractor to ensure satisfactory performance, including the right to inspect, the right to stop work, to make suggestions as to the details of the work, and the right to propose modifications to the work.

### 4. EXPENSES.

(a) During the term of this Agreement, Contractor shall not bill and Bespoke shall not reimburse Contractor for any out-of-pocket expenses that are incurred in connection with the performance of the duties hereunder. Bespoke shall be responsible for supplying Contractor with an e-mail address.

(b) Contractor shall carry automobile insurance having coverage of at least \$300,000/500,000 for bodily injury and \$25,000 for property damage. Such insurance shall be maintained with an insurance company having a Best Rating of A+:X, and the insurance policy shall require that the insurance Company provide to at least 30 days' prior written notice of any cancellation of such policy.

5. **CONFLICT OF INTEREST.** Contractor shall not at any time during Contractor's engagement with Bespoke, without the prior written consent of Bespoke, engage, whether directly or indirectly, in any business or employment which is similar or in any way connected to or in

competition with the business of Bespoke, its subsidiaries, affiliates, associates and joint ventures, or which may be considered by Bespoke in its entire unfettered opinion to impair Contractor's capability to act at all times in the best interests of Bespoke. Notwithstanding the foregoing:

(a) Existing License Placement: Contractor will place New York State, and other affiliated Real Estate Licenses with Bespoke's associated entity, and only Bespoke Entities unless otherwise approved by Bespoke.

(b) All prospective buyers and sellers acquired by or introduced to Contractor from any source or activity will be referred into BRE system for assignment/referral and tracking. Any commission-based compensation related to applicable buyers, sellers, and/or projects will be paid in accordance with the terms and conditions of this Agreement.

## **6. TERMINATION.**

(a) Either Bespoke or Contractor may terminate this Agreement at any time upon written notice to the other.

(b) If Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of Bespoke, is deemed guilty by Bespoke of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, Bespoke at any time may terminate the engagement of Contractor immediately and without prior written notice to Contractor.

(c) Upon any termination of this Agreement, Contractor shall not be eligible to receive any further compensation, remuneration, or consideration whatsoever. Any remaining SOW Fee due to the Contractor by the Company at the time of termination will be withheld and paid only upon the Contractor completing the satisfactory return of all Company provided materials, tools, files, e-mails, confidential and non-confidential information, and removal of Company portal, email, and file access from Contractor's personal devices.

(d) If the Company terminates this Agreement for any reason other any stated in Section 6(b) and 6(c), the Company will compensate Contractor with a "Termination Payment" equal to thirty (30) days compensation calculated by the prorated SOW Fee at the time of Company initiated termination. Contractor will additionally be entitled to Tail-Period Commission Compensation as per the terms defined within Section 7 of this Agreement. The "Termination Payment" and Tail-Period Commission Compensation will only be due to Contractor upon the Contractor completing the return of all Company provided materials, tools, files, e-mails, confidential and non-confidential information, and removal of Company portal, email, and file access from Contractor's personal devices, in addition to any other return of information /materials and termination obligations defined within this and/or associated Bespoke agreements or policy manuals. In the event the Contractor and/or person or entity controlled by or in control of the Contractor is deemed to be in breach of this Agreement or associated agreements, Contractor shall not be eligible to receive any further compensation, remuneration, or consideration whatsoever.

(e) If the Contractor terminates this Agreement prior to the 8<sup>th</sup> month from "Effective Date" of this Agreement, there will be NO Termination Payment" provided by Bespoke. Any remaining SOW Fee, and/or Tail-Period Commission Compensation due to the Contractor by the Company will be withheld and paid only upon the Contractor completing the return of all Company provided materials, tools, files, e-mails, confidential and non-confidential information, and removal of Company portal, email, and file access from Contractor's personal devices. In the event the Contractor and/or person or entity controlled by or in control of the Contractor is deemed to be in breach of this Agreement or associated agreements, Contractor shall not be eligible to receive any further compensation, remuneration, or consideration whatsoever.



(f) If the Contractor terminates this Agreement prior to procuring \$1 Million Dollars of Contracted Gross Income to Bespoke, from "Effective Date" of this Agreement there will be NO Termination Payment" provided by Bespoke. Any Tail-Period Commission Compensation due to the Contractor will be paid after a credit of \$100,000 is reimbursed to Bespoke from income generated by the Company, collected from contract and/or commission payments for services performed for clients directly procured by the Contractor ("Tail-Period Clients"). After the \$100,000 is reimbursed to Bespoke, the remaining Tail-Period Commission Compensation due to the Contractor will be paid in accordance with terms and conditions of this Agreement. Any remaining SOW Fee, and/or Tail-Period Commission Compensation due to the Contractor by the Company will be withheld and paid only upon the Contractor completing the satisfactory return of all Company provided materials, tools, files, e-mails, confidential and non-confidential information, and removal of Company portal, email, and file access from Contractor's personal devices.

(g) In the event the Contractor and/or person or entity controlled by or in control of the Contractor is deemed to be in breach of this Agreement or associated agreements, Contractor shall not be eligible to receive any further compensation, remuneration, or consideration whatsoever.

**7. Commission Compensation after Termination or Expiration:** Notwithstanding the terms and conditions of Section 6, the Company will pay Contractor for commission-based compensation specifically and only related to projects and listings that were directly procured by the Contractor, and are of "active", paying, and paid to date status with the Company at the time of termination. Any commissions paid during the Tail-Period will be paid to Contractor as per the payment terms and conditions defined within this and associated agreements with the Company.

(a) **Contractor Procured and of Active Status "Direct Relationship" Single Family Listings:** (1) 50% of the commission compensation stated within Exhibit B for the duration of the specific listings term with the Company, and (2) 25% of the commission compensation stated within Exhibit B for a period of 12 months after any renewal or extension of the listing term with the Company from the effective date of termination or expiration.

(b) **Contractor Introduced and of Active Status "New Development" Listings:** (1) 50% of the commission compensation stated within Exhibit B for the duration of the specific listings term with the Company, and (2) 25% of the commission compensation stated within Exhibit B for a period of 12 months after any renewal or extension of the listing term with the Company from the effective date of termination or expiration.

