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

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MAZAL 485 LLC,

Plaintiff,

- against -

GREEN 485 HOLDINGS LLC, GREEN 485 OWNER LLC, 485 EAT OWNER LLC, GREEN 485 TIC LLC, GREEN 485 JV LLC, GREEN 485 MEZZ LLC, SL GREEN OPERATING PARTNERSHIP, L.P. and SL GREEN REALTY CORP.,

Defendants.

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Index No.: 600262/10

COMPLAINT

Plaintiff, Mazal 485 LLC ("Mazal"), by its attorneys, Morrison Cohen LLP, as and for its Complaint against Defendants, Green 485 Holdings LLC ("Transferor"), Green 485 Owner LLC ("Subsidiary"), 485 EAT Owner LLC ("EAT"), Green 485 TIC LLC ("TIC"), Green 485 JV LLC ("Company"), Green 485 Mezz LLC ("Mezz LLC"), SL Green Operating Partnership, L.P. ("SLGOP") and SL Green Realty Corp. ("SL Green Realty")[1], alleges as follows:

SUMMARY OF THE ACTION

1. This action arises out of SL Green's scheme to renege on Transferor's agreement to sell to Mazal (the "Sale") the property located at 485 Lexington Avenue, New York, New York (the "Property") pursuant to an August 7, 2009 Sale-Purchase Agreement (the "Agreement"). Though on the surface SL Green purported to comply with its obligation under the Agreement to seek and obtain approval for the transaction from its lender (the "Lender"), a

[1] Upon information and belief, Transferor, Subsidiary, EAT, TIC, Company, Mezz LLC and SLGOP are real estate holding companies or limited partnerships owned and/or controlled by the publicly traded company SL Green Realty and act through SL Green Realty. Therefore, for simplicity, Defendants are collectively referred to herein as SL Green.

"formality" that SL Green represented to Mazal was a non-issue prior to the execution of the Agreement since Lender already "blessed" the Sale, in actuality, as soon as SL Green realized that the Sale was no longer advantageous, SL Green derailed the deal and stonewalled the approval process until it had an opportunity to terminate the Agreement.

2. The impetus for SL Green's devious plan is that the announcement of the Sale had a significant positive impact on its financials. Prior to the execution of the Agreement, SL Green's financial picture, like that of most Real Estate Investment Trusts in the current economic climate, was bleak. In the last year and a half, SL Green's stock had plummeted and it had serious liquidity problems. However, as soon as SL Green disclosed the Sale and the Agreement, the company underwent a resurgence – its stock started to rise and it was able to refinance a number of its loans on other properties, generating an influx of cash. Thus, there was no longer a need for SL Green to sell the Property at the agreed upon price.

3. To achieve its goal, SL Green capitalized on its purported "relationship" with Lender and, in violation of the Agreement, completely excluded Mazal from the process of obtaining Lender's approval of the Sale. As the approval process dragged on, due to Lender unreasonably placing ridiculous conditions on Mazal in exchange for consent, SL Green seized the opportunity to play a cat and mouse game with Lender so that it could silently extricate itself from the deal while fronting as if it were fighting with Lender for consent.

4. The insight to SL Green's scheme can be divined from the fact that even though negotiations were ongoing and the deadline to achieve Lender approval was extended to January 2010, on December 7, 2009, SL Green announced at an annual investor conference, in violation of the Agreement's confidentiality provisions, that it was "unlikely" that the Sale would be consummated and stated that "if this sale does fall through, we will likely retain [the Property]

given improving market conditions and de-emphasis on the initial reasons for our sale, as we've achieved significant deleveraging elsewhere on our balance sheet."

5. This announcement was the beginning of the end of the Sale, as the following day it was reported in *Crain's New York Business* that the deal had "died." SL Green's public statement evidenced its intention to disregard its obligations under the Agreement to cooperate with Mazal in getting Lender's consent. Instead of pushing forward at this point, SL Green slowed down the approval process and timed its responses to correspondence so that, given the tight deadlines for obtaining Lender approval, it would be virtually impossible for a negotiated resolution to be achieved. Even when Lender finally came to the table and indicated its willingness explore alternative arrangements for which it would issue its consent, as a final indignity and evidencing its bad faith, SL Green attempted to white wash its improper conducting by refusing to negotiate and extend the deadline for getting Lender consent unless Mazal provided SL Green with a complete release from all liability. When Mazal refused to succumb to SL Green's frivolous demand, Transferor wrongfully and improperly terminated the Agreement. Upon information and belief, SL Green is now marketing the Property well above the purchase price agreed to in the Agreement.

6. Based upon the foregoing, and as set forth in detail below, SL Green's seller's remorse does not justify its breaches of the Agreement nor its deliberate and intentional scheme to impede Mazal from obtaining the benefits of the Agreement and acquire the Property. But for SL Green's misconduct, Mazal would have been able to close on the transaction as there was absolutely no legitimate basis for Lender to withhold its consent to the deal. As a result thereof, Mazal is entitled to, among other things, a judgment requiring SL Green to specifically perform all of its obligations under the Agreement.

THE PARTIES

7. Mazal is a Delaware limited liability company having an address c/o Bayrock Group, LLC ("Bayrock"), 160 Varick Street, New York, New York 10013. It is co-owned by subsidiaries of Optibase Ltd. ("Optibase") and Gilmor International Inc. ("Gilmor").

