

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of

JAY KVAM v. BRIAN MINEAU;
LEGION INVESTMENTS, LLC; 7747 S.
May Street, an Unincorporated Joint
Venture; and DOES I-X, inclusive.

JAY KVAM,
Petitioner

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
LYNNE K. SIMONS,
Respondents,

and

BRIAN MINEAU and LEGION
INVESTMENTS, LLC,
Real Parties in Interest

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District Court Case No. CV18-00764
Elizabeth A. Brown
Clerk of Supreme Court

**PETITION FOR WRIT OF
PROHIBITION OR
ALTERNATIVELY,
MANDAMUS**

Concerning the District Court,
Department 6 (Hon. Lynne Simons),
Second Judicial District

PETITIONER'S APPENDIX

VOLUME 9A

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7 **THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 JAY KVAM,	Plaintiff,	Case No. CV18-00764
10 v.		Dept. No. 6
11 BRIAN MINEAU; LEGION INVESTMENTS,		
12 LLC; 7747 S. May Street, an Unincorporated		
13 Joint Venture; and DOES I-X, inclusive,		
14	Defendants.	

15 **OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; AND**
16 **CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT**

17 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law
18 Offices, Ltd., Michael L. Matuska, Esq., and hereby opposes the Motion for Summary Judgment
19 filed by Defendants, BRIAN MINEAU and LEGION INVESTMENTS LLC (collectively
20 "Mineau"). Kvam also files this Cross-Motion for Partial Summary on the First Cause of Action
21 (Declaration of Joint Venture) on the basis that Mineau conceded this issue in his Motion for
22 Summary Judgment. This Opposition is made and based on the Affidavits of Jay Kvam, Benjamin
23 Charles Steele and Michael L. Matuska, and the exhibits submitted herewith.

24 **I. INTRODUCTION**

25 Mineau's Motion for Summary Judgment has at least four (4) fundamental errors which
26 render the arguments presented legally irrelevant.

27 1. First, Mineau tries to argue that the problems encountered with the project at 7747
28 S. May Street, Chicago, Illinois (the "Project" or the "Property"), were the fault of the contractor,

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1 TNT Complete Facility Care Inc. ("TNT"). Unfortunately, Mineau has provided no evidence to
2 date of any wrongdoing by the contractor, other than the self-serving statements in the Declaration
3 of Brian Mineau ("Mineau Dec."), which contradict Mineau's prior declarations. Also, the
4 contractor is not a party to this case, and Mineau failed to provide any legal authorities that excuse
5 his own breaches of the agreement between the parties, as well as the duties imposed upon Mineau
6 as a matter of law. Further, Mineau failed to provide any evidence that he made any effort to have
7 the project completed once TNT stopped work, despite Kvam's multiple requests for such a plan.

8 Mineau's argument that he owed no duty to Kvam unless expressed in the one (1)
9 paragraph Terms of Agreement (Mineau's Ex. "2", that was signed after escrow closed, is too
10 simplistic and erroneous as a matter of fact and law. This case is first and foremost a case of
11 breach of duty. As explained herein, Mineau owed at least eight (8) different legal duties to
12 Kvam, separate and apart from the contractual duties to fund the project and repay Kvam. The
13 various duties owed by Mineau to Kvam include:

14 1.1. **Duty to Disclose.** "A duty to disclose arises only where there is a special
15 relationship between the parties. . . A special relationship may exist where 'one party imposes
16 confidence in the other because of that person's position and the other party knows of this
17 confidence.'" *Nevada Power Co. v. Monsanto Co.*, 891 F.Supp. 1406, 1416 and n.3 (D. Nev.
18 1995) quoting *Mackintosh v. Matthews & Co.*, 109 Nev. 628, 855 P.2d 549, 553 (1993); Nev.J.I.
19 10.6.

20 1.2. **Fiduciary Duty.** Nev. J.I. 15.8 ("A fiduciary or confidential relationship
21 exists when one reposes a special confidence in another so that the latter, in equity and good
22 conscience, is bound to act in good faith and with due regard to the interests of the one reposing
23 the confidence."); *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 30 (1982). A fiduciary duty
24 gives rise to a duty of care.") Nev. J.I. 15.11; *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137
25 P.3d 1171 (2006). Fiduciary duties are also imposed as a matter of partnership law and include
26 the attendant duties of **loyalty** and **due care**. NRS 87.4336. The **duty of loyalty** described in
27 NRS 87.4336 subpart 2 deserves special mention and includes two (2) additional duties: "2. A
28 partner's duty of loyalty to the partnership and the other partners is limited to the following: (a)

1 To account to the partnership and hold as trustee for it any property, profit or benefit derived by
2 the partner in the conduct and winding up of the partnership business . . .” (emphasis added).
3 Mineau conceded in his Motion that partnership law and NRS 87.4335 apply to this case. (See
4 Motion at 12:3, 13:3). As such, he held the Property as trustee for Kvam and the joint venture,
5 owed a duty of care with regard to the Project, and was required to account to Kvam. He failed in
6 every respect.

7 1.3. Duties arising from a special or confidential relationship. Nev. J.I. 15.5
8 (“A special or confidential relationship exists when one party gains confidence of the other and
9 purports to act or advise with the other’s interest in mind. It may exist although there is no
10 fiduciary relationship; it is likely to exist when there is a family or friendly relationship, but a
11 close or familial relationship, standing alone, is insufficient to create a confidential or fiduciary
12 relationship. Whether a confidential or fiduciary relationship exists is a question of fact for you to
13 determine from the evidence.”); *Liapis v. District Court*, 128 Nev. 414, 421-22, 282 P.3d 738
14 (2012); *Perry v. Jordan*, 111 Nev. 943, 900 P.2d 335 (1995). “In *Long v. Towne*, 98 Nev. 11, 13,
15 639 P.2d 528, 529-30 (1982), we explained that ‘Constructive fraud is the breach of some legal or
16 equitable duty which, irrespective of moral guilt, the law declares fraudulent because of its
17 tendency to deceive others or to violate confidence.’ Constructive fraud may arise when there has
18 been ‘a breach of duty arising out of a fiduciary or confidential relationship.’ *Id.* at 13, 639 P.2d at
19 530. Such a relationship exists where ‘one reposes a special confidence in another so that the
20 latter, in equity and good conscience, is bound to act in good faith and with due regard to the
21 interests of the one reposing the confidence.’ . . . [A]lthough Executive’s breach of fiduciary duty
22 claim will not lie against Palmall/Shipkey, there are factual questions concerning the issue of
23 ‘special confidence’ yet to be resolved, and thus a claim for constructive fraud may be viable.”
24 *Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 963 P.2d 465, 477 (1998).

25 1.4. Covenant of Good Faith and Fair Dealing. Nev.J.I. 13.43 (“In every
26 contract or agreement there is an implied promise of good faith and fair dealing, which prohibits
27 arbitrary or unfair acts by one party that work to the disadvantage of the other.”). “[W]hen ‘the
28 terms of a contract are literally complied with but one party to the contract deliberately

1 countervenes the intention and spirit of the contract, that party can incur liability for breach of the
2 implied covenant of good faith and fair dealing.” *J.A. Jones Const. Co. v. Lehrer McGovern*
3 *Bovis, Inc.*, 120 Nev. 277, 286, 89 P.3d 1009, 1015-16 (2004) quoting *Hilton Hotels Corp. v.*
4 *Butch Lewis Productions, Inc.*, 107 Nev. 226, 232-34, 808 P.2d 919, 922-24 (1991); see also
5 *University & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 989, 103 P.3d 8, 19 (2004); *Frantz v.*
6 *Johnson*, 116 Nev. 455, 465 n. 4, 999 P.2d 351, 358 n. 4 (2000); *Consolidated Generator-Nevada*
7 *v. Cummins Engine*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998); *Albert H. Wohlers & Co.*
8 *v. Bartgis*, 114 Nev. 1249, 969 P.2d 949 (1998); *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d
9 335, 338 (1995); *Morris v. Bank of America Nevada*, 110 Nev. 1274, 1278-79, 886 P.2d 454, 457
10 (1994); *K Mart Corp. v. Ponsock*, 103 Nev. 39, 732 P.2d 1364 (1987).

11 Due to the special relationship between the parties and the fiduciary duties
12 identified above, Kvam has alleged breach of the covenant of good faith and fair dealing as both a
13 contractual breach and a tortious breach.

14 2. Second, Mineau continues to present the February 17, 2017 Terms of Agreement
15 (Mineau’s **Ex. “2”**) as the only expression of the parties’ intent. As explained below, the Terms
16 of Agreement is little more than a memorandum of the agreement between the parties, which is
17 incomplete and ambiguous in multiple respects. The jury will have the option of enforcing the
18 Terms of Agreement as written, interpreting the Terms of Agreement along with other evidence of
19 the parties’ intent, or declaring the agreement to be so ambiguous, or the product of fraud or
20 mistake, such that it cannot be enforced, and the parties should be restored to their original
21 positions.