(c) **Contractor Procured "Direct Relationship" Single Family Buyer Referral:** 75% of the commission compensation stated within Exhibit B in the event a transaction is facilitated with the Contractor referred buyer, and the Company is actually paid from the transaction.

(d) **Contractor Introduced "New Development" Marketing Client"- Content Creation:** (1) 50% of the commission compensation stated within Exhibit B for the duration of the specific projects agreement term with the Company.

(e) **Contractor Introduced "New Development" Marketing Client"- Ongoing Marketing Services:** (1) 50% of the commission compensation stated within Exhibit B for the duration of the specific projects agreement term with the Company.

(f) If at any time during the Tail-Period Commission Compensation schedule, the Contractor and/or person or entity controlled by or in control of the previously contracted entity is deemed to be in breach of its non-disclosure and non-compete, non-circumvention and/or other restrictive covenants with the Company, Contractor shall not be eligible to receive any further compensation, remuneration, or consideration whatsoever and be liable to reimburse the Company upon demand, any and all SOW Termination Payments and Tail-Period Commissions received.

(g) Tail-Period Commission Compensation will only be applicable if (1) clients were directly procured by the Contractor, Company provided clients will not be included as Tail-Period Clients, (2) Tail-Period Clients were register upon termination of this Agreement by the Contractor in writing, and approved by Bespoke, (3) clients were of active status within a valid contract and/or agreement with Bespoke at the time of termination, (4) at the time of termination or expiration, the client was not in arrears of any sort with Bespoke, and (5) client does not default from their agreement with the Company during the Tail-Period.

8. **INDEPENDENT CONTRACTOR.** This Agreement shall not render Contractor an employee, partner, agent of, or joint venturer with Bespoke for any purpose. Contractor is and will remain an independent contractor in Contractor's relationship to Bespoke and Bespoke shall not (i) be responsible for withholding national, regional, local, state or other taxes or similar premiums or fees with respect to Contractor's compensation hereunder; (ii) make any insurance contributions for Contractor (or its employees, if applicable); or (iii) be responsible for any other payment on Contractor's (or its employees', if applicable) behalf whether similar or dissimilar to the foregoing. Contractor shall neither be entitled to nor have any claim against Bespoke hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, defined benefits, life insurance, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. All amounts paid to Contractor hereunder shall constitute income from self-employment, and Contractor shall take sole responsibility for payment of any and all taxes and similar charges related thereto including, without limitation, Federal, state and local income and payroll taxes, social security and FICA, unemployment insurance, and workers' compensation. Contractor shall pay any taxes and insurance applicable to Contractor's engagement hereunder and shall bear sole responsibility if any taxing authority asserts that Contractor is not an independent contractor under this Agreement.

9. **OWNERSHIP OF WORK PRODUCT.** The ownership of all work product and intellectual property rights such as trademarks, copyrights, brand names, registered designs and patents created by Contractor in the course of or related to Contractor's engagement (collectively, "Work Product") shall wholly and exclusively belong to Bespoke. As a condition of Contractor's engagement, Contractor will be required to sign Bespoke's Confidential Information, Work for Hire and Covenant Agreement, a copy of which is attached.

10. **RULES AND POLICIES.** Contractor's engagement shall be subject to all rules, regulations and policies of Bespoke as may be prescribed by Bespoke from time to time, including, but not limited to, Bespoke's anti-harassment and discrimination policy (the "Rules"). Bespoke may also add to, amend or terminate the Rules or any of the benefits applicable to Contractor's engagement or establish, suspend, or discontinue at its discretion any programs, including those devised to provide Contractor with gratuitous benefits.

11. **CONFIDENTIALITY.** Any trade secrets, non-public or confidential information of whatever nature relating to Bespoke, its holding, subsidiary, affiliated or associated companies or their business, affairs, finance or customers, which Contractor shall prepare, receive, generate or obtain any time during Contractor's engagement with Bespoke, shall be the property of Bespoke. Contractor shall use such trade secrets or confidential information only in the normal course of Contractor's engagement as directed by Bespoke and absolutely not for Contractor's private personal use or disclosure of the same to any third person whether for money, other consideration or otherwise any time during or after Contractor's engagement with Bespoke *provided* that this restriction shall not apply to information which may have come into the public domain otherwise than through the unauthorized disclosure by Contractor. Upon termination of Contractor's engagement with Bespoke, Contractor must return immediately to Bespoke all property and documents belonging to Bespoke or relating to the business or affairs of any of Bespoke's holding, subsidiary, associated or affiliated companies. As a condition of Contractor's engagement, Contractor will be required to sign Bespoke's Confidential Information, Work for Hire and Covenant Agreement, a copy of which is attached.

12. **REPRESENTATIONS AND WARRANTIES.** Contractor represents, warrants and covenants that: (i) Contractor is legally authorized to work in any jurisdiction in which Contractor will provide services to Bespoke, (ii) the parties are and shall be independent contractors to one another, (iii) nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties, (iv) nothing herein shall be interpreted or construed as creating or establishing the relationship of employer and employee between Bespoke and Contractor, (v) Contractor shall perform Contractor's responsibilities hereunder in a professional manner with the highest level of care and skill, (vi) Contractor shall comply with all Rules, including, but not limited to, Bespoke's anti-harassment and discrimination policy, (vii) Contractor shall perform Contractor's responsibilities hereunder in a manner that does not infringe, or constitute an infringement or misappropriation of any patent, copyright, trademark, trade secret or other interest, proprietary or otherwise, of any individual or entity including, without limitation, any of Contractor's prior clients/employers, and (viii) the Work Product and any use and/or exploitation thereof shall not be improperly derived from any copyrighted or trade secret material or otherwise be subject to or infringe upon any patent, copyright, trademark, trade secret or other interest, proprietary or otherwise, of any individual or entity including, without limitation, any of Contractor's prior clients/employers. Contractor agrees to defend, indemnify and hold harmless Bespoke from and against all fines, penalties, taxes, legal fees, claims, damages, losses, liabilities and other costs arising out of or relating to any breach of the above representations and warranties.