8. Upon information and belief, Defendant Transferor is a Delaware limited liability company having an address c/o SL Green Realty Corp., 420 Lexington Avenue, New York, New York 10170.

9. Upon information and belief, Defendant Subsidiary is a Delaware limited liability company having an address c/o SL Green Realty Corp., 420 Lexington Avenue, New York, New York 10170.

10. Upon information and belief, Defendant EAT is a Delaware limited liability company having an address c/o SL Green Realty Corp., 420 Lexington Avenue, New York, New York 10170.

11. Upon information and belief, Defendant TIC is a Delaware limited liability company having an address c/o SL Green Realty Corp., 420 Lexington Avenue, New York, New York 10170.

12. Upon information and belief, Defendant Company is a Delaware limited liability company having an address c/o SL Green Realty Corp., 420 Lexington Avenue, New York, New York 10170.

13. Upon information and belief, Defendant Mezz LLC is a Delaware limited liability company having an address c/o SL Green Realty Corp., 420 Lexington Avenue, New York, New York 10170.

14. Upon information and belief, Defendant SLGOP is a Delaware limited partnership having an address at SL Green Realty Corp., 420 Lexington Avenue, New York, New York 10170.

15. Upon information and belief, Defendant SL Green is a Maryland business corporation having an address at 420 Lexington Avenue, New York, New York 10036.

JURISDICTION AND VENUE

16. Jurisdiction in this Court is proper under New York Civil Practice Law and Rules ("CPLR") Sections 301 and 302 because Mazal and Defendants reside and/or transact or regularly do or solicit business within New York State.

17. Venue is proper under CPLR 503(a) because the majority of the parties' principal places of business and/or residences are in New York County and the Property is located in New York County.

FACTS COMMON TO ALL CAUSES OF ACTION

SL Green Is A Savvy And Sophisticated REIT

18. According to its website, SL Green is a "self-administered and self-managed real estate investment trust, or REIT, that predominantly acquires, owns, repositions and manages Manhattan office properties." SL Green claims that as of December 31, 2008, it was "New York's largest office landlord," owning 29 New York office properties for a total of 23,211,200 square feet.

19. SL Green owns approximately 71 office properties across Manhattan, Brooklyn, Westchester, Connecticut and New Jersey. Notable properties include: (a) 1 Madison Avenue, New York, New York, with 1,176,911 square feet and the headquarters of CS First Boston; (b) 1515 Broadway, New York, New York, located in the heart of Times Square, with

2,056,442 square feet and tenants such as Viacom International, Inc.; (c) 555 West 57th Street, New York, New York, with 975,983 square feet and tenants such as CBS, Inc. and the City University of New York; and (d) 1185 Avenue of the Americas, New York, New York with 1,088,690 square feet and tenants such as Bank of America, Hess Corporation and the National Hockey League.

20. Like nearly all REITs, SL Green's stock price and financial performance were adversely impacted by the real estate market downturn in the last few years. Specifically, at the close of the market on September 3, 2008, SL Green's stock price was $90.19. As of March 6, 2009, the stock price had dropped all the way to $8.69. Similarly, at the end of its second quarter 2008, SL Green reported quarterly net income of $148 million, and earnings per share of $2.29. By the end of its second quarter 2009, SL Green's net quarterly income was less than $22 million and earnings per share were only $0.18.

21. By the beginning of 2009, SL Green's liquidity concerns had become glaringly evident. In its 2008 Annual Report, SL Green stated:

> Beginning in the third quarter of 2007, the sub-prime residential lending and single family housing markets in the U.S. began to experience significant default rates, declining real estate values and increasing backlog of housing supply, and other lending markets experienced higher volatility and decreased liquidity resulting from the poor credit performance in the residential lending markets. The residential sector capital markets issues quickly spread more broadly into the asset-backed commercial real estate, corporate and other credit and equity markets. These factors have resulted in substantially reduced mortgage loan originations and securitizations, and caused more generalized credit market dislocations and a significant contraction in available credit. As a result, most financial industry participants, including commercial real estate owners, operators, investors and lenders continue to find it extremely difficult to obtain cost-effective debt capital to finance new investment activity or to refinance maturing debt. In the few instances in which debt is available, it is at a cost much higher than in the recent past.

22. On or about April 6, 2009, Credit Suisse downgraded SL Green's stock from "neutral" to "underperform" on liquidity concerns. Then on April 20, 2009, SL Green's stock price tumbled nearly 20% when the mounting credit losses of its biggest tenant, Citigroup, were revealed. On May 11, 2009, SL Green announced that its quarterly per share common stock dividend would be slashed from $0.375 to $0.10. That same day, SL Green announced the commencement of a public offering of 14,500,000 shares of common stock, for, among other purposes, "purchases of the indebtedness of its subsidiaries...and the repayment of indebtedness at the applicable maturity or put date." By June 4, 2009, the stock price had modest growth, climbing back to $26.70. However, one month later, on July 10, 2009, SL Green's stock price was back down to $18.66 – a decline of nearly 80% from its September 3, 2008 price.

The Unique And Desirable Property

23. The Property, also known as Grand Central Square, is located at 485 Lexington Avenue, and runs the entire east side block on Lexington between 46th Street and 47th Street. As such, it is located in the heart of midtown, just steps from Grand Central Terminal.

24. Through various subsidiaries, SL Green Realty is the owner of the Property. In particular, Subsidiary, EAT and TIC, as tenants-in-common, own 100% of the fee interest in the Property.