22 “When contract language is ambiguous and/or incomplete, the evidence admitted at trial is
23 to be used to determine the parties’ intent, clarify and explain ambiguities, supply omissions, and
24 may prove a separate oral agreement regarding any matter not included in the contract, so long as
25 the separate oral agreement does not contradict any terms of the written agreement.” Nev. J.I.
26 13CN18 (2013); “A single contract may consist of two (or more) separate documents. Two (or
27 more) separate writings may be sufficiently connected by internal evidence contained in the
28 documents themselves without any express references.” Nev. J.I. 13.20. “Two separate writings

1 may be sufficiently connected by internal evidence without any express words of reference of one
2 to the other. That they refer to the same transaction and state the terms thereof may appear from
3 the character of the subject matter and from the nature of the terms. 2 Corbin, Contracts § 514. All
4 of the essential terms of the oral agreement alleged can be found in the two written documents. If
5 they were intended by the parties to constitute one transaction appellants should have been
6 permitted to present evidence to show this and also to explain the differences in the amount of the
7 down payment as set forth in the two instruments, and the fact that Exhibit 'E' is an unsigned
8 document does not preclude the admission of parol evidence to connect Exhibit 'E' with Exhibit
9 'A.'" *Haspray v. Pasarelli*, 79 Nev. 203, 380 P.2d 919, 921 (Nev. 1963).

10 "One party may cancel a contract if there was fraud to induce that party to enter into the
11 contract, mutual mistake, or a material breach of the contract. A non-breaching party is entitled to
12 recover all benefits they previously conferred on any other party, but a complete restoration of
13 benefits to a party at fault is not required for the contract to be extinguished." Nev. J.I. 13.36. "A
14 mutual mistake may be grounds to equitably rescind a contract or to render a contract void."
15 *Anderson v. Sanchez*, 132 Nev. Adv. Op. 34, 373 P.3d 860, 863 (2016) citing *Tarrant v. Monson*,
16 96 Nev. 844, 845, 619 P.2d 1210, 1211 (1980). "Mutual mistake occurs when both parties, at the
17 time of contracting, share a misconception about a vital fact upon which they based their bargain."
18 *Id.* quoting *Gen. Motors v. Jackson*, 111 Nev. 1026, 1032, 900 P.2d 345, 349 (1995). "Rescission
19 is a remedy, equitable in nature, that allows an aggrieved party to a contract to abrogate totally, or
20 cancel, the contract, with the final result that the parties are returned to the position they occupied
21 prior to formation of the contract." *Great American Ins. Co. v. General Builders, Inc.*, 113 Nev.
22 346, 353 n. 6, 934 P.2d 257, 262 n.6 (1997) citing *Bergstrom v. Estate of DeVoe*, 109 Nev. 575,
23 577, 854 P.2d 860, 861 (1993).

24 3. Third, much of Mineau's Statement of Undisputed Facts describes Kvam's
25 conduct. Mineau failed to establish the legal relevance of such an approach, but it seems intended
26 to establish a comparative fault defense. Mineau's Statement of Undisputed Facts offers little or
27 no justification for his own conduct and does not offer a defense. This case is primarily a case of
28 breach of contract, fraud, and breach of various duties owed by Mineau to Kvam, including breach

1 of fiduciary duty, breach of the duty to disclose, and breach of the covenant of good faith and fair
2 dealing. The affirmative defense of comparative fault is not available as a defense to these causes
3 of action.

4 4. Fourth, most of the allegations contained in Mineau's Statement of Undisputed
5 Facts occurred after the parties entered into the Terms of Agreement in February, 2017, after the
6 various breaches and misrepresentations by Mineau, and after the project had already failed.
7 Mineau's factual allegations are therefore largely extraneous to the issues presented in Kvam's
8 Second Amended Complaint. This is particularly true of the letters regarding settlement offers
9 that were improperly included as Mineau's Exhibits 25-27.

10 II. STATEMENT OF UNDISPUTED MATERIAL FACTS

11 1. The following facts are supported by the Declarations Jay Kvam (Ex. "1"),
12 Benjamin Charles Steele, CPA (Exs. "40"- "42") and Michael L. Matuska (Ex. "39"), the
13 deposition testimony of Michelle Salazar, CPA (Ex. "37") and Colleen Burke (Ex. "38") and the
14 various other exhibits submitted herewith.

15 2. In late December, 2016, Michael Spinola texted Jay Kvam about a rehabilitation
16 project that his friend and business partner, Brian Mineau was starting at 7747 S. May Street,
17 Chicago, Illinois (Kvam Dec. Par. 2 and Ex. "2"). The project was essentially a "flip" project.

18 3. On approximately December 30, 2016 or January 1, 2017, Kvam met Spinola at a
19 Starbucks, where Spinola first introduced him to Mineau. (Kvam Dec. Par. 3). At that meeting,
20 Spinola and Mineau prepared on outline of the project financing. Spinola took a photo of that
21 outline which he later sent to Kvam's email on January 7, 2017 (Ex. "3"). Kvam had never
22 engaged in a flip project before. Mineau represented that he had experience with flip projects in
23 Chicago that he successfully and profitably completed. Kvam relied on Mineau's experience and
24 the information that he provided, including the outline of project financing. They never discussed
25 that Kvam would have any involvement with this Project beyond that of a mere investor. (Kvam
26 Dec. Par. 3) Mineau later acknowledged Kvam's limited status as an investor in an email to his
27 lawyer who helped with the escrow: "My investor on May Street checked the recorders website
28 last night and said the deed for may street has not been posted, can you please look into what

1 happened." (Ex. "4").

2 4. In general, the parties' discussions about the Project are encapsulated in Ex. "3"
3 which indicates that the Project would cost \$44,000 for the purchase price and \$70,000 for repairs
4 which would be repaid with interest at the rate of 7% per annum in (3) three months, which would
5 be \$1,995 in interest. Ex. "3" also includes \$13,520 in closing costs. Based on an estimated sale
6 price of \$169,000, the Project would generate a profit of \$39,485, which would be divided three
7 (3) ways, \$13,161 each. (Kvam Dec. Par. 4)

8 5. On January 2, 2017, Mineau copied Kvam on an email that included an unsigned
9 bid sent from Triple "R" Construction for \$70,000 and dated November 11, 2016 (Ex. "5"). That
10 bid stated that "THIS JOB WILL TAKE 3 MONTHS FROM START TO FINISH." (Kvam Dec.
11 Par. 5)

12 6. Mineau signed a purchase agreement for the Property on January 3, 2017 in the
13 amount of \$44,000 (Ex. "6"). This suggests that Mineau was already working on negotiations for
14 the Property before he met Kvam.

15 7. On February 13, 2017, Kvam wired \$44,000 to escrow for the purchase price (Ex.
16 "7") and another \$784.31 for miscellaneous escrow fees (Ex. "8"). Escrow closed that same day
17 (Ex. "9"). Mineau acquired title to the Property in the name of his limited liability company,
18 Legion Investments, LLC (Ex. "10"), which therefore held title for the benefit of the three (3) joint
19 venturers. (Kvam Dec. Par. 7)

20 8. The next day, on February 14, 2017, Kvam signed a document entitled "Terms of
21 Agreement" (Ex. "11"). Mineau and Spinola previously signed the Terms of Agreement on
22 February 13, 2017. The Terms of Agreement refers to Kvam as the Initial Funding Member and
23 specifies that "Initial Funder will be due a 7% annual return on any funds provided due from date
24 of disbursement." The Terms of Agreement also explain that Kvam was to pay Spinola's funding
25 draw, and in exchange, he would receive ½ of the profits that were expected for Spinola. The
26 Terms of Agreement does not purport to encapsulate all of the discussions between the parties, and
27 it does not in fact encapsulate all of the discussions between the parties. (Kvam Dec. Par. 8)

28 9. On February 17, 2017, Kvam texted Mineau to ask for wiring details to forward the

1 first payment. Mineau responded "Not yet, he was getting the wiring info for a separate account
2 so he could keep May Street funds separate from other projects." (Ex. "12"). As indicated in the
3 documents Mineau recently produced to and from the real estate agent in Chicago, he began
4 talking with TNT Complete Facility Care, Inc. after March 16, 2017 (Ex. "13"). Mineau
5 proceeded to prepare and sign the construction contract with TNT on March 20, 2017 (See Ex.
6 "14", DocuSign Certificate of Completion Ex. "15" and Contractor Agreement provided as
7 Mineau's Ex. "7"). (Kvam Dec. Par. 9)

8 10. The Contractor Agreement provided as Mineau's Exhibit "7" specifies *inter alia*
9 that the project will be "turn key" complete by June 1, 2017 at a total cost of \$80,000 (See
10 Addendum "A"). Addendum A also specified the payment schedule, including:

11 \$20,000 to secure permits, architects, demo;

12 \$15,000 to begin reconstruction April 17th 2017

13 \$15,000 due April 27th 2017

14 \$13,000 due May 8th 2017

15 \$9,000 due May 18th 2017

16 Final payment of \$8,000 due upon punch list completion.

17 The Contractor Agreement also specifies that "The Owner [Legion/Mineau, ed.] will
18 approve the percentage of work at its sole discretion" (Addendum "B") and "IN ORDER TO
19 RECEIVE PAYMENT, CONTRACTOR MUST PROVIDE INVOICES . . ." (Par. 4).