13. **GOVERNING LAW AND JURISDICTION.** All matters (in contract, tort or otherwise) arising out of, in connection with, or relating to this Agreement including, without limitation, the validity, interpretation, construction, performance, and enforcement of this Agreement, shall be governed, construed, and interpreted exclusively in accordance with the laws of the State of New York without giving effect to its conflicts or choice-of-law principles. The parties hereto irrevocably consent to the exclusive personal and subject matter jurisdiction of the federal and state courts located in the State of New York, County of New York, and to the exclusive venue of the United States District Court for the Southern District of New York and of the courts of the State of New York located in the County of New York. The parties hereby irrevocably waive any and all rights to trial by jury in any legal proceeding arising out of or relating to this Agreement. Contractor agrees that any claim or lawsuit relating to Contractor's engagement with Bespoke must be filed no more than six (6) months after the date of the action that is the subject of the claim or lawsuit. Contractor agrees to waive any statute of limitations to the contrary.

14. **RETURN OF PROPERTY.** Upon any termination of this Agreement, Contractor shall deliver to Bespoke all property, which is Bespoke's property or related to Bespoke's business (including keys, records, notes, data, memoranda, models, email, passwords and equipment) that is in Contractor's possession, custody or control. This includes an immediate in-person meeting with Bespoke management to affect the removal of any prior emails related to Bespoke from any/all devices of Bespoke and Contractor. This must be done prior to being paid any outstanding amounts due from the Company. In the event Contractor does not comply with any aspect of return of property, this non-compliance will be considered a material breach of this Agreement by Contractor, and will result in a forfeiture all owed compensation.

15. **MISCELLANEOUS.** Contractor shall use the e-mail address provided by Bespoke (i) solely for business purposes, and (ii) for all electronic correspondence relating to Bespoke. All real estate business related electronic correspondence shall be conducted via Bespoke's email platform. This Agreement cannot be changed or terminated orally, and none of the terms hereof shall be deemed to be waived or modified except by an express agreement in writing signed by the party against whom such waiver or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.

16. This Agreement constitutes the entire agreement between the parties relating to the subject matter contained herein and terminates and supersedes all prior or contemporaneous


representations, promises, warranties, covenants, undertakings, discussions, negotiations, and agreements, whether written or oral, other than those expressly contained in this Agreement. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable, in whole or in part, the remaining terms and provisions shall be unimpaired and the unenforceable term or provision shall be replaced by such enforceable term or provision as comes closest to the intention underlying the unenforceable term or provision. This Agreement is the product of arms-length negotiations between parties knowledgeable of its subject matter that have had the opportunity to consult counsel concerning the terms and conditions of this Agreement prior to the execution hereof.

17. Any rule of law that would require interpretation of any provision against the party responsible for its inclusion herein shall have no effect on the interpretation of this Agreement. The headings on each paragraph hereof are for convenience purposes only and shall not be used to construe the terms of this Agreement.

18. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile copy, or electronic copy in .pdf or similar format, of an executed counterpart shall be valid and have the same force and effect as an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**CONTRACTOR:**

By:   
Name: Harrison Golding Date 4/4/19  
Title: \_\_\_\_\_

**BESPOKE:**

Bespoke Luxury Marketing LLC

By: \_\_\_\_\_  
Zachary Vichinsky Date  
Managing Member

**BESPOKE:**

Bespoke Real Estate LLC

By: \_\_\_\_\_  
Zachary Vichinsky Date  
Managing Member

## EXHIBIT A- INDEPENDENT CONTRACTOR AGREEMENT

This is an Exhibit to the Independent Contractor Agreement (the "Agreement") dated as of April 1st 2019 (the "Effective Date"), by and between Bespoke Real Estate LLC, a New York limited liability company ("Bespoke Real Estate", and Bespoke Luxury Marketing LLC a limited liability company ("Bespoke Marketing") and together with Bespoke Real Estate, "Bespoke", "Company", or "BRE") having an office at 903 Montauk Highway, Water Mill New York 11976 and H GOLD LLC, and Harlan Goldberg (together, "Contractor") having an address at 3330 NW 190TH ST APT 2410, Miami Florida 33180. This Exhibit shall be subject to, and incorporated in, the Agreement. In the event of any conflict between the terms of this Exhibit and the terms of the Agreement, the terms of this Exhibit shall control. Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Agreement.

**Duties:** Independent Contractor acting as and in accordance as a Licensed Salesperson, Salesperson, agent, or Associate Broker.

1. Enhancement and management of the New Development Marketing and Sales Division of Bespoke.
2. Enhancement and management of the Bespoke Corporate Brokerage and Managed Services Business Model.
3. Enhancement and management onboarding Bespoke Marketing Projects.
4. Enhancement, management and Involvement in the lead generation, presentation, onboarding, and sales efforts for VIP Listings and Projects.
5. Work with principals to complete wire frame and action strategy in the creation of Bespoke's New Development Marketing and Sales Division.
6. Work with principals and Company members to implement and staff associated systems related to the New Development Division.
7. Work with Company to generate and implement the New Development Division specific marketing and branding strategy.
8. Work with principals and Company members to fine tune, enhance, expand lead generation /procurement systems to grow the Bespoke Portfolio of New Development, Individual High Value Resale, and Marketing projects within the specific segments and locations desired by the Company.
9. Continuously audit and enhance the budgets, systems, processes, roles, responsibilities, needs, and issues within the divisions under management.
10. Work with principals and Company members to wire frame duplication of needed systems and logistics related to expansion in additional core markets. (New Development- UHV Single Family Listings- Marketing Services)
11. Obligations related to the public facing elements of the divisions.
12. Enhancement and management of the processes related to the obtaining, onboarding, and managing Bespoke Marketing Projects.
13. Management and direct involvement in the lead generation, presentation, onboarding, and sales efforts for VIP Listings and New Development Projects.

### Compensation:

1. Annual Contract SOW Fee: \$150,000 (One Hundred Fifty Thousand Dollars)
  - A. Your annual Contract SOW Fee will be paid in equal payments every Two (2) weeks, based on a 12-month calendar year. Bespoke reserves the right to make SOW Fee payments from any of its company or affiliated entity accounts, which will not void any aspect of your agreements with Company.
2. Commission Based Compensation will be paid as set forth on Exhibit B.
  - A. Automatic Project and Listing Allocations Upon Agreement:  
Upon commencement of this Exhibit, Contractor will be entitled to compensation related to the following properties and projects as per the compensation terms defined

within Exhibit B. The projects specified within this provision will not count towards any Portfolio Growth or Contractor Provided Gross Income Milestone Key Performance Indicators.