25. The Property was constructed in 1956. SL Green recently completed a major capital improvement program at the Property, including a new lobby, entryway, windows, elevators, corridors and a renovated façade. In fact, in 2008, SL Green and the Property received a BOMA Award for Renovated Building of the year.

26. The Property consists of thirty-two floors, plus a basement and mezzanine, and has a total of 921,370 rentable square feet.

27. Notable tenants of the Property include: Citibank, N.A., Fairchild Publications, Novantas, Offit Capital, Travelers Insurance, the New York Public Library, KPS Capital Partners LP and Konica Minolta Business Solutions, Inc.

The Mortgage On The Property

28. On or about January 22, 2007, Subsidiary, EAT and TIC, as borrowers, entered into an Amended, Restated and Consolidated Mortgage, Security Agreement, Assignment of Rents and Fixture Filing (the "Mortgage") on the Property with Lender. The Mortgage secures a loan in the amount of $450,000,000 (the "Mortgage Loan") made by Lender to Subsidiary, EAT and TIC.

29. Under a Pooling and Servicing Agreement dated as of March 1, 2007, Lender appointed a special servicer (the "Special Servicer") for the loans held by Lender.

30. The Mortgage Loan is a non-amortized loan at an interest rate of 5.608% that matures on February 11, 2017.

31. Article 9 of the Mortgage governs "Transfer or Encumbrance of the Property." Under this Article, there are separate standards for Lenders "consent" to proposed transactions concerning the Property and/or the Mortgage:

a. With respect to a "Transfer" of the Mortgage, Section 9.02 provides that "Borrower shall not Transfer, not permit any Transfer, without the prior written consent of Lender, which consent Lender may withhold in its sole and absolute discretion..."

b. With respect to a "Sale" of the Property, Section 9.04(b) of the Mortgage requires Lender to exercise its "reasonable discretion" in consenting to a sale or transfer of the Property.

Mazal And SL Green Enter Into The Agreement For The Property

32. On or about June 16, 2009, Mazal (through an entity known as Green Investments Group, LLC) executed a term sheet with SL Green for the Sale (the "Term Sheet").

33. On or about July 7, 2009, Mazal, Optibase and Gilmor retained Greenberg Traurig, LLP ("Greenberg") to represent them in their acquisition of the Property and to negotiate the Agreement. Because Greenberg had long represented SL Green and its affiliates, Greenberg required Optibase and Gilmor to execute a conflict waiver letter in connection with its representation of the companies. Throughout Greenberg's representation, it capitalized off of its history and relationship with SL Green and essentially served as a middle-man for the transaction.

34. Between June 16, 2009 and early August 2009 when the Agreement was executed, SL Green had protracted discussions with Lender and Special Servicer concerning its "pre-approval" of the Sale as none of the parties to the Agreement wanted to waste their time negotiating the details of the Agreement without assurances from Lender and Special Servicer that consent would be forthcoming.

35. At this juncture, Mazal went through onerous hurdles to provide SL Green and Lender with background and financial information concerning Mazal, Optibase (and its chairman and CEO, Tom Wyler ("Wyler"), and Gilmor (and its principals – Avi Abekasis ("Abekasis") and Eli Goldhar ("Goldhar")).

36. After Lender's and Special Servicer's initial review of the materials provided to it, SL Green informed Mazal that due to the structure of the transaction set forth in the Term Sheet, the transaction was being assessed as a "Sale" of the Property rather than a

"Transfer," as defined in the Mortgage and, as such, the proposed transaction would be governed by the "reasonable discretion" standard set forth in the Mortgage.

37. Based upon these representations, and the understanding that Lender approval would not be an issue, Mazal and Transferor entered into the Agreement for the Sale on or about August 7, 2009.

38. Pursuant to Articles 3(A) and 20(C) of the Agreement, Mazal was required to Pay Transferor $20,790,000 (the "Purchase Price") and assume the Mortgage Loan for a 49.5% stake in the Property. Mazal paid Transferor the $7,500,000 required deposit, leaving a $13,290,000 balance to be paid at closing.

39. Article 3(B) of the Agreement expressly provides that as a condition of closing Lender was required to consent in writing to, among other things: the Sale to Mazal, the change in control of the fee owner of the Property and the approval of Newmark Knight Frank ("Newmark") as a "Qualified Manager" (as defined in the Mortgage) or otherwise as a permitted manager.

40. Under Article 3(D) of the Agreement, Newmark, as well as Optibase and Gilmor, would be substituted in as guarantors in the Mortgage for any misappropriation of the Property's tenants' security deposits or rent, or physical damage to the Property itself arising from the willful or grossly negligent acts of Newmark. Collectively, these acts are defined in the Agreement as "Manager Bad Boy Acts."

41. Article 3(C) of the Agreement provided that Mazal and Transferor would work together to provide the assumption application and required documentation that Lender would need to give its consent (the "Assumption Application"). This provision stresses that

"[Mazal] and Transferor shall cooperate with one another and with [Lender] and work diligently to obtain [Lender's] Consent."

42. Similarly, Article 3(E) of the Agreement provided that

> Each of [Mazal] and Transferor shall reasonably endeavor to include the other party in any meetings and discussions with [Lender] in connection with the Loan Assumption. Neither [Mazal] nor Transferor may deliver any written communication to [Lender] without delivering a copy thereof to the other party. Each of [Mazal] and Transferor shall deliver to the other, promptly upon receipt or sending, as applicable, copies of all correspondence among or between [Lender], [Mazal] or Transferor, as the case may be...Each of [Mazal] and Transferor shall endeavor to keep the other party reasonably apprised on a current basis of all communications with [Lender].