20 11. Unfortunately, Mineau never obtained invoices, never verified that work was
21 progressing, and instructed Kvam to make the payments without regard to the payment schedule
22 or the progress of construction. (Kvam Dec. Par. 11). Mineau never provided the Contractor
23 Agreement to Kvam, so he did not know the payment schedule or amounts due and relied on
24 Mineau. Kvam first received the Contractor Agreement when it was provided through the
25 discovery process in this lawsuit. (Kvam Dec. Par. 11).

26 12. On March 23, 2017, Mineau texted that "... we are ready for our first draw on May
27 street 20k. I will email the wiring instructions to you jay and if you have time to get it out some
28 time in the next day or two I would appreciate it." (Ex. "16"). Later that morning, Mineau emailed

1 the wire instructions as an attachment. (Ex. "17"). Kvam wired \$20,000 to TNT that same day.
2 (Ex. "18"; Kvam Dec. Par. 12)

3 13. On April 13, 2017, Mineau texted that "I spoke with Derek last night and this
4 morning and next Tuesday or Wednesday is good for the next draw if that works for you. He said
5 Easter pushed a few inspections back but we will be done no later than the 16th of May." (Ex.
6 "19"). In reliance on that text message, Kvam sent another \$20,000 on April 14, 2017, even
7 though the payment schedule in the Contractor Agreement only called for \$15,000 (Ex. "20";
8 Kvam Dec. Par. 13).

9 14. Kvam wired another \$9,000 on May 18, 2017 (Ex. "21") and began to ask
10 questions of Mineau on about May 21, 2017: "Have you heard from Derek recently about May
11 Street? How's it progressing in these, as I've heard, last couple weeks of renovation? to which
12 Mineau replied: "I did actually he called me about an hour and a half ago and told me he is
13 installing floors this week and should be finished very soon." (Ex. "22"). On June 5, 2017 Kvam
14 expressed some concern to Mineau regarding the project: "...the photos that Derek sent us both
15 yesterday left me with the impression that the interior it was much less further along than I had
16 imagined it and most of the roofing and siding problems I had already seen." (Ex. "23"; Kvam
17 Dec. Par. 14).

18 15. Although Mineau was able to procure the property for \$44,000, most of the other
19 representations have proven to be false. For instance, Kvam first discovered on July 12, 2017 that
20 Mineau's budget for construction costs had increased from \$70,000 to \$80,000 when Bradley
21 Tammen forwarded a copy of an email conversation that Mineau had initiated with him to solicit
22 funds. (Ex. "24"; Kvam Dec. Par. 15).

23 16. Also, Mineau never informed Kvam that he did not have his share of funding as
24 required by the Terms of Agreement, and Kvam would not have proceeded with this Project had
25 he known that Mineau needed to borrow his share of funding as he now claims in the Declaration.
26 Mineau now claims that he borrowed \$20,000 from Tammen to invest in the project. (See Mineau
27 Declaration at Par. 25). Unfortunately, the Contractor Agreement did not call for an additional
28 \$20,000 at that time, and Mineau has never provided any evidence of this alleged loan or

1 repayment. The only evidence of an arrangement between Mineau and Tammen is an email that
2 was forwarded to Kvam on July 14, 2017, well after the referenced loan on May 26, 2018. (Ex.
3 "24"). Ironically, in his email to Tammen, Mineau confirmed his obligation to Kvam. Mineau
4 testified in his Declaration that he repaid Tammen in full (See Mineau Declaration at Par. 25). He
5 has not repaid Kvam (Kvam Dec. Par. 16).

6 17. The summary permit history report is provided as Mineau's Exhibit "23" and
7 confirms that there were no inspections at the time of the second draw on April 14, 2017, and the
8 floors were not ready to install at the time of the third draw on May 18, 2017. There was no
9 progress beyond demolition (which should have been covered by the first draw), and the Project
10 could not have been on track to be completed by the 16th of May. In fact, the first permit that was
11 issued on April 21, 2017 was for "Removal of Drywall Only." The permit for "Interior Alteration
12 of a Single Family Residence, Architectural, Mechanical, Plumbing and Electrical Involved" was
13 not issued until June 14, 2017.

14 18. Mineau continued to misrepresent the status of the project. On June 26, 2017, in
15 response Kvam's question: "... how is May shaping up at this point? Are we close to completion
16 and do we have an expected finish-by date?" Mineau stated: "I spoke with him this morning and
17 they are finishing the drywall then the kitchen goes in and finishing touches in the bath room and
18 we are done. He told me this morning if the city can finish their final inspection at two weeks (no
19 inspections next week cause of the holiday) then we are done!" (Ex. "25"; Kvam Dec. Par. 18).

20 19. On August 12, 2017, Kvam asked Mineau: "Is Todd progressing and delivering on
21 finalizing the rehab?" to which Mineau responded: "Yes sir. He has gotten everything up and
22 running again and has promised a swift completion. I have a follow up call with him Monday to
23 go over the progress." (Ex. "26"; Kvam Dec. Par. 19).

24 20. On August 16, 2017, Kvam asked: "What's the status of the project, and are we
25 getting close to having it marketable?" to which Mineau responded: "[Todd] has assured me we
26 will be able to list the first week of September, willing no other city problems." (Ex. "27"; Kvam
27 Dec. Par. 20).

28 21. Mineau continued to misrepresent the status of inspections. On September 25,

1 2017, Mineau stated: "Also spoke with Derek this morning and we are final about to cross the
2 finish line, need two more inspections by the city (one this week) then the other and we are done."
3 (Ex. "28"; Kvam Dec. Par. 21). On October 12, 2017, Mineau states "... he said they are doing
4 the final touches then the occupancy inspection then it's completed." (Ex. "29"; Kvam Dec. Par.
5 21).

6 22. On November 5, 2017, Mineau told the group: "I spoke to Derek on Friday
7 morning ... and he said some of the plumbing work wasn't to the inspectors standard / preference
8 and that he didn't pass. He is correcting the items now and asked if I could send him \$1500 (of the
9 10k remaining budget on Monday to help correct these items and speed it up. I told him I would.
10 Once they are completed and we have a new date I will let everyone know." (Ex. "30"; Kvam
11 Dec. Par. 22).

12 23. On November 19, 2017, Mineau told the group: "... he [Cole] said they will be
13 done in 14-17 days from tomorrow, ..." and: "... I plan on having an agent come to the property
14 to list no later than the 8th of December and he said it would be done." (Ex. "31" at KVAM0220;
15 Kvam Dec. Par. 23).

16 24. On December 26, 2017, Mineau told the group: "... he said it has new windows
17 and a new room and everything is basically complete." and he guaranteed that nobody would lose
18 any capital: "No one has lost any capital yet nor will they." (Ex. "31" at KVAM0217;; Kvam Dec.
19 Par. 24).

20 25. These various statements about the status of the Project and inspections were false.
21 There were never any inspections beyond the rough plumbing and rough electrical that only
22 partially passed with comments on July 11, 2017 and July 17, 2017. (See Inspection Reports
23 12270203 (Electrical Wiring) Ex. "32"; 12274840 (Electrical - Renovation/Alteration Ex. "33";
24 12288430 (Plumbing) Ex. "34"; and summary report, Mineau's Ex. "23").

25 26. Mineau sold the Property to Thousand Oaks Management, LLC for a loss on
26 November 16, 2018. (See Closing Statement Ex. "35", showing net proceeds of merely
27 \$24,473.77). Kvam was left to find out about the sale on his own and moved for a temporary
28 restraining order and preliminary injunction on November 30, 2018 to prevent the loss of the sale

1 proceeds. (#7000744; Kvam Dec. Par. 26). Facing no other options, Mineau and Legion stipulated
2 to deposit the funds with the clerk of the court (#7021308).

3 27. Kvam's name does not appear on the any of the paperwork involved in this case for
4 the purchase, sale or construction. Mineau signed all the sales agreements, escrow papers and
5 deed, all without informing Kvam. He did not inform Kvam of the attempts to sell nor the sale nor
6 disclose what happened to the proceeds. He did not keep a separate bank account for the project
7 instead directing escrow to disburse the funds to a Legion-held bank account and receiving them
8 accordingly (See Deed, Check, Wire Transfer Authorization, Electronic Withdraw Statement Ex.
9 "36").