- I. Bespoke Marketing: Consulting- Branding-Content Creation Clients:**
  - Project: Renegade – Remaining Contract Value: \$50,625.00
  - Project: IC Procured -Oil Nut Bay: Remaining Contract Value: \$450,000.00
- II. Ongoing Marketing Management Contract Clients:**
  - Project: Renegade- Remaining Contract Value: \$117,000.00
  - Project: IC Procured Oil Nut Bay- Remaining Contract Value: \$306,000.00
  - Project: Half Moon Bay-: Monthly Term Gross Value- \$25,000.00
  - Project: William D' Agata: Remaining Contract Value: \$27,000.00
- III. New Development Listing Sales: Corporate Procured**
  - Project: Oil Nut Bay
  - Project: Half Moon
- IV. Corporate Procured NYC High Value Single Family Listings:**
  - 134 Charles Street NYC, Asking Price: \$80,000,000 Completed- \$50,000,000 "As - Is"
  - Walker Tower PH 18A NYC- Asking Price: \$28,000,000
  - 56 East 66<sup>th</sup> Street, Upper East Side- Asking Price: \$11,900,000

**Terms:** This Exhibit will continue until either party terminates this Exhibit and is subject to periodic review and amendment as required by Bespoke. The parties agree to formally review and agree upon revisions to the commission-based compensation terms one (1) year after the Effective Date. The Company reserves the rights to modify, revise, delete, or add to the provisions from time to time when, in its discretion, it determines it is appropriate. This Agreement is not intended to alter the at-will relationship between the Company and its Contractors.

1. **Real Estate Brokerage Commissions:** To receive commissions on deals involving Real Estate Brokerage Commissions, IC have a valid real estate license held with the appropriate Bespoke entity, unless otherwise legally permitted and approved by Bespoke.
2. **Reduced or Modified Commission Structures:** There may be circumstances that commission percentages will fluctuate, based on client needs and internal team goals. This will be discussed upfront with regard to the specific circumstance and client. All parties to this Exhibit will agree to reduced or modified commission splits in advance.
3. **Confidential Nature of Contractor Compensation:** The Compensation structure found in This Exhibit is to remain highly confidential. Disclosing this compensation structure can result in termination.
4. **Policy Adherence:** Contractor/Agent shall comply with all policies and rules in the Bespoke Company Handbook/Policy Manual.
5. **Company at its Sole Discretion Reserves the Rights To:**
  - A. Elect to not take on a client procured by the Contractor.
  - B. Elect to terminate an agreement with a client procured by the Contractor.
6. **Contractor Understands and Agrees to the Following:**
  - A. Commission will be paid to Contractor within 10 business days after Bespoke deposits and receives, retainer payment from the client.
  - B. Commission will only be paid on payments received, deposited, and cleared.
  - C. In the event of partial payment, the commission due to Contractor will be associated to the amount of payment actually received.
  - D. In the event a client goes into default on payment, and the Company elects to pursue legal actions to collect owed compensation from the client; the commission



paid to the Contractor if payment is received by the Company will be based on the outstanding balance due to the Company minus the actual legal fees and expenses incurred by the Company for the collection of payment.

**7. Term Period for Exhibit B Commission Compensation:**

- A. The Term Period for the Contractor Commission based compensation will be 12 months from the effective date of This Exhibit, or upon Contractor generating \$1 Million in Gross Revenue through Bespoke Services, whichever comes first. Contractor and Bespoke will review the commission schedule and conclude if a modification to the schedule is necessary based on factors of growth, procedure, divisional necessities and other factors. Any modifications to the commission-based schedule will be agreed upon in writing by both parties.
- B. Contractor and Bespoke may mutually elect to modify the commission and SOW fee at any point if necessary to benefit both parties. Any modifications to the compensation schedule will be agreed upon in writing by both parties.

8. **Counterparts.** This Exhibit may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of all parties hereto be contained on any one counterpart hereof. Additionally, the parties hereto hereby covenant and agree that, for purposes of this Exhibit, (a) the signature pages taken from separate individually executed counterparts of this Exhibit may be combined to form multiple fully executed counterparts and (b) a facsimile or PDF signature shall be deemed to be an original signature. All executed counterparts of this Exhibit shall be deemed to be originals, but all such counterparts taken together shall constitute one and the same Exhibit.

IN WITNESS WHEREOF, the parties hereto have executed this Exhibit as of the day and year first above written.

**CONTRACTOR:**

By:  \_\_\_\_\_  
Harlan Goldberg  
Title: \_\_\_\_\_ Date 4/4/19

**BESPOKE:**

Bespoke Luxury Marketing LLC

By: \_\_\_\_\_  
Zachary Vichinsky  
Managing Member Date

**BESPOKE:**

Bespoke Real Estate LLC

By: \_\_\_\_\_  
Zachary Vichinsky  
Managing Member Date

## EXHIBIT B





# **EXHIBIT 3**

**CO-BROKER AGREEMENT**

**PROJECT:** Waldorf Astoria Residences Miami

**UNIT NO:** 8802 ("Unit")

**UNIT PURCHASE PRICE:** \$9,000,000.00

**PURCHASER:** Steven Vogel & Caroline Vogel

**COOPERATING BROKER COMPANY:** BESPOKE REAL ESTATE FLORIDA LLC

("Cooperating Broker")

**COOPERATING AGENT** (print name) Harlan Goldberg ("Cooperating Agent")

**PMG RESIDENTIAL, LLC** ("Listing Broker"), Cooperating Broker and Cooperating Agent, agree as follows as to the purchase and sale of the Unit in the Project developed by **PMG DOWNTOWN DEVELOPERS, LP** ("Owner"):

1. Subject to Cooperating Broker and/or Cooperating Agent's registration of Purchaser for the above-referenced Unit within the past ninety (90) days and involvement as participating broker/agent in connection with the above real estate transaction, Cooperating Broker shall be entitled to a total commission for the sale of the Unit to Purchaser in the amount of 8 % of the total Unit Purchase Price (the "Commission") as set forth in the purchase and sale agreement executed by Purchaser and Owner (the "PSA").