43. Pursuant to Article 5, entitled "Closing,"

> If Lender does not deliver the Lender Consent to Transferee or Transferor on or before the date that is ninety (90) days after submission of the Assumption Application (the "Assumption Outside Date"), either Transferor or Transferee may terminate this Agreement by written notice to the other party, whereupon the parties shall have no further rights or obligations hereunder, and Escrow Agent shall return the Deposit to Transferee. Notwithstanding anything to the contrary contained herein, (i) Transferor may, upon written notice to Transferee, extend the Closing Date one or more times for an aggregate of up to forty five (45) days in order to satisfy a condition to closing under this Agreement (such extended period, the "Transferor Adjournment Period") and (ii) Transferee may, upon written notice to Transferor, extend the Closing Date one or more times for an aggregate of up to fifteen (15) days for any reason.

44. Pursuant to Article 7 of the Agreement, at closing the Purchase Price was to be adjusted to account for, among other things, the following with respect to the Property: (a) real property taxes and assessments; (b) water rates and charges; (c) sewer taxes and rents; (d) salaries, vacation pay, sick pay and pensions of Union Employees; (e) permit, license and inspection fees; (f) fuel; (g) deposits on account with utility companies; (h) rents; (i) leasing costs; (j) payments due on Surviving Contracts; (k) interest payable under the current loan

documents; and (l) *"all other items customarily apportioned in connection with the sale of similar properties similarly located"* (emphasis added).

45. In addition to the Purchase Price, pursuant to Article 8 of the Agreement, at the closing, Mazal was required to pay Transferor an additional $20,000,000.00 above the purchase price in the form of a loan to Transfer and $275,000 in connection with an option to purchase an additional 49.5% stake in the Property.

46. Pursuant to Article 8(A) of the Agreement, at the closing, Transferor was also required to deliver to Mazal, among other things, the following items relating to the use of the Property: (a) executed copies of all leases, brokerage agreements and contracts relating to the Property; (b) licenses, permits, authorizations and approvals pertaining to the Property; (c) tenant estoppels pursuant to Article 10 of the Agreement; (d) transferable guaranties and warranties received in connection with any work or services performed or equipment installed in and improvements erected on the Property; (e) copies of all building plans relating to the Property; (f) documents required by Mazal to calculate the rents of the Property's tenants after the closing; (g) a certified updated schedule of rent arrearages; (h) keys to the locks at the Property; (i) a certified updated schedule of all base rents, real estate taxes, and operating expense escalations billed to tenants one month prior to the closing date; (j) security deposits of the tenants held by Subsidiary, EAT and TIC as of the closing; and (k) copies of bills sent to tenants prior to the closing.

47. Under Article 13, Mazal is granted the right, at its sole expense, to obtain a new title insurance policy for the Property and Transferor is required to cooperate with Mazal in connection with Mazal's efforts to obtain such policy.

48. Article 23(A) of the Agreement, which governs Transferor's inability to perform and Transferor's defaults, provides that in the event of a default by Transferor, Mazal's remedy is to either terminate the Agreement or "bring an action in equity against Transferor for specific performance."

49. Article 24 of the Agreement sets forth the condition that Mazal would acquire the Property at closing and provides that Mazal shall acquire the Property in its "as is" condition. This provision also sets forth Transferor's continuing obligations after the closing and excepts Transferor from liability with respect to the Property under certain circumstances after the Sale.

50. While Article 37 of the Agreement provides Transferor with an indemnity for losses, costs and damages incurred by Transferor for the public filing of the Agreement or a Notice of Pendency, it specifically excepts from the indemnity the filing of a Notice of Pendency where Mazal "prevails in an final unappealable order against Transferor in the action underlying such notice of pendency" – thus recognizing the parties' understanding that a Notice of Pendency is an acceptable remedial measure for Transferor's breach of the Agreement.

The Letter Agreement

51. Despite the foregoing, and, upon information and belief, based upon SL Green's communications with Lender and Special Servicer prior to the execution of the Agreement, SL Green had concerns about whether Lender and Special Servicer would approve Newmark, Optibase and Gilmor as substitute guarantors for the Mortgage. According to SL Green, it was concerned that Lender and Special Servicer would require personal guarantees in addition to that of Optibase and Gilmor because the two companies were foreign.

52. To address this concern, SL Green required Mazal to enter into a separate letter agreement (the "Letter Agreement") on or about August 7, 2009, which modified and added provisions to the original Agreement. Specifically, with respect to obtaining Lender's consent for the Sale, the Letter Agreement provided, among other things, that:

a. "In the event that Lender does not deliver the Lender Consent to Transferee or Transferor on or before the Assumption Outside Date, then, notwithstanding anything contained in the Agreement, either party may extend the Assumption Outside Date for an additional period of thirty (30) days (the "First Adjournment Period") by providing written notice to the other party prior to the Assumption Outside Date. If Lender has not yet delivered the Lender Consent to Transferee or Transferor at the expiration of First Adjournment Period, either party may again extend the Assumption Outside Date, by providing written notice to the other party prior to the expiration of the First Adjournment Period, for an additional fifteen (15) days."