10 III. REBUTTAL TO MINEAU'S STATEMENT OF UNDISPUTED 11 MATERIAL FACTS

12 Mineau did not actually provide a separate statement of material facts. Instead, he
13 provided unnumbered paragraphs, many of which contain multiple assertions of fact. Evidence
14 used in support of summary judgment must be in a form that would be admissible as evidence.
15 NRCP 56(c)(2). Most of Mineau's evidence is not.

16 1. Starting at page 6, line 1, Mineau includes a lengthy discussion about a meeting
17 between Derek Cole and Jay Kvam regarding Atlas Investors Southside and included minutes of a
18 meeting for Atlas Southside Investors. This information is legally irrelevant and misleading for at
19 least three (3) reasons. First, the alleged meeting took place on May 5, 2017, which is well after
20 the Project at issue in this case was undertaken. Second, the meeting has nothing to do with
21 Terms of Agreement (or other agreements) at issue in this case or Mineau's duties in relation
22 thereto. Rather, Atlas Investors Southside was an investment vehicle that the parties formed with
23 the expectation of undertaking subsequent projects. (Kvam Dec. Par. 28). Third, Judge Polaha
24 already ruled that Atlas Investors Southside was irrelevant to the case at hand and dismissed
25 Mineau's counterclaims concerning that company. "Anything having to do with Atlas is
26 irrelevant to the adjudication of this case's issues." Order January 9, 2019 (Trans. # 7059540) at
27 5:13-14.
28

2. Starting at page 7, line 6, Mineau includes a confusing discussion about borrowing \$20,000 from Bradley Tammen to fund his share of the repair costs. This statement may be the subject a separate motion, and potential reference on perjury charges. On October 1, 2018, Mineau verified interrogatory responses wherein he answered that Michael Spinola's company, Criterion NV, LLC provided the \$20,000 payment at issue. (Response to Interrogatory No. 6, Ex. "43"). Based on that response, and following the sale of the Property on November 16, 2018, Kvam filed his Motion for Leave to File Amended Complaint on December 24, 2018. (Trans. # 7037918). The stated purpose of the Motion was "to add claim of fraud and breach of contract against Brian Mineau due to his failure to fund 7747 S. May Street, an Unincorporated Joint Venture, as required by the Joint Venture Agreement, and to make other changes to the complaint to reflect the recent sale of the House on November 16, 2018." *Id.* at 1:15-18. That Motion was granted and Kvam included the following allegations in the First Amended Complaint: "15. MINEAU failed to fund his required renovation draw. . . 36. MINEAU and LEGION breached their legal, contractual, and fiduciary duties to KVAM and 7747 by inter alia: failing to provide funding; failing to properly manage and complete the renovation; commingling joint venture funds with the LEGION's accounts; failing to account to KVAM and 7747; concealing facts and making multiple misrepresentations to KVAM as set forth above regarding the timing of completion, the status of the project and sale thereof." These allegations were repeated in the operative Second Amended Complaint.

In opposition to Kvam's Motion to Leave, Mineau submitted a declaration with the vague statement as follows: "5. In 2017, Michael Spinola and I caused Criterion, NV LLC to contribute \$20,000 to the project at 7747 May Street, Chicago, Illinois ("Property") on behalf of Legion." (Trans. # 7067328). Predictably, Kvam subpoenaed Criterion's bank statements from Mutual of Omaha Bank to verify the veracity of this statement. Mineau filed a Motion for Protective Order, Kvam filed an opposition thereto, and Mineau filed a Reply (Trans. # 7134280) in which he provided another declaration which expanded on his prior declaration as follows:

9. In Late May, 2017, TNT's owner Derek Cole called me and requested a \$20,000 construction draw for the project at the Property. I was

1 travelling at the time and was unable to promptly make direct payment; however,
2 I had sufficient cash on hand in my personal safe at home to make this payment.
3 At my request, Michael Spinola agreed to arrange to pick up the cash and have it
wired to TNT.

4 Mineau's Motion for Protective Order was denied, and he was ordered to pay sanctions.
5 (Trans. # 7151158). Because Mineau cleverly asserted a "cash" payment, there is no record of this
6 transaction Michael Spinola and Criterion NV LLC. As such, Kvam requested some of the
7 schedules attached to Mineau's 2017 and 2018 1040 tax return, to confirm whether Mineau
8 reported expenses, gains or losses relating to the Mineau refused and Kvam filed his First Motion
9 to Compel on March 1, 2019 (Trans. # 7168868). In response, Mineau confirmed that the cash
10 transaction for \$20,000 "was not documented" and incorporated his prior declaration (See
11 Opposition, Trans. # 7183966 at 3:19-28). Based on this statement, as well as some other reasons,
12 the Discovery Commission entered his Recommendation for Order which recommended that
13 Mineau's tax returns should not be produced. (Trans. # 7210304).

14 Mineau changed his story entirely in his most recent Declaration wherein he now testifies
15 that "25. . . However, upon further reflection and consideration in preparing this Declaration and
16 preparing for trial, I believe my previous testimony was mistaken. I now recall that I borrowed
17 \$20,000 from Bradley Tammen . . ." (Mineau's Ex. "1"). Mineau further testifies that he repaid
18 \$28,000, which would be \$8,000 interest. Unfortunately for Mineau, this revelation comes after
19 the close of discovery, he never identified Bradley Tammen as a person with knowledge on the
20 NRCP 16.1 disclosures (Trans. # 6813392) and he has provided no evidence of such a loan. As
21 such, Mineau's testimony regarding a loan from Bradley Tammen should be stricken or Mineau
22 should be required to produce his 2017 and 2018 tax returns to see if he ever reported any
23 contribution to the May Street project or an interest payment to Bradley Tammen.

24 Because Mineau never disclosed Bradley Tammen's involvement with the project and
25 failed to explain when or why he would have repaid Bradley Tammen and not Kvam, Mineau's
26 new version of facts supports Kvam's case for concealment.

27 3. Beginning at page 8, line 7, Mineau refers to various inspection reports. In fact,
28 these reports were obtained and produced by Kvam as part of the litigation, well after the fact. It

1 seems evident that Mineau was not monitoring the work on the Project or reviewing the inspection
2 reports as the Project was underway. Mineau also seems to misinterpret the inspection report. He
3 represented to Kvam that this project would take 90 days (See Kvam's Statement of Undisputed
4 Material Facts). What the inspection report (Mineau's Ex. "23") really shows is that TNT was not
5 issued a permit for work until June 14, 2017, well beyond the agreed upon 90 days, and that the
6 property was in such bad shape that it was cited for various code violations. This report was
7 provided to Mineau to demonstrate that Mineau should not have been asking Kvam to contribute
8 more money to the project under these circumstances, and that despite the money paid by Kvam,
9 the property was in worse shape when sold on November 16, 2018 than when it was purchased on
10 February 17, 2017.

11 4. Beginning at page 8 line 13, Mineau attributes a series of statements to Derek Cole
12 at TNT. These statements are all inadmissible hearsay. None of them are supported by evidence
13 other than Mineau's self-serving affidavit, and none of them obviate the duties owed by Mineau to
14 Kvam.

15 5. Beginning at page 9, line 10, Mineau lapses into a recitation of various letters
16 received from Kvam's attorney and the various demands and offers of settlement contained
17 therein. Beginning at page 9, line 21, Mineau discusses an offer of judgment he made during this
18 litigation. Such offers are not admissible as evidence for any purpose and must be disregarded.
19 NRS 48.105.

20 6. Beginning on page 10, line 11 Mineau asserts that he deposited proceeds of sale
21 with the Clerk of the Court in the amount of \$24,473.77. This statement, alone, is misleading.
22 Mineau neglected to point out that he transacted the sale on his own, deposited the money into
23 Legion's account, and never informed Kvam of the sale of the available proceeds. That is a clear
24 breach of the various duties outlined above. Kvam was left to find out about the sale on his own
25 and filed a motion for protective order and preliminary injunction to secure the proceeds of sale.
26 (Trans. # 7000744). Caught red-handed, Mineau had no choice but to agree.

1 IV. ARGUMENT

2 A. FIRST CAUSE OF ACTION – DECLARATION OF JOINT VENTURE

3 The Terms of Agreement is not the model of clarity. The Agreement reads, in part, as a
4 membership agreement whereby Kvam acquired a 1/3rd membership interest in Legion. Legion is
5 Mineau's limited liability company that predates the Terms of Agreement and owns multiple
6 assets. Consequently, an interpretation of the Terms of Agreement that gives Kvam 1/3rd
7 ownership in Legion would be very favorable to Kvam. As such, Kvam does not believe that
8 Mineau intended to transfer ownership in Legion. Rather, the Terms of Agreement is more
9 reasonably construed as a memorandum of a joint venture agreement between Kvam on one hand,
10 and Mineau and Legion on the other hand. This interpretation is supported by Uniform
11 Partnership Act.