In accordance with the aforementioned, the Commission shall be paid as follows:

a. Pre-Groundbreaking PSA's:

- i. 50% of the Commission shall be earned only upon the later of (x) the closing of Owner's construction loan with respect to the Project ("Groundbreaking") and (y) receipt by Owner (or by a third party designated by Owner), in clear funds, of an earnest money deposit equal to or exceeding 20% of the purchase price set forth in the applicable PSA, and shall be payable thirty (30) days after the later to occur of (x) and (y); and
- ii. 50% of the Commission shall be earned only upon the later of (x) one (1) year following Groundbreaking and (y) receipt by Owner (or by a third party designated by Owner), in clear funds, of an earnest money deposit equal to or exceeding 30% of the purchase price set forth in the applicable PSA, and shall be payable thirty (30) days after the later to occur of (x) and (y);

b. Post-Groundbreaking PSA's:

- i. 100% of the Commission shall be earned only upon the later of (x) the expiration of the 15-day rescission period with respect to the applicable purchase and sale agreement; and (y) receipt by Owner (or by a third party designated by Owner), in clear funds, of an earnest money deposit equal to or exceeding 30% of the purchase price set forth in the applicable PSA, and shall be payable thirty (30) days after the later to occur of (x) and (y); and

2. **OTHER SALES TRANSACTIONS.** This agreement does not obligate Listing Broker to pay commissions to Cooperating Broker for any prospective purchaser at the Project other than for Purchaser's purchase of the Unit. Such an obligation may only be pursuant to a written agreement in a form acceptable to Listing Broker in its sole discretion. Listing Broker reserves the right in its sole and absolute discretion to modify the terms under which it agrees to pay Cooperating Broker commissions. Neither Cooperating Broker nor Cooperating Agent may rely upon the terms of this agreement for any transaction other than the one specifically involving the Purchaser during the effective term of this registration. This agreement does not obligate Listing Broker to pay commissions to Cooperating Broker in the event Purchaser purchases a unit in the Project which is not listed with Listing Broker.
3. **INDEMNIFICATION.** Cooperating Broker and Cooperating Agent jointly and severally agree to indemnify and hold Listing Broker and Owner harmless from and against any and all losses, claims, demands, damages, costs and expenses of whatever nature or kind including reasonable attorneys' fees and costs and appellate fees and costs relating to or arising out of any claims against Listing Broker and/or Owner as a result of any representation / or other conduct by either of them which are made or done without the express written consent of Listing Broker and Owner.
4. **NO INDUCEMENTS.** Neither Cooperating Broker or Cooperating Agent shall pay or offer to any person a referral fee, rebate, bonus gratuity, commission or other form of compensation or consideration, for the purchase by Purchaser of a unit at the Project, without the prior written consent of the Owner and the Listing Broker.
5. **CONFIDENTIALITY.** The registration forms, mailing lists, purchaser lists and other records of prospective or actual purchasers are proprietary to Listing Broker and/or Owner and are confidential trade secrets. Cooperating Broker and Cooperating Agent are not entitled to review the contents of any of the foregoing. Cooperating Broker and Cooperating Agent agree not to enter into any negotiations directly or indirectly with any purchaser at the Project or prospective purchaser deemed registered to Listing Broker regarding the reservation, purchaser, lease and or option of the Project, except with the direct participation or express prior written approval of Listing Broker.
6. **ATTORNEYS' FEES AND COSTS.** In the event of any litigation arising from this Agreement, the prevailing party shall be entitled to reimbursement from the other party of all reasonable attorneys' fees and cost associated with such matter at the pretrial, trial and appellate levels.
7. **COMPLIANCE WITH LAWS AND RULES.** Cooperating Broker and Cooperating Agent agree to comply, abide and be bound by all laws, rules, regulations and codes of ethics promulgated or adopted by any state or local authority or board realtors regulating the conduct of real estate brokers and salespersons and the payment of real estate commissions. In addition, Cooperating Broker and Cooperating Agent shall not interfere with Listing Broker's employee's performance or duty of loyalty to Listing Broker and/or the Owner. Further, and unless Cooperating Broker and Cooperating Agent notify Listing Broker in writing of their respective exclusion from the requirement for such licensure upon execution of this Agreement, Cooperating Broker and Cooperating Agent represent and warrant that their respective applicable Real Estate Licenses are current and in good standing and that they will maintain such status at all times material to this Agreement.
8. **RELEASE:** Simultaneously with delivery of the amount(s) provided for in paragraph 1, Cooperating Broker and Cooperating Agent shall provide Listing Broker with a Full General Release in favor of Owner and Listing Broker as to the amount(s) delivered. The Release provided for herein shall be on

a form prepared by and acceptable to Listing Broker within its sole discretion.

9. **DEFAULT BY COOPERATING BROKER.** If either Cooperating Broker or the Cooperating Agent violates any of the terms or conditions of this agreement or fails to fully and completely participate as needed throughout the transaction giving rise to the commission set forth herein, Listing Broker shall have the right, in its sole and absolute discretion to do any one or more of the following:
- a. Not pay any commission to Cooperating Broker or Cooperating Agent for any transaction involving the Purchaser;
  - b. Not pay any commission to Cooperating Broker or Cooperating Agent for any other transaction(s) (whether involving the Purchaser or not) in which Cooperating Broker is a Cooperating Broker; and
  - c. Refuse to recognize Cooperating Broker and Cooperating Agent as a Cooperating Broker for any future transactions (whether involving the Purchaser or not) in which the Listing Broker is involved.
10. **EXECUTION BY COOPERATING BROKER AND COOPERATING AGENT.** The execution of this agreement by Cooperating Agent shall be deemed to bind both the Cooperating Agent and the Cooperating Broker to the terms and conditions hereof. Notwithstanding the foregoing, this Agreement is not enforceable by Cooperating Broker or Cooperating Agent unless executed by both Listing Broker and Cooperating Broker.
11. **REJECTION OF PSA BY OWNER.** In the event that Owner, in its sole discretion, rejects the PSA, no commission shall be due to Cooperating Agent or Cooperating Broker.
12. Cooperating Agent acknowledges that s/he registered the Purchaser's name with the Project on behalf of Cooperating Broker. By registering the Purchaser's name on the form and by executing a copy of same, Cooperating Agent on behalf of itself and the Cooperating Broker acknowledges that he/she has read the terms and conditions of the Cooperating Broker Commission Agreement contained herein and agrees to abide and be bound thereby.
13. **CERTIFICATION BY COOPERATING BROKER and COOPERATING AGENT.** Cooperating Broker and Cooperating Agent hereby certify to Owner that each neither has nor will rebate, refund or otherwise credit to or for the benefit of Listing Broker or any agent or employee of Listing Broker any portion of the Commission. Further, Cooperating Broker and Cooperating Agent hereby agree that neither will look to Owner for enforcement of this Agreement or collection of the Commission provided for herein and that they will solely look to Listing Broker for same.
14. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement between Listing Broker and Cooperating Agent and shall not be altered, modified or amended, unless in writing and signed by all the parties hereto.