b. If Lender determined that the Sale was not actually a "Sale" under the terms of Section 9.04 of the Mortgage, and that the assumption or transfer fee would exceed $1 million, then either party would have a right of termination of the Agreement unless the other party agreed to pay the excess of the assumption or transfer fee over $1 million;

c. If Lender determined that Newmark, Optibase and Gilmor were not acceptable as substitute guarantors for the Mortgage, then Wyler, Abekasis and Goldhar would agree to be added as additional guarantors (collectively, the "Additional Guarantors");

d. If it were determined that a vote at a special shareholders meeting of Optibase was required to approve Wyler's commitment as a guarantor, then Mazal would need to

provide written notice thereof to Transferor, whereupon Transferor would have five business days to terminate the Agreement if it wished;

e. If Transferor did not terminate the Agreement upon receipt of written notice of that a special shareholders meeting of Optibase would be required to approve Wyler's guarantor commitment, Optibase would use its "good faith efforts" to obtain approval for Wyler's commitment; and

f. If Lender determined that a new title insurance policy was required for the Property transaction, Mazal and Transferor would each be liable for the cost of half up to $330,000, and if the new policy were to cost more than this, then either party would have the right to terminate the Agreement.

SL Green's Announcement Of The Agreement Triggers A Surge In Its Stock Price

53. On August 10, 2009, in violation of the Agreement, SL Green announced in a press release that it had entered into the Agreement. The press release noted that the transaction gave the Property an implied asset valuation of approximately $504.2 million, or $547 per square foot. SL Green's CEO Marc Holliday ("Holliday") was quoted as saying: "This is a first, but significant step towards the sale of interests in 485 Lexington Avenue. If ultimately approved, the transaction would demonstrate that the Midtown Manhattan office market continues to stand as one of the world's top locations and that investor interest is once again on the rise."

54. The Sale was widely reported in the press. An August 10, 2009 article in *Real Estate Weekly*, for example, noted that the Mortgage on the Property was "far more favorable than what can be secured today amid the credit crunch." The same article noted that SL Green had, earlier in 2009, attempted to sell the Property for a total valuation of $550 million,

or $600 per square foot, but that that transaction "fell apart in part because of a dearth in available financing for commercial real estate acquisitions." A *Crain's New York Business* article of the same day noted that "[t]he sales market for large Manhattan office buildings has been all but dead for almost two years as the recession and credit crisis stifled deals," and quoted the president of Newmark opining that "there was no way this deal could have worked without having the existing financing in place because lenders are still not financing major real estate purchases."

55. Upon information and belief, SL Green's press release and disclosure of the Sale and Agreement to the media was a strategic ploy to drive up its stock price. Upon information and belief, as a result of the press release and the good publicity obtained by SL Green, it was able to raise significant capital thereby alleviating some of its liquidity issues.

SL Green Excludes Mazal From The Approval Process

56. After execution of the Agreement and Letter Agreement, the parties began the formal process of gathering information to submit to Lender and Special Servicer in connection with the Assumption Application.

57. Despite the express requirement in Article 3(E) of the Agreement that Mazal and SL Green should "reasonably endeavor to include the other party in any meetings and discussions with [Lender] in connection with the Loan Assumption," from the inception of the approval process SL Green excluded Mazal and served as the exclusive conduit to Lender and Special Servicer.

58. For example, in a response to an August 10, 2009 email from Bayrock, a real estate investment company assisting Mazal during the assumption process, which wrote: "I understand that SL Green will be sending in the package for the loan assumption, " Robert

Schiffer ("Schiffer"), a vice president of SL Green, confirmed the names of the employees who were "handling it from our end" and simply said, "We'll let you know as soon as we hear from [Lender]."

59. The Assumption Application was submitted to Lender by SL Green on or about August 21, 2009.

60. By letter dated September 3, 2009, SL Green informed Mazal that, upon review of the Assumption Application, Lender "did not anticipate Gilmor, Optibase and [Newmark] being acceptable substitute guarantors under the existing loan." SL Green further stated that:

> As such, pursuant to Paragraph 6 of [the Letter Agreement], *we will be advising Lender* that Tom Wyler, Avi Abekasis and Eli Goldhar will be additional substitute guarantors under the existing loan, but limited to the matters described in Paragraph 6. In the case of Tom Wyler, we will advise Lender that Mr. Wyler's execution is conditioned upon a successful Optibase shareholder vote, unless, due to a subsequent event, the Optibase shareholder vote is no longer necessary or relevant.
>
> *Please provide the undersigned, as expeditiously as possible, the information requested* of the guarantors in Lender's loan assumption application, with respect to Messrs. Wyler, Abekasis and Goldhar, together with their signatures to the application.

(emphasis added). Clearly, given SL Green's insistence on Mazal's execution of the Letter Agreement, SL Green's September 3, 2009 letter did not come as a surprise to Mazal.

61. The same day, Alan West from SL Green sent an email to Ray Lee of Bayrock requesting information about the guarantors to provide to the underwriter. Mr. Lee provided Mr. West with the information requested and told SL Green that "since SL Green has the relationship with Lender, it may be helpful if we can be introduced to the underwriter you are working with so that we can send any sensitive documents she needs directly to her." Schiffer,

who was copied on Mr. Lee's email, responded on behalf of SL Green and rebuffed Mr. Lee's suggestion, claiming that

> for consistency we think its best that you send us the individual financial statements as soon as possible and we'll send them on to Lender. Please realize that we will be having on-going dialogue with the servicer and special servicer regarding the assumption and its critical that we have all the relevant information, including the individual financials, available to us so we can continue to fight for the assumption.