12 A joint venture is essentially a single-purpose partnership, and the principles of partnership
13 law apply to joint ventures. *Clark v. Jdi Loans, LLC* (In re Clubs), 130 Nev. Adv. Op. 14, 319
14 P.3d 625, 631 (2014). As such, the joint venture agreement in this case should by analyzed under
15 NRS Chapter 87.

16 Chapter 87 actually contains two (2) distinct version of the Uniform Partnership Act. NRS
17 87.001 – 87.430 are identified as “the Uniform Partnership Act” (NRS 87.010) and apply to
18 partnerships that were formed before July 1, 2006, or if formed after July 1, 2006, elect to be
19 governed by the Uniform Partnership Act. NRS 87.4301 – 87.565 comprise the Uniform
20 Partnership Act – 1997 (hereafter, “UPA 1997”) and apply to partnerships that were created on
21 after July 1, 2006, or if created prior to July 1, 2006, elect to be governed by the UPA 1997. NRS
22 87.4314. The joint venture in this case was formed in 2017 and did not elect to be governed by
23 the earlier UPA, hence, it is governed by the UPA 1997.

24 1. Presumption of Partnership – NRS 87.4322

25 **NRS 87.4322 Formation of partnership.**

26 1. Except as otherwise provided in subsection 2, the association of two or
27 more persons to carry on as co-owners of a business for profit forms a
28 partnership, whether or not the persons intend to form a partnership.

1 2. An association formed under a statute other than NRS 87.4301 to
2 87.4357, inclusive, a predecessor statute or a comparable statute of another
3 jurisdiction is not a partnership under NRS 87.4301 to 87.4357, inclusive.

4 3. In determining whether a partnership is formed, the following rules apply:

5 (a) Joint tenancy, tenancy in common, tenancy by the entireties, joint
6 property, common property or part ownership does not by itself establish a
7 partnership, even if the co-owners share profits made by the use of the property.

8 (b) The sharing of gross returns does not by itself establish a partnership,
9 even if the persons sharing them have a joint or common right or interest in
10 property from which the returns are derived.

11 (c) A person who receives a share of the profits of a business is presumed to
12 be a partner in the business, unless the profits were received in payment:

13 (1) Of a debt by installments or otherwise;

14 (2) For services as an independent contractor or of wages or other
15 compensation to an employee;

16 (3) Of rent;

17 (4) Of an annuity or other retirement or health benefit to a beneficiary,
18 representative or designee of a deceased or retired partner;

19 (5) Of interest or other charge on a loan, even if the amount of payment
20 varies with the profits of the business, including a direct or indirect present or
21 future ownership of the collateral, or rights to income, proceeds or increase in
22 value derived from the collateral; or

23 (6) For the sale of the goodwill of a business or other property by
24 installments or otherwise.

25 (NRS 87.4322) (emphasis added)

26 The Agreement expressly provides that Kvam and Mineau are to share net profits; as such,
27 they are presumed to be partners under NRS 87.4322(3)(c), and none of the other exceptions to
28 this presumption apply.

29 2. Partnership Property

30 “Property is presumed to be partnership property if purchased with partnership assets, even
31 if not acquired in the name of the partnership or of one or more partners with an indication in the
32 instrument transferring title to the property of the person’s capacity as a partner or of the existence
33 of a partnership.” NRS 87.4324(3). The property in this case was purchased with joint venture
34 funding and is therefore considered be partnership property.

35 3. Duty to Account

36 Members of a joint venture owe each other fiduciary duties, including the duty of loyalty
37 for the duration of the venture. *Brinkerhoff v. Foote*, 2016 WL 7439357 (No. 68851, December
38

22, 2016) (unpublished); *Leavitt v. Leisure Sports, Inc.*, 103 Nev. 81, 86, 734 P.2d 1221, 1224 (1987); see also NRS 87.4336.

NRS 87.4335 Rights and duties of partner with respect to information.

1. A partnership shall keep its books and records, if any, at its chief executive office.

2. A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

3. Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(a) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or NRS 87.4301 to 87.4357, inclusive; and

(b) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

Despite the foregoing, Mineau and Legion have failed and refused to account to Kvam and disavowed their fiduciary duties. (See Kvam Aff. and Exs. "4" and "5"). Their attorney has gone so far state that "Mr. Kvam is not entitled to any 'disclosures' or 'an accounting' from Brian Mineau or Legion Investments . . ." (Ex. "45").

4. Conclusion

Mineau has not changed his position and conceded that "the parties formed a partnership pursuant to NRS 87.4322." (Motion at 12:3). Summary judgment should therefore be entered in Kvam's favor on his first cause of action, with the consequence that Mineau owed a fiduciary duty to Kvam, and other corresponding duties, including the duty of loyalty and duty of due care. NRS 87.4336. Mineau breached these duties for reasons set forth above and below.

The Court should reject the other relief requested by Mineau in regard to Kvam's First Cause of Action, including the assertion that Legion/Mineau hold a 33% interest in the partnership, no party made any loans, and that any remedies due to the partnership have been assigned to Kvam. (Motion at 13:6-9). There are no profits, and Mineau would not be entitled to enforce the Terms of Agreement and assert a claim for any profits due to his multiple breaches.

1 See *Cain v. Price*, 134 Nev. Adv. Op. 26, 415 P.3d 25, 29 (2018) citing Restatement (Second) of
2 Contracts § 237 (Am. Law Inst. 1981) (“When parties exchange promises to perform, one party’s
3 material breach of its promise discharges the non-breaching party’s duty to perform.”)

4 The jury can decide whether Kvam’s investment of \$93,784.31 is a loan or a capital
5 contribution. Either way, it has to be returned either way, at 7% interest. And although the Terms
6 of Agreement purport to assign any rights to Kvam in the event of default, the Court should reject
7 any suggestion by Mineau that such rights are exclusive of any rights asserted in this lawsuit.

8 B. SECOND CAUSE OF ACTION – RECISSION OR REFORMATION

9 Mineau’s argument regarding Kvam’s Second Cause of Action for Rescission or
10 Reformation is confused. Rescission is a remedy, equitable in nature, that allows an aggrieved
11 party to a contract to abrogate totally, or cancel, the contract, with the final result that the parties
12 are returned to the position they occupied prior to formation of the contract. *Bergstrom v. Estate of*
13 *DeVoe*, 109 Nev. 575, 577, 854 P.2d 860, 861 (1993). *citing Crowley v. Lafayette Life Ins. Co.*,
14 106 Idaho 818, 683 P.2d 854 (1984); *Breuer-Harrison, Inc. v. Combe*, 799 P.2d 716 (Utah
15 Ct.App.1990); *Busch v. Nervik*, 38 Wash.App. 541, 687 P.2d 872 (1984). “Rescission may be
16 accomplished in one of two ways: In what is called ‘legal rescission,’ a party, in response to a
17 material breach on the part of the other party or for other valid reasons, unilaterally cancels the
18 contract; alternatively, in what is known as ‘equitable rescission,’ the aggrieved party brings an
19 action in a court with equitable jurisdiction asking the court to nullify the contract. A priori, where
20 there has been a valid rescission of the contract, there is no longer any contract to enforce and,
21 therefore, no longer a cause of action for breach.” *Great American Ins. Co. v. General Builders,*
22 *Inc.*, 113 Nev. 346, 353 n. 6, 934 P.2d 257, 262 n.6 (1997)

23 Mineau acknowledges that a contract may be rescinded on the basis of mutual mistake.
24 However, he then briefly mentions “assumption of risk” without providing any argument on that
25 issue. Assumption of risk would be Mineau’s affirmative defense to prove. Mineau seems
26 unaware of the fact that a contract can also be rescinded for fraud, material breach, and in some
27 instances, unilateral mistake. Nev. J.I. 13.36. “Further, a unilateral mistake may be the basis for
28 rescission only if ‘the other party had reason to know of the mistake or his fault caused the

1 mistake.” *Graber v. Comstock Bank*, 111 Nev. 1421, 1428-29, 905 P.2d 1112, 1116 (1995) citing
2 *Home Savers, Inc. v. United Security Co.*, 103 Nev. 357, 358-59, 741 P.2d 1355, 1356-57 (1987).

3 Kvam has demonstrated Mineau’s fraud and material breach, above and below. To the
4 extent Mineau now claims that he was not in charge of the Project, that is either part of the fraud,
5 or a mistake (whether mutual or unilateral) that warrants rescission. Mineau induced Kvam to
6 believe that he was in charge of project, and he proceeded to sign the purchase agreement and
7 escrow papers, procure the contractor, prepare and sign the Contractor Agreement, and instruct
8 Kvam when to make payments. Mineau also signed the sales agreement, escrow papers and deed
9 to sell the Property.