*[signatures on the following page]*

PROJECT: Waldorf Astoria Residences Miami

UNIT NO: 8802

PURCHASE PRICE: \$ 9,000,000.00

PURCHASER: Steven Vogel & Caroline Vogel

LISTING BROKER:

COOPERATING BROKER:

PMG RESIDENTIAL, LLC

BESPOKE REAL ESTATE FLORIDA LLC

By: DocuSigned by:  
Rodrigo Pintos  
F009D437960A413

By: DocuSigned by:  
Kathleen Shadley  
7850741AD59147F  
Cooperating Broker's Signature  
Licensed Real Estate Broker

Name: Rodrigo Pintos

Name: Kathleen Shadley

Title: Qualifying Broker

Title: Qualifying Broker

Date: 3/1/2022

Date: 2/7/2022 | 11:37 AM PST

**CO-BROKER AGREEMENT**

**PROJECT:** Waldorf Astoria Residences Miami

**UNIT NO:** PH 102 ("Unit")

**UNIT PURCHASE PRICE:** \$17,000,000.00

**PURCHASER:** Steven Vogel & Caroline Vogel

**COOPERATING BROKER COMPANY:** BESPOKE REAL ESTATE FLORIDA LLC

("Cooperating Broker")

**COOPERATING AGENT** (*print name*) Harlan Goldberg ("Cooperating Agent")

**PMG RESIDENTIAL, LLC** ("Listing Broker"), Cooperating Broker and Cooperating Agent, agree as follows as to the purchase and sale of the Unit in the Project developed by **PMG DOWNTOWN DEVELOPERS, LP** ("Owner"):

1. Subject to Cooperating Broker and/or Cooperating Agent's registration of Purchaser for the above-referenced Unit within the past ninety (90) days and involvement as participating broker/agent in connection with the above real estate transaction, Cooperating Broker shall be entitled to a total commission for the sale of the Unit to Purchaser in the amount of 7 % of the total Unit Purchase Price (the "Commission") as set forth in the purchase and sale agreement executed by Purchaser and Owner (the "PSA").

In accordance with the aforementioned, the Commission shall be paid as follows:

a. Pre-Groundbreaking PSA's:

- i. 50% of the Commission shall be earned only upon the later of (x) the closing of Owner's construction loan with respect to the Project ("Groundbreaking") and (y) receipt by Owner (or by a third party designated by Owner), in clear funds, of an earnest money deposit equal to or exceeding 20% of the purchase price set forth in the applicable PSA, and shall be payable thirty (30) days after the later to occur of (x) and (y); and
- ii. 50% of the Commission shall be earned only upon the later of (x) one (1) year following Groundbreaking and (y) receipt by Owner (or by a third party designated by Owner), in clear funds, of an earnest money deposit equal to or exceeding 30% of the purchase price set forth in the applicable PSA, and shall be payable thirty (30) days after the later to occur of (x) and (y);

b. Post-Groundbreaking PSA's:

- i. 100% of the Commission shall be earned only upon the later of (x) the expiration of the 15-day rescission period with respect to the applicable purchase and sale agreement; and (y) receipt by Owner (or by a third party designated by Owner), in clear funds, of an earnest money deposit equal to or exceeding 30% of the purchase price set forth in the applicable PSA, and shall be payable thirty (30) days after the later to occur of (x) and (y); and

2. **OTHER SALES TRANSACTIONS.** This agreement does not obligate Listing Broker to pay commissions to Cooperating Broker for any prospective purchaser at the Project other than for Purchaser's purchase of the Unit. Such an obligation may only be pursuant to a written agreement in a form acceptable to Listing Broker in its sole discretion. Listing Broker reserves the right in its sole and absolute discretion to modify the terms under which it agrees to pay Cooperating Broker commissions. Neither Cooperating Broker nor Cooperating Agent may rely upon the terms of this agreement for any transaction other than the one specifically involving the Purchaser during the effective term of this registration. This agreement does not obligate Listing Broker to pay commissions to Cooperating Broker in the event Purchaser purchases a unit in the Project which is not listed with Listing Broker.
3. **INDEMNIFICATION.** Cooperating Broker and Cooperating Agent jointly and severally agree to indemnify and hold Listing Broker and Owner harmless from and against any and all losses, claims, demands, damages, costs and expenses of whatever nature or kind including reasonable attorneys' fees and costs and appellate fees and costs relating to or arising out of any claims against Listing Broker and/or Owner as a result of any representation / or other conduct by either of them which are made or done without the express written consent of Listing Broker and Owner.
4. **NO INDUCEMENTS.** Neither Cooperating Broker or Cooperating Agent shall pay or offer to any person a referral fee, rebate, bonus gratuity, commission or other form of compensation or consideration, for the purchase by Purchaser of a unit at the Project, without the prior written consent of the Owner and the Listing Broker.
5. **CONFIDENTIALITY.** The registration forms, mailing lists, purchaser lists and other records of prospective or actual purchasers are proprietary to Listing Broker and/or Owner and are confidential trade secrets. Cooperating Broker and Cooperating Agent are not entitled to review the contents of any of the foregoing. Cooperating Broker and Cooperating Agent agree not to enter into any negotiations directly or indirectly with any purchaser at the Project or prospective purchaser deemed registered to Listing Broker regarding the reservation, purchaser, lease and or option of the Project, except with the direct participation or express prior written approval of Listing Broker.
6. **ATTORNEYS' FEES AND COSTS.** In the event of any litigation arising from this Agreement, the prevailing party shall be entitled to reimbursement from the other party of all reasonable attorneys' fees and cost associated with such matter at the pretrial, trial and appellate levels.
7. **COMPLIANCE WITH LAWS AND RULES.** Cooperating Broker and Cooperating Agent agree to comply, abide and be bound by all laws, rules, regulations and codes of ethics promulgated or adopted by any state or local authority or board realtors regulating the conduct of real estate brokers and salespersons and the payment of real estate commissions. In addition, Cooperating Broker and Cooperating Agent shall not interfere with Listing Broker's employee's performance or duty of loyalty to Listing Broker and/or the Owner. Further, and unless Cooperating Broker and Cooperating Agent notify Listing Broker in writing of their respective exclusion from the requirement for such licensure upon execution of this Agreement, Cooperating Broker and Cooperating Agent represent and warrant that their respective applicable Real Estate Licenses are current and in good standing and that they will maintain such status at all times material to this Agreement.
8. **RELEASE:** Simultaneously with delivery of the amount(s) provided for in paragraph 1, Cooperating Broker and Cooperating Agent shall provide Listing Broker with a Full General Release in favor of Owner and Listing Broker as to the amount(s) delivered. The Release provided for herein shall be on