62. In order to move the process forward to timely get Lender's consent and close the deal, Mazal responded to all of SL Green's and Lender's requests for information, including information with respect to the Additional Guarantors. However, SL Green continued to maintain almost exclusive contact with Lender to the detriment of Mazal.

63. Even when Lender's request for information indicated their confusion as to the intricacies of the transaction and Mazal sought a conference call to make sure all the details were correct, SL Green persisted in handling the matter itself, telling Mazal "[d]o not focus on the nature of the description of the guaranty, and what is or is not going to be covered. Rest assured that there is no disconnect between our understanding and the contract, nor is there any disconnect as to the purpose and effect of the Optibase shareholder vote. We will make sure that Lender understands all this."

64. Likewise, SL Green also excluded Mazal from participating on calls with Lender representatives and notified Mazal after the fact that it had calls with Lender. For instance, on September 23, 2009, Schiffer notified Bayrock that "we had a productive call with Jack Jones. He said that he was practically finished with his underwriting package and recommendation but for 2 open items which are listed below. He indicated that although there were hurdles he understood and appreciated the relationship that SLG has with Lender and that

that relationship would weigh heavily on his recommendation and Lender's recommendation to the special servicer."

SL Green Has Seller's Remorse And Colludes
To Undermine the Agreement And Prevent The Closing

65. By September 30, 2009, SL Green's stock price had jumped to $43.85. The same day, SL Green announced the refinancing of another one of its properties, at 100 Park Avenue, at a fixed rate of only 6.64%. SL Green had previously refinanced its loans for the Graybar Building at Grand Central and was able to reduce its fixed rate from 8.44% to 7.25%.

66. Upon information and belief, given the significant turnaround in stock price and additional liquidity occasioned by the announcement of the Agreement and SL Green's refinancing opportunities, SL Green started second guessing its decision to sell the Property to Mazal and SL Green became more lackadaisical in working towards obtaining Lender's approval prior to the Assumption Outside Date. As a result, upon information and belief, SL Green decided to stonewall the approval process in the hopes that the Assumption Outside Date would pass without Lender approval being obtained.

67. Due to the foregoing, there was virtually no progress made towards achieving Lender approval in the next month. As a result, on November 19, 2009, Mazal elected to extend the Assumption Outside Date until December 19, 2009 pursuant to Section 4 of the Letter Agreement.

68. In late November 2009, SL Green finally informed Mazal that Lender and Special Servicer would consent to the Sale only upon certain "conditions." One of these conditions was that Mazal fund a tenant improvement and lease commission reserve for a total of $45 million (the "Tenant Reserve") and maintain the Tenant Reserve for the remainder of the life

of the Mortgage. According to SL Green, Lender demanded the Tenant Reserve to protect Lender from tenant rollover even though current tenant leases were not set to expire until 2017.

69. In response to Special Servicer's unreasonable demand, SL Green embarked on a letter writing campaign against Special Servicer and Lender. Upon information and belief, SL Green engaged in such a campaign to create a paper trail (either with or without the aid of Lender and Special Servicer) so that it would not be accused of failing to abide by the terms of the Agreement and Letter Agreement that required SL Green to work diligently towards achieving Lender's consent.

70. Specifically, upon information and belief, on November 18, 2009, Holliday sent an email to Special Servicer objecting to this condition (the "November 18th Email"). Mazal was not consulted about or copied on the November 18th Email and, to date, has not received a copy of it.

71. By letter dated November 20, 2009, Jill Hyde, managing director and deputy counsel of Special Servicer responded to the November 18th Email. In Ms. Hyde's letter she stated that Special Servicer did not reject the proposed "sale of the Property" and assumption of the Mortgage Loan, but rather conveyed to Andrew Levine, counsel for SL Green, that it would approve the Sale "subject to certain conditions," one of which was the creation of the Tenant Reserve.

72. On November 23, 2009, SL Green wrote another letter to Special Servicer. This letter rehashed Special Servicer's previous unreasonable demands in connection with the Assumption Application, including, but not limited to: (a) Special Servicer's demand for a $50,000 fee merely to consider the transaction on a timely basis; (b) Special Servicer's demand that SL Green pay it an "assumption fee" in the amount of $4.5 million; and (c) Special

Servicer's demand for the Tenant Reserve. This letter also demanded that the condition for Tenant Reserve be dropped on the grounds that it was entirely unreasonable and represented a breach of Special Servicer's duty to exercise its approval rights in good faith.

73. Counsel for Special Servicer responded by letter on December 1, 2009 and again rejected the demand to drop the Tenant Reserve. However, Special Servicer indicated that: "[Special Servicer] personnel are willing to discuss with their business counterparts at SL Green how to mitigate the risk created by the proposed substitution of a new Borrower, and are willing to consider any proposals from SL Green in this regard."

74. SL Green ignored Special Servicer's willingness to meet to discus alternative arrangements and, knowing that the Assumption Outside Date was looming, waited until December 10, 2009 to respond to Special Servicer.

75. However, by this point it was patently clear that SL Green had no intention of closing the Sale since at a December 7, 2009 annual investor conference, SL Green announced that it was "unlikely" that the Sale would be consummated, and then revealed the significant benefit to SL Green if the deal fell through: "[I]f this sale does fall through, we will likely retain [the Property] given improving market conditions and de-emphasis on the initial reasons for our sale, as we've achieved significant deleveraging elsewhere on our balance sheet."