10 Similarly, the remedy of reformation is available to relieve to a contract of a mistake.
11 *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 839 P.2d 399, 108 Nev. 811 (1992); 1
12 Restatement of the Law Second (Contracts 2d) § 158 (Am. Law Institute 1979); 2 Restatement of
13 the Law Second (Contracts 2d) § 204 (Am. Law Institute 1979) (*Appendix A*). “Under the rule
14 stated in § 204, when the parties have not agreed with respect to a term that is essential to a
15 determination of their rights and duties, the court will supply a term that is just in the
16 circumstances.” *Id.* at § 158, Comment c. “Or they may have expectations but fail to manifest
17 them, either because the expectation rests on an assumption which is unconscious or only partly
18 conscious, or because the situation seems to be unimportant or unlikely, or because discussion of it
19 might be unpleasant or might produce delay or impasse.” *Id.* at § 204, Comment c. “The fact that
20 an essential term is omitted may indicate that the agreement is not integrated or that there is a
21 partial rather than complete integration. In such cases, the omitted term may be supplied by prior
22 negotiations or a prior agreement.” *Id.* at § 204, Comment e.

23 In this case, Kvam signed the Terms of Agreement after escrow already closed. That
24 document does not purport to be a complete integration of the entire agreement between the
25 parties, and it is not the entire agreement. The court can supply any essential missing terms,
26 including that Mineau was to complete the project in a timely manner.

27 C. THIRD CAUSE OF ACTION – BREACH OF CONTRACT - LOAN

28 Kvam’s Third Cause of Action and Fourth Action both allege breach of contract. The

1 Third Cause of Action focuses on the loan aspect of agreement between the parties. Mineau's
2 argument is confused and misstates the Terms of Agreement and the other agreements between the
3 parties. The Terms of Agreement contain both a profit-sharing agreement (which Mineau
4 concedes is an element of the joint venture agreement) and a loan agreement.

5 The Terms of Agreement (Mineau's Ex. "2") identify Kvam as the "Initial Funding
6 Member" and state: "Initial funder will be due a 7% annual return on any provided from date of
7 disbursement." Unlike a profit-sharing agreement, this agreement is not conditioned on receipt of
8 profits. Kvam was never repaid.

9 D. FOURTH CAUSE OF ACTION – BREACH OF CONTRACT AND TORTIOUS
10 BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
11 – JOINT VENTURE AGREEMENT

12 Kvam's Fourth Cause of Action is for breach of contract and tortious breach of the
13 covenant of good faith and fair dealing. The allegations address Mineau's various duties:

14 34. As parties to the joint venture Agreement, MINEAU and LEGION
15 owed multiple contractual, legal and fiduciary duties to KVAM and 7747, which
16 included the duty to provide funding, the duty to maintain books and records, the
17 duty to account to KVAM and 7747, the duty of loyalty, the duty of care, and the
18 duty to fulfill the purpose of the joint venture and the terms of Agreement in good
19 faith in a timely manner.

20 35. As parties to the joint Venture Agreement, MINEAU and LEGION
21 further owed a duty of good faith to KVAM and 7747.

22 36. MINEAU and LEGION breached their legal, contractual, and
23 fiduciary duties to KVAM and 7747 by inter alia: failing to provide funding;
24 failing to properly manage and complete the renovation; comingling joint venture
25 funds with LEGION's accounts; failing to account to KVAM and 7747;
26 concealing facts and making multiple misrepresentations to KVAM as set forth
27 above regarding the timing of completion, the status of the project and the sale
28 thereof.

(Second Amended Complaint Trans. # 7478580 at Pars. 34-36).

A claim for tortious breach of the covenant of good faith and fair dealing includes:

1. Plaintiff and defendant entered into a contract;
2. Defendant owed a duty of good faith to plaintiff arising from the contract;
3. A special element of reliance or fiduciary duty existed between plaintiff and

1 defendant where defendant was in a superior or entrusted position;

2 4. Defendant breached the duty of good faith by engaging in misconduct; and

3 5. Plaintiff suffered damages as a result of the breach.

4 *Great Amer. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 934 P.2d 257 (1997).

5 These elements are easily satisfied from the explanation above and follow from the special
6 confidence imposed in Mineau's leadership on the Project and the fiduciary duty required between
7 parties to a joint venture agreement as conceded in Mineau's Motion for Summary Judgment. A
8 duty of good faith is imposed in every contract in Nevada. *Albert H. Wohlers & Co. v. Bartgis*,
9 114 Nev. 1249, 969 P.2d 949 (1998); *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 109 Nev.
10 1043, 862 P.2d 1207 (1993). The admission of a partnership virtually requires a finding of a
11 special relationship. *Great Amer. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 934 P.2d 257,
12 263; *K-Mart Corp. v. Ponsock*, 103 Nev. 39, 732 P.2d 1364, 1371 (1987) abrogated on other
13 grounds by *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 111 S.Ct. 478, 112 L.Ed.2d 474
14 (1990). Mineau was in a superior and entrusted position in this case; as a result, Kvam imposed a
15 special element of reliance, in addition to Mineau's statutory, fiduciary duties. The entire project
16 was driven by Mineau, who had experience in flip projects in Chicago, lined up the estimates and
17 eventually the construction contract, signed the purchase agreement, and acquired title in the name
18 of his limited liability company which thereby held title as a trustee. NRS 87.4336 subpart 2.
19 Damages in a case involving tortious breach of the covenant of good faith and fair dealing are not
20 limited to contract damages. *Great Amer. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 934 P.2d
21 257 (1997); *K-Mart Corp. v. Ponsock*, 103 Nev. 39, 732 P.2d 1364, 1371 (1987). Hence, Kvam is
22 entitled to his lost profits and attorney's fees in addition to the loan amount.

23 Mineau's so-called defense underscores the bad faith. He claims that "Legion and Mineau
24 owed no duty to provide funding for the project" and cites to the Terms of Agreement provided as
25 Ex. "2." Ex. "2" says no such thing and contradicts the agreement as explained by Kvam (See
26 Kvam Declaration, Opposition, Ex. "1.") This statement also contradicts the testimony of
27 Mineau's expert witness, Michelle Salazar, CPA. She testified at her deposition on December 30,
28 2019 as follows: "Q But you did testify twice that Brian Mineau was supposed to provide

1 funding, correct? A He was, yes.” (Ex. “37” at 50:23-25). Mineau failed to provide any
2 evidence that he ever provided his share of funding, other than his self-serving declaration.
3 Mineau has essentially admitted that he failed to supervise the project, yet he kept representing to
4 Kvam that the project was almost finished and asking for money. The Contractor Agreement
5 required that Mineau approve the percentage of work completed and obtain invoices and also
6 provided that the work would be completed in 90 days. Colleen Burke, the real estate agent in
7 Chicago, also testified that Mineau was supposed to supervise the project. “Q But my question is
8 really who’s responsible for making sure that TNT is doing the work and authorizing the
9 payments? A That would be Brian because I had no more involvement in that.” (Transcript, Ex.
10 “38” at 26:11-15). This never happened. Regardless of whether these obligations are spelled out
11 in the Terms of Agreement or not, Mineau had a duty to fulfill the intended purpose of the
12 contract, and he acted in a manner that was unfaithful to the contract. See *Perry v. Jordan*, 111
13 Nev. 943, 900 P.2d 335 (1995); *Hilton Hotels v. Butch Lewis Prods.*, 107 Nev. 226, 808 P.2d 919
14 (1991). Similarly, Mineau no longer disputes the fact that some of the Project funds were diverted
15 to his other projects.

16 E. FIFTH CAUSE OF ACTION - ACCOUNTING

17 Mineau again acknowledges his duties under the Uniform Partnership Act, including NRS
18 87.4336(2)(a). The duty to account is expressed in the statute: “2. A partner’s duty of loyalty to
19 the partnership and the other partners is limited to the following: (a) **To account** to the
20 partnership and **hold as trustee** for it any property, profit or benefit derived by the partner in the
21 conduct and winding up of the partnership business . . .” (emphasis added). He failed to account,
22 even though he held title to the Property “as trustee.”

23 Mineau seems to confuse this simple issue with an argument that he does not have to
24 account because Kvam paid the contractor, directly. That is beside the point. Mineau has to
25 account for the loans and capital contributions (which are repaid at 7% interest) and expenses, in
26 order to know what the profits and losses were for the Project. His expert witness also confirmed
27 the need for these documents. “Q But there’s more to that, accounting of expenses and interest.
28 Don’t we need an accounting before profits can be divided here? A You would need to

1 understand the net profits from the project, if there are any, in order to split them 33.33 percent.”
2 (Ex. “37” at 47:24-48:4). Mineau is unable or unwilling to do so. Further, in winding up the
3 business, “the contributions of the partners required by this section, must be applied . . .” NRS
4 87.4357(1). Mineau still has not documented his contribution, if any.