a form prepared by and acceptable to Listing Broker within its sole discretion.

9. **DEFAULT BY COOPERATING BROKER.** If either Cooperating Broker or the Cooperating Agent violates any of the terms or conditions of this agreement or fails to fully and completely participate as needed throughout the transaction giving rise to the commission set forth herein, Listing Broker shall have the right, in its sole and absolute discretion to do any one or more of the following:
- a. Not pay any commission to Cooperating Broker or Cooperating Agent for any transaction involving the Purchaser;
  - b. Not pay any commission to Cooperating Broker or Cooperating Agent for any other transaction(s) (whether involving the Purchaser or not) in which Cooperating Broker is a Cooperating Broker; and
  - c. Refuse to recognize Cooperating Broker and Cooperating Agent as a Cooperating Broker for any future transactions (whether involving the Purchaser or not) in which the Listing Broker is involved.
10. **EXECUTION BY COOPERATING BROKER AND COOPERATING AGENT.** The execution of this agreement by Cooperating Agent shall be deemed to bind both the Cooperating Agent and the Cooperating Broker to the terms and conditions hereof. Notwithstanding the foregoing, this Agreement is not enforceable by Cooperating Broker or Cooperating Agent unless executed by both Listing Broker and Cooperating Broker.
11. **REJECTION OF PSA BY OWNER.** In the event that Owner, in its sole discretion, rejects the PSA, no commission shall be due to Cooperating Agent or Cooperating Broker.
12. Cooperating Agent acknowledges that s/he registered the Purchaser's name with the Project on behalf of Cooperating Broker. By registering the Purchaser's name on the form and by executing a copy of same, Cooperating Agent on behalf of itself and the Cooperating Broker acknowledges that he/she has read the terms and conditions of the Cooperating Broker Commission Agreement contained herein and agrees to abide and be bound thereby.
13. **CERTIFICATION BY COOPERATING BROKER and COOPERATING AGENT.** Cooperating Broker and Cooperating Agent hereby certify to Owner that each neither has nor will rebate, refund or otherwise credit to or for the benefit of Listing Broker or any agent or employee of Listing Broker any portion of the Commission. Further, Cooperating Broker and Cooperating Agent hereby agree that neither will look to Owner for enforcement of this Agreement or collection of the Commission provided for herein and that they will solely look to Listing Broker for same.
14. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement between Listing Broker and Cooperating Agent and shall not be altered, modified or amended, unless in writing and signed by all the parties hereto.

*[signatures on the following page]*

PROJECT: Waldorf Astoria Residences Miami

UNIT NO: PH 102

PURCHASE PRICE: \$ 17,000,000.00

PURCHASER: Steven Vogel & Caroline Vogel

LISTING BROKER:

COOPERATING BROKER:

PMG RESIDENTIAL, LLC

BESPOKE REAL ESTATE FLORIDA LLC

By: DocuSigned by:  
Rodrigo Pintos  
F999D437960A413

By: DocuSigned by:  
Kathleen Shadley  
7850741AD59147F...  
Cooperating Broker's Signature  
Licensed Real Estate Broker

Name: Rodrigo Pintos

Name: Kathleen Shadley

Title: Qualifying Broker

Title: Qualifying Broker

Date: 3/1/2022

Date: 2/7/2022 | 11:37 AM PST

**CO-BROKER AGREEMENT**

**PROJECT:** Waldorf Astoria Residences Miami

**UNIT NO:** PH 101 ("Unit")

**UNIT PURCHASE PRICE:** \$17,000,000.00

**PURCHASER:** Steven Vogel & Caroline Vogel

**COOPERATING BROKER COMPANY:** BESPOKE REAL ESTATE FLORIDA LLC

("Cooperating Broker")

**COOPERATING AGENT** (*print name*) Harlan Goldberga ("Cooperating Agent")

**PMG RESIDENTIAL, LLC** ("Listing Broker"), Cooperating Broker and Cooperating Agent, agree as follows as to the purchase and sale of the Unit in the Project developed by **PMG DOWNTOWN DEVELOPERS, LP** ("Owner"):

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- ii. 50% of the Commission shall be earned only upon the later of (x) one (1) year following Groundbreaking and (y) receipt by Owner (or by a third party designated by Owner), in clear funds, of an earnest money deposit equal to or exceeding 30% of the purchase price set forth in the applicable PSA, and shall be payable thirty (30) days after the later to occur of (x) and (y);

b. Post-Groundbreaking PSA's:

- i. 100% of the Commission shall be earned only upon the later of (x) the expiration of the 15-day rescission period with respect to the applicable purchase and sale agreement; and (y) receipt by Owner (or by a third party designated by Owner), in clear funds, of an earnest money deposit equal to or exceeding 30% of the purchase price set forth in the applicable PSA, and shall be payable thirty (30) days after the later to occur of (x) and (y); and

2. **OTHER SALES TRANSACTIONS.** This agreement does not obligate Listing Broker to pay commissions to Cooperating Broker for any prospective purchaser at the Project other than for Purchaser's purchase of the Unit. Such an obligation may only be pursuant to a written agreement in a form acceptable to Listing Broker in its sole discretion. Listing Broker reserves the right in its sole and absolute discretion to modify the terms under which it agrees to pay Cooperating Broker commissions. Neither Cooperating Broker nor Cooperating Agent may rely upon the terms of this agreement for any transaction other than the one specifically involving the Purchaser during the effective term of this registration. This agreement does not obligate Listing Broker to pay commissions to Cooperating Broker in the event Purchaser purchases a unit in the Project which is not listed with Listing Broker.
3. **INDEMNIFICATION.** Cooperating Broker and Cooperating Agent jointly and severally agree to indemnify and hold Listing Broker and Owner harmless from and against any and all losses, claims, demands, damages, costs and expenses of whatever nature or kind including reasonable attorneys' fees and costs and appellate fees and costs relating to or arising out of any claims against Listing Broker and/or Owner as a result of any representation / or other conduct by either of them which are made or done without the express written consent of Listing Broker and Owner.
4. **NO INDUCEMENTS.** Neither Cooperating Broker or Cooperating Agent shall pay or offer to any person a referral fee, rebate, bonus gratuity, commission or other form of compensation or consideration, for the purchase by Purchaser of a unit at the Project, without the prior written consent of the Owner and the Listing Broker.
5. **CONFIDENTIALITY.** The registration forms, mailing lists, purchaser lists and other records of prospective or actual purchasers are proprietary to Listing Broker and/or Owner and are confidential trade secrets. Cooperating Broker and Cooperating Agent are not entitled to review the contents of any of the foregoing. Cooperating Broker and Cooperating Agent agree not to enter into any negotiations directly or indirectly with any purchaser at the Project or prospective purchaser deemed registered to Listing Broker regarding the reservation, purchaser, lease and or option of the Project, except with the direct participation or express prior written approval of Listing Broker.
6. **ATTORNEYS' FEES AND COSTS.** In the event of any litigation arising from this Agreement, the prevailing party shall be entitled to reimbursement from the other party of all reasonable attorneys' fees and cost associated with such matter at the pretrial, trial and appellate levels.
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8. **RELEASE:** Simultaneously with delivery of the amount(s) provided for in paragraph 1, Cooperating Broker and Cooperating Agent shall provide Listing Broker with a Full General Release in favor of Owner and Listing Broker as to the amount(s) delivered. The Release provided for herein shall be on

a form prepared by and acceptable to Listing Broker within its sole discretion.

9. **DEFAULT BY COOPERATING BROKER.** If either Cooperating Broker or the Cooperating Agent violates any of the terms or conditions of this agreement or fails to fully and completely participate as needed throughout the transaction giving rise to the commission set forth herein, Listing Broker shall have the right, in its sole and absolute discretion to do any one or more of the following:
- a. Not pay any commission to Cooperating Broker or Cooperating Agent for any transaction involving the Purchaser;
  - b. Not pay any commission to Cooperating Broker or Cooperating Agent for any other transaction(s) (whether involving the Purchaser or not) in which Cooperating Broker is a Cooperating Broker; and
  - c. Refuse to recognize Cooperating Broker and Cooperating Agent as a Cooperating Broker for any future transactions (whether involving the Purchaser or not) in which the Listing Broker is involved.
10. **EXECUTION BY COOPERATING BROKER AND COOPERATING AGENT.** The execution of this agreement by Cooperating Agent shall be deemed to bind both the Cooperating Agent and the Cooperating Broker to the terms and conditions hereof. Notwithstanding the foregoing, this Agreement is not enforceable by Cooperating Broker or Cooperating Agent unless executed by both Listing Broker and Cooperating Broker.
11. **REJECTION OF PSA BY OWNER.** In the event that Owner, in its sole discretion, rejects the PSA, no commission shall be due to Cooperating Agent or Cooperating Broker.
12. Cooperating Agent acknowledges that s/he registered the Purchaser's name with the Project on behalf of Cooperating Broker. By registering the Purchaser's name on the form and by executing a copy of same, Cooperating Agent on behalf of itself and the Cooperating Broker acknowledges that he/she has read the terms and conditions of the Cooperating Broker Commission Agreement contained herein and agrees to abide and be bound thereby.
13. **CERTIFICATION BY COOPERATING BROKER and COOPERATING AGENT.** Cooperating Broker and Cooperating Agent hereby certify to Owner that each neither has nor will rebate, refund or otherwise credit to or for the benefit of Listing Broker or any agent or employee of Listing Broker any portion of the Commission. Further, Cooperating Broker and Cooperating Agent hereby agree that neither will look to Owner for enforcement of this Agreement or collection of the Commission provided for herein and that they will solely look to Listing Broker for same.
14. **ENTIRE AGREEMENT.** This Agreement sets for the entire agreement between Listing Broker and Cooperating Agent and shall not be altered, modified or amended, unless in writing and signed by all the parties hereto.

*[signatures on the following page]*

PROJECT: Waldorf Astoria Residences Miami

UNIT NO: PH 101

PURCHASE PRICE: \$ 17,000,000.00

PURCHASER: Steven Vogel & Caroline Vogel

LISTING BROKER:

PMG RESIDENTIAL, LLC

By: DocuSigned by:  
Rodrigo Pintos  
F999D437960A413...

Name: Rodrigo Pintos

Title: Qualifying Broker

Date: 3/1/2022

COOPERATING BROKER:

BESPOKE REAL ESTATE FLORIDA LLC

By: DocuSigned by:  
Kathleen Shadley  
7850741AD59147F...  
Cooperating Broker's Signature  
Licensed Real Estate Broker

Name: Kathleen Shadley

Title: Qualifying Broker

Date: 2/7/2022 | 11:37 AM PST