76. The following day, *Crain's New York Business* reported, in an article entitled "Sale of 485 Lexington dies" that

> SL Green Realty Corp.'s deal to sell 49.5% of 485 Lexington Avenue has fallen through, the company's chief executive, Marc Holliday, said at an investment meeting Monday. Mr. Holliday didn't detail the reasons that led to the transaction, which was announced over the summer, falling apart. Instead, he noted there could be litigation involved in the unraveling of the deal, which valued the 32-story tower at $502 million. Sources said CW

Capital, the special servicer that controlled the building's mortgage, refused to sign off on the transaction.

77. Nevertheless, Mazal was still hopeful that an accommodation could be reached with Lender and Special Servicer. Therefore, by letter dated December 16, 2009, Mazal exercised its right to extend the Assumption Outside Date for an additional fifteen days.

78. On December 17, 2009, Lender sent a letter to both Transferor and Mazal informing the parties that the Assumption Application had been approved subject to certain conditions, including the creation of the Tenant Reserve and a new equally unreasonable condition that the guarantors and Additional Guarantors execute a $20,000,000.00 guarantee of the Tenant Reserve.

79. In response to Lender's December 17, 2009 letter, Mazal directly contacted SL Green, Lender and Special Servicer to propose an alternate structure to the Sale that would not have required Lender's consent. Mazal's counsel, Greenberg, represented that it would provide an opinion letter stating that this new structure would not require Lender consent and that this alternative would be amenable to SL Green. However, without considering the strategy or meeting with Mazal, Lender or Special Servicer, through Greenberg, SL Green rejected Mazal's alternate proposal.

80. Realizing that time was on its side if it wanted to walk away from the Agreement, SL Green waited until December 30, 2009 to respond to the Lender's December 17th letter and reject Lender's "conditional" approval. In this letter, SL Green demanded that Lender drop its unreasonable demands for approval and immediately approve the transaction prior to the January 4, 2010 Assumption Outside Date. SL Green intentionally stalled until December 30, 2009 to send this letter knowing that the New Year's Eve holiday would leave only two business

days before the expiration of the Assumption Outside Date in which a resolution could be achieved.

SL Green Prematurely Terminates The Agreement In Bad Faith

81. Desperate, Mazal's representatives requested a meeting on January 4, 2010 with SL Green, to which SL Green initially agreed. At the same time, Mazal requested an additional postponement of the Assumption Outside Date in order for the parties to meet with and convince Lender to approve the transaction. However, SL Green refused a further extension of time without Mazal providing SL Green a release of all liability in connection with the Sale. When Mazal rebuked this bad-faith condition for granting the extension, SL Green refused to meet with Mazal.

82. Although the parties seemed at an impasse, a glimmer of hope was provided by a letter from counsel for Special Servicer dated January 4, 2010. In the letter, Special Servicer stated that it would "remain open to consideration of alternative suggestions to...mitigate the projected lease rollover and other tenant-related risks identified by" Lender, and that "[w]e hope that SL Green will use any additional time it is given to close the Transaction to present any alternative suggestions it has."

83. However, this dangling carrot was rejected by SL Green, who informed counsel for Mazal on January 5, 2010 that it would not consider another extension of Assumption Outside Date, although Greenberg was under the assumption it would given that it was "standard" practice to grant such a request under the circumstances. In the same breath, however, SL Green notified Mazal's counsel that it encouraged a meeting with Special Servicer and would let him know if SL Green intended to participate in such a meeting.

84. Despite such representation, *the same day*, Transferor purported to terminate the Agreement pursuant to Article 5 thereof and directed Greenberg to return to Mazal its deposit in accordance with Article 19 of the Agreement.[2]

85. Upon information and belief, to cover its tracks and as part of its deceptive plan of pretending it was working towards achieving Lender approval, on January 6, 2010, counsel for SL Green notified Lender and Special Servicer that it terminated the Agreement and placed the blame for the Sale's demise on Lender and Special Servicer for unreasonably withholding their consent.

86. Upon information and belief, even prior to its purported termination of the Agreement, SL Green began re-marketing the Property with a purchase price of approximately $25-30 million more in equity than the Purchase Price and is brazenly continuing to do so

FIRST CAUSE OF ACTION
(Breach of Contract/Specific Performance)

87. Mazal repeats and realleges the allegations contained in paragraphs 1 through 86 as if fully set forth herein.

88. Mazal and Transferor are parties to the Agreement and Letter Agreement, valid and enforceable contracts.

89. Pursuant to Article 3(B) of the Agreement, obtaining Lender's consent to Mazal's assumption of the Mortgage Loan was a condition of closing.

90. Pursuant to Article 3(C) of the Agreement, Mazal and Transferor were required to cooperate with one another and with Lender and work diligently to obtain Lender's consent.

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[2] Interestingly, the same day, SL Green announced yet another refinancing of one of its properties, 1515 Broadway at Times Square, in the amount of $475 million by a syndicate led by the Bank of China.

91. Pursuant to Article 3(E) of the Agreement: (a) Mazal and Transferor were required to reasonably endeavor to include the other party in any meetings or discussions with Lender in connection with the Loan Assumption; (b) neither Mazal nor Transferor may deliver any written communication to Lender without delivering a copy thereof to the other party; (c) each of Mazal and Transferor shall deliver to the other, promptly upon receipt or sending, as applicable, copies of all correspondence among or between Lender, Mazal or Transferor, as the case may be; and (d) each of Mazal and Transferor shall endeavor to keep the other party reasonably apprised on a current basis of all communications with Lender.