5 F. SIXTH CAUSE OF ACTION – COURT SUPERVISION OF DISSOLUTION
6 AND WINDING UP, AND APPOINTMENT OF RECEIVER

7 Kvam filed this case on April 11, 2018, and included a claim for court supervised
8 dissolution, winding up and appointment of a receiver. Kvam filed a Motion for Dissolution on
9 July 11, 2018, which relied heavily on the Uniform Partnership Act and quoted NRS 87.4322
10 (Trans. # 6771073). Mineau opposed that motion and disputed the application of the Uniform
11 Partnership Act. Mineau has now reversed his position, entirely, and admits to the application of
12 the Uniform Partnership and relies on NRS 87.4336 in his argument regarding Kvam’s First and
13 Fifth Causes of Action.

14 Ultimately, Mineau sold the property on November 16, 2018 for net proceeds of
15 \$24,473.77. He did not pay this money to Kvam; rather, Kvam found out about the sale on his
16 own and moved for a restraining order to prevent Mineau from absconding with the money.
17 (Trans. # 7000744). The Temporary Restraining Order was entered on December 3, 2018. (Trans.
18 # 7002881). Even after being caught red-handed, Mineau did not agree to pay the funds to Kvam,
19 but rather, stipulated to deposit them with the Clerk of the Court. (See Stipulation and Order
20 Trans. # 7021306). Throughout these proceedings, it seemed as if Mineau was refusing to release
21 the funds to Kvam because someone else might have a claim to the funds, whether Mineau,
22 Bradley Tammen, or someone else. Hereto, Mineau has now reversed his position, and has agreed
23 to release the funds to Kvam. However, his agreement is qualified, and subject to some inchoate
24 claim of offset. “[A]” partnership continues after dissolution only for the purpose of winding up its
25 business. The partnership is terminated when the winding up of its business is completed.” NRS
26 87.4352(1). Once the funds are eventually released to Kvam, the winding up will be complete, at
27 which time Kvam should be considered the prevailing party on this Sixth Cause of Action. Until
28 then, the winding up is not complete.

1 G. SEVENTH CAUSE OF ACTION – TEMPORARY AND PERMANENT
2 INJUNCTION

3 The discussion on Kvam's Seventh Cause of Action is similar to the discussion on the
4 Sixth Cause of Action. Most of the objectives of these two causes of action have been achieved.
5 The Property has been sold and the funds secured with the clerk of the court. Once the funds are
6 distributed and the joint venture finally wound up, this cause of action will be complete and Kvam
7 should be considered the prevailing party.

8 H. EIGHTH CAUSE OF ACTION – FRAUD, FRAUDULENT
9 INDUCEMENT AND FRAUDULENT CONCEALMENT

10 Kvam's Eighth Cause of Action incorporates the various types of fraud and deceit at issue:

11 1. Fraudulent or Intentional Misrepresentation:

- 12 1. A false representation made by the defendant;
- 13 2. Knowledge or belief on the part of the defendant that the representation was
14 false or that he had an insufficient basis of information to make the
15 representation;
- 16 3. An intention on the part of the defendant to induce plaintiff to act or refrain
17 from acting upon the misrepresentation;
- 18 4. Justifiable reliance upon the misrepresentation on the part of the plaintiff in
19 taking the action or refraining from it; and
- 20 5. Damage to the plaintiff, resulting from such reliance.

21 *Nev. J.I. 10.2; Barmletter v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382 (1998);
22 *Blanchard v. Blanchard*, 108 Nev. 908, 839 P.2d 1320 (1992).

23 2. False Promise

- 24 i. The defendant made a promise as to a material matter; and
 - 25 ii. At the time it was made, the defendant did not intend to perform;
 - 26 iii. The defendant made the promise with the intent to induce plaintiff to
27 rely upon it and act or refrain from acting accordingly;
- 28

- iv. The plaintiff was unaware of the defendant's intention not to perform the promise;
- v. The plaintiff acted in reliance upon the promise;
- vi. The plaintiff was justified in relying upon the promise; and
- vii. The plaintiff sustained damages as a result of plaintiff's reliance on defendant's promise.

Nev. J.I. 10.3; *Balsamo v. Sheriff, Clark County*, 93 Nev. 315, 316, 565 P.2d 650, 651 (1977).

3. Concealment

- i. The defendant assumed the responsibility to give information;
- ii. The defendant concealed or suppressed a material fact;
- iii. The defendant was under a duty to disclose the fact to the plaintiff;
- iv. The defendant knew [he] [she] [it] was concealing the fact;
- v. The defendant intended to induce the plaintiff to act or refrain from acting in a manner different than the plaintiff would have done had [he] [she] [it] known the truth;
- vi. The plaintiff was unaware of the fact and would not have acted as [he] [she] [it] did had [he] [she] [it] known of the concealed or suppressed fact; and
- vii. The concealment or suppression of the fact caused the plaintiff to sustain damage.

Nev. J.I. 10.4; *Midwest Supply, Inc. v. Waters*, 89 Nev. 210, 212-133, 510 P.2d 876, 878 (1973) ("The suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation, since it constitutes an indirect representation that such fact does not exist."); *Nevada Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1415 (D. Nev. 1995) ("A plaintiff alleging fraud may also ground its case on negative misrepresentations, omissions or fraudulent concealment. 'A defendant may be found liable for misrepresentation even when the defendant does not make an express misrepresentation, but instead makes a representation which is misleading because it partially suppresses or conceals information.'"); *Blanchard v. Blanchard*, 108 Nev. 908, 911, 839 P.2d 1320, 1322 (1992) ("A defendant may be found liable for

misrepresentation even when the defendant does not make an express misrepresentation, but instead makes a representation which is misleading because it partially suppresses or conceals information.”)

4. Fraud by Nondisclosure (Silence):

- i. The defendant assumed the responsibility to give information;
- ii. The defendant was silent regarding a material fact;
- iii. The defendant was under a duty to disclose the fact to the plaintiff;
- iv. The defendant knew [he] [she] [it] was omitting the fact;
- v. The defendant intended to induce the plaintiff to act or refrain from acting in a manner different than the plaintiff would have done had [he] [she] [it] known the truth;
- vi. The plaintiff was unaware of the fact and would not have acted as [he] [she] [it] did had [he] [she] [it] known of the omitted fact; and
- vii. The omission of the fact caused the plaintiff to sustain damage.

Nev. J.I. 10.5; Nevada Power Co. v. Monsanto Co., 891 F. Supp. 1406, 1415; *Cohen v. Wedbush, Noble, Cooke, Inc.*, 841 F.2d 282, 287 (9th Cir. 1988) (“In order for a mere omission to constitute actionable fraud, a plaintiff must first demonstrate that the defendant had a duty to disclose the fact at issue.”).

5. Negligent Misrepresentation:

1. The defendant made a representation;
2. While in the course of his business, profession, employment or other action of pecuniary interest;
3. The defendant failed to exercise reasonable care or competence in obtaining or communicating the representation to the plaintiff;
4. The representation was false;
5. The representation was supplied for the purpose of guiding the plaintiff in its business transactions;
6. The plaintiff justifiably relied on the false information; and

1 7. The plaintiff sustained a loss due to the false information.

2 *Nev. J.I. 10.7; Bill Stremmel Motors, Inc. v. First Nat'l Bank of Nevada*, 94 Nev. 131, 575
3 P.2d 938 (1978); *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382 (1998) ("In *Bill*
4 *Stremmel Motors, Inc. v. First Nat'l Bank of Nevada*, we adopted the RESTATEMENT
5 (SECOND) OF TORTS § 552 definition of the tort of negligent misrepresentation: (1) One who in
6 the course of his business, profession, or employment or in any other action in which he has a
7 pecuniary interest, supplies false information for the guidance of others in their business
8 transactions is subject to liability for pecuniary loss caused to them by their justifiable reliance
9 upon the information, if he fails to exercise reasonable care or competence in obtaining or
10 communicating the information.").

11 6. Constructive Fraud

12 Constructive fraud is the breach of some legal or equitable duty which, irrespective of
13 moral guilt, the law declares fraudulent because of its tendency to deceive others or to violate
14 confidence. *Perry v. Jordan*, 900 P.2d 335, 111 Nev. 943 (Nev. 1995), citing *Long v. Towne*, 98
15 Nev. 11, 13, 639 P.2d 528 (1982).