92. Despite Mazal's compliance with Articles 3(C) and 3(E) of the Agreement, SL Green failed to comply with these obligations and improperly and unjustifiably purported to terminate the Agreement after it undermined the prospect of achieving Lender consent prior to the Assumption Outside Date.

93. SL Green's wrongful actions, detailed above, constitute a material breach of the Agreement.

94. But for SL Green's breach of its obligations under the Agreement, Mazal would have been ready, willing and able to close on the Sale as anticipated by the Agreement and, upon information and belief, would have obtained Lender's consent to the assumption of the Mortgage Loan.

95. By reason of the foregoing, Mazal is entitled to a judgment, pursuant to Article 23 of the Agreement, declaring and adjudging that SL Green had no right to terminate the Agreement, which therefore remains in full force and effect, and directing Transferor to specifically perform all of its obligations under the Agreement, with an abatement of purchase

price to take into account the damages suffered by Mazal as a result of SL Green's breaches and the declining market conditions.

96. The Agreement relates to an interest in real property that is special, unique and irreplaceable. The specific performance sought by Mazal relates to and affects the title to, or the possession, use or enjoyment of, real property.

97. Mazal has no adequate remedy at law as monetary damages are inadequate. Barring specific performance, Mazal cannot be made whole by an award of monetary damages.

98. Since there is no adequate remedy at law and Mazal is entitled to specific performance, Mazal has filed a Notice of Pendency in connection with the Property as authorized by Article 37 of the Agreement. Annexed hereto as Exhibit A is a copy of the Notice of Pendency.

99. Mazal is also entitled to recovery of all of its fees and expenses (including reasonable attorneys' fees) incurred in this action pursuant to Article 35 of the Agreement.

SECOND CAUSE OF ACTION
(Breach of the Covenant of Good Faith and Fair Dealing)

100. Mazal repeats and realleges the allegations contained in paragraphs 1 through 99 as if fully set forth herein.

101. Implied in all contracts, including the Agreement, is a covenant of good faith and fair dealing which obligates the parties to act in good faith and to use their best efforts to deal fairly with one another.

102. SL Green has breached the covenant of good faith and fair dealing and has wrongfully deprived, destroyed and injured the rights of Mazal to receive the value, benefit and fruits of the Agreement by, among other things: (a) representing to Mazal prior to the execution

of the Agreement that it received Lender's "blessing" to the Sale; (b) improperly using the transaction and the executed Agreement as a vehicle to drive up its stock price with no intention to close the transaction; (c) repeatedly excluding Mazal from participating in the process of obtaining Lender's consent to the assumption of the Mortgage Loan; (d) misrepresenting to Mazal that it was doing everything it could to secure Lender's approval of the transaction; (e) representing to Mazal that it would continue to extend the closing date and would not terminate the contract while negotiations with Lender were ongoing; and (f) timing its communications with Mazal, Lender and Special Servicer to ensure that Lender approval could not be achieved by the Assumption Outside Date.

103. As a result of SL Green's actions and inactions SL Green ensured that the requisite consent would not be obtained from Lender and impeded Mazal from obtaining the benefits of the Agreement – namely the acquisition of the Property.

104. By reason of the foregoing, Mazal is entitled to a judgment, pursuant to Article 23 of the Agreement, declaring and adjudging that SL Green had no right to terminate the Agreement, which therefore remains in full force and effect, and directing Transferor to specifically perform all of its obligations under the Agreement, with an abatement of purchase price to take into account the damages suffered by Mazal as a result of SL Green's breaches and the declining market conditions.

105. The Agreement relates to an interest in real property that is special, unique and irreplaceable. The specific performance sought by Mazal relates to and affects the title to, or the possession, use or enjoyment of, real property.

106. Mazal has no adequate remedy at law as monetary damages are inadequate. Barring specific performance, Mazal cannot be made whole by an award of monetary damages.

107. Since there is no adequate remedy at law and Mazal is entitled to specific performance, Mazal has filed a Notice of Pendency in connection with the Property as authorized by Article 37 of the Agreement. Annexed hereto as Exhibit A is a copy of the Notice of Pendency.

108. Mazal is also entitled to recovery of all of its fees and expenses (including reasonable attorneys' fees) incurred in this action pursuant to Article 35 of the Agreement.

WHEREFORE, Mazal, demands judgment against Defendants as follows:

a. On Mazal's First Cause of Action, for a judgment, pursuant to Article 23 of the Agreement, declaring and adjudging that Transferor had no right to terminate the Agreement, which therefore remains in full force and effect, and directing Transferor to specifically perform all of its obligations under the Agreement, with an abatement of purchase price to take into account the damages suffered by Mazal as a result of Transferor's breaches and the declining market conditions.

b. On Mazal's Second Cause of Action, for a judgment, pursuant to Article 23 of the Agreement, declaring and adjudging that Transferor had no right to terminate the Agreement, which therefore remains in full force and effect, and directing Transferor to specifically perform all of its obligations under the Agreement, with an abatement of purchase price to take into account the damages suffered by Mazal as a result of Transferor's breaches and the declining market conditions.

c. An award for Mazal's costs and disbursements of this action, including attorneys' fees pursuant to Article 35 of the Agreement; and

d. Such other and further relief as the Court deems just and proper.

Dated: New York, New York
February 2, 2010

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