16 These various species of fraud all apply to this case. Mineau misrepresented, inter alia, his
17 intention and ability to fund his share of the costs. He misrepresented that the Project funds would
18 be placed in a separate account. He misrepresented (or concealed) his management of the Project,
19 or lack thereof. He continuously misrepresented the status of the Project and inspections, when in
20 fact the permit was not the Permit for the alteration was not issued until June 14, 2017. He
21 concealed that the bid had increased from \$70,000 to \$80,000. He never showed Kvam the
22 Contractor Agreement and misrepresented that additional payments were due, when in fact, the
23 first payment of \$20,000 should have covered all of the permits and demolition work. The Project
24 never proceeded past the demolition phase and was sold in worse condition than when it was
25 purchased. Mineau also concealed that he brought in another investor, Bradley Tammen, until
26 after the fact, if that is actually true. Regardless of whether that is true or not, there was no
27 justification for spending \$49,000 (or \$69,000 counting the alleged \$20,000 from Bradley
28 Tammen). To this date, Mineau continues to conceal what actually happened with this money.

1 Mineau does not deny the falsity of his various reports on the progress of the construction,
2 or the diversion of funds. Rather, his defense is primarily that "Kvam did not rely on Mineau's
3 statements . . ." (Motion at 21:19-20). This is false and is contradicted by Kvam's Declaration
4 and the various communications to and from Brian Mineau attached thereto.

5 I. NINTH CAUSE OF ACTION - CONVERSION

6 To prove a claim of conversion, the Plaintiff has the burden of proving each of the
7 following:

8 1. That the Defendants committed a distinct act of dominion wrongfully exerted over
9 Kvam's (or the joint venture's) personal property, and

10 2. The act was in denial of, or inconsistent with, Kvam's (or the joint venture's) title
11 or rights therein, or

12 3. The act was in derogation, exclusion, or defiance of Kvam's (or the joint
13 venture's) title or rights in the personal property.

14 See *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000)
15 ("Conversion is a distinct act of dominion wrongfully exerted over another's personal property in
16 denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of
17 such title or rights."); *Edwards v. Emperor's Garden Restaurant*, 122 Nev. 317, 328, 130 P.3d
18 1280, 1287 (2006) ("Conversion is a distinct act of dominion wrongfully exerted over personal
19 property in denial of, or inconsistent with, title or rights therein or in derogation, exclusion or
20 defiance of such rights.").

21 It is important to note that the tort of conversion focuses on the distinct act of dominion.
22 The tort of conversion is not concerned with the question of who received the illicit proceeds.
23 Personal liability attaches when a person participates in conversion, even if that person does not
24 personally benefit from the conversion. *Casias v. Wal-Mart Stores, Inc.*, 695 F.3d 428, 434
25 (6th Cir. 2012), rehearing and rehearing denied; *Binder v. Disability Group, Inc.*, 772 F.Supp.2d
26 1172, 1182 (C.D. Cal. 2011); *In re American Home Mortgage Holding*, 458 B.R. 161, 170
27 (Bankr. D. Del. 2011); *Knepper & Bailey Liability of Corporate Officers and Directors* § 6.07[2]
28 (8th ed.) ("It is not necessary that the property be converted for their own personal benefit.").

1 “Further, conversion is an act of general intent, which does not require wrongful intent and is not
2 excused by care, good faith, or lack of knowledge.” *Evans v. Dean Witter Reynolds*, 116 Nev. 538,
3 5 P.3d 1043, 1048 *citing Bader v. Cerri*, 96 Nev. 352, 357 n. 1, 609 P.2d 314, 317 n. 1 (1980).

4 “Whether a conversion has occurred is generally a question of fact for the jury.” *Id.*

5 Mineau seems to misunderstand Kvam’s Ninth Cause of Action for Conversion which
6 alleges: “57. By taking title to the property, diverting project funds and keeping proceeds of sale
7 from KVAM, Defendants MINEAU and LEGION committed a distinct act or acts of dominion
8 wrongfully exerted over the joint venture property, project funds and KVAM’s investment.”
9 (Second Amended Complaint). The reference to title to the Property is part of the seminal
10 background facts. It is undisputed that Mineau and Legion took title. It is also undisputed that
11 Mineau represented that the project funds would be held in a “separate account so he could keep
12 May street funds separate from other project.” (Ex. “12”). This did not happen. The conversion
13 was diverting project funds and holding the proceeds of sale. The main focus is the act in
14 derogation of Kvam’s and the joint venture’s rights to have the Project funds applied to Project. It
15 does not matter who ultimately received the funds, so long as Mineau participated in the
16 conversion, which he did by allowing Project funds to be commingled with other funds. As for
17 proceeds of sale, there is no dispute that Mineau kept those from Kvam. These facts are also
18 undisputed. Mineau no longer denies the diversion of funds, and the record demonstrates that he
19 did not pay the proceeds of sale to Kvam.

20 The diversion of funds is also substantiated by Kvam’s expert witness, Benjamin Charles
21 Steele, CPA (See Declaration and Report, Ex. “41”) (“I am unable to confirm how much of
22 Kvam’s funding was used on the 7747 May Street project, and whether the funding from
23 Mineau/Criterion NV LLC was used on the project.”) The diversion of funds can now be
24 quantified by reference to the Contractor Agreement. The Project never proceeded beyond the
25 permitting and demolition phase, all of which was covered with Kvam’s first \$20,000 payment
26 (See Contractor Agreement, Mineau’s Ex. “7” at Appendix A. Therefore, the additional \$29,000
27 paid by Kvam and the \$20,000 paid by Mineau from Bradley Tammen (if that really happened)
28 were diverted away from the project to Mineau’s other projects. Discovery is outstanding on

1 those other projects. To the extent the court would otherwise consider summary judgment for
2 Mineau on this Ninth Cause of Action, such ruling should be deferred until the outstanding
3 information is supplied and Mr. Steele has been given an opportunity to supplement his report.

4 J. TENTH CAUSE OF ACTION - RICO

5 Kvam's RICO cause of action incorporates Par. 53 of the Second Amended Complaint as
6 follows:

7 53. The fraud and concealment perpetrated by MINEAU and LEGION
8 continued throughout their performance of the Agreement and after this lawsuit
9 was filed, and included concealment about the status of the project, problems with
10 the project, diversion of project funds to other projects under way by MINEAU,
11 LEGION and their colleagues and cohorts, some of whom may claim a financial
12 interest the project, the listing and sale of the House, and the close of escrow and
13 receipt of funds.

14 Mineau's argument regarding Kvam's Tenth Cause of Action – RICO is based on his own
15 interpretation of the definition of RICO, without citing any case law to support his interpretation.
16 Essentially Mineau argues that Kvam would need to allege multiple investments (or multiple
17 investors), rather than multiple predicate acts in relation to the same investor. Unfortunately, NRS
18 207.390 says quite the opposite.

19 **NRS 207.390 "Racketeering activity" defined.** "Racketeering activity"
20 means engaging in at least two crimes related to racketeering that have the same
21 or similar pattern, intents, results, accomplices, victims or methods of
22 commission, or are otherwise interrelated by distinguishing characteristics and are
23 not isolated incidents, if at least one of the incidents occurred after July 1, 1983,
24 and the last of the incidents occurred within 5 years after a prior commission of a
25 crime related to racketeering.

26 In fact, NRS 207.390 only requires two crimes that involve the same or similar victims, or
27 accomplices, results, etc. In this case, the victims are the same, Kvam and the joint venture. The
28 accomplices are the same, or related, including Mineau, Legion Investments, LLC, Michael
Spinola, Criterion Investments, Wyoming Partners, LLC, and Imperium 5, LLC. This case
involves six (6) wire transfers, and a later sale. Exs. "7", "8", "18", "20", "21", "35" and
Mineau's Ex. "19). The pattern, methods, intents and results are the same and involve repeated
misrepresentations and concealment.

1 We have said that "Nevada's anti-racketeering statutes ... are patterned
2 after the federal [RICO] statutes." *Hale v. Burkhardt*, 104 Nev. 632, 634, 764 P.2d
3 866, 867 (1988). However, we have also noted "that Nevada's civil RICO statute
4 differs in some respects from the federal civil RICO statute." *Id.* at 635, 764 P.2d
5 at 868. One critical distinction is found in comparing the language of 18 U.S.C. §
6 1961(5) with that of NRS 207.390. The federal statute provides that a claimant
must plead a pattern of racketeering activity and that such a pattern requires at
least two predicate acts; Nevada's RICO statute does not speak in terms of a
"pattern of racketeering" and provides that racketeering activity means two
predicate acts of the type described in NRS 207.390 and NRS 207.360.

7 In *Sedima, S.P.R.L. v. Imrex Co.*, the United States Supreme Court noted the
8 critical linguistic distinction between "requires" and "means." 473 U.S. 479, 496
9 n. 14, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). The Court explained:

10 ... [T]he definition of a "pattern of racketeering activity" ... states that a
11 pattern "requires at least two acts of racketeering activity," [18 U.S.C.] § 1961(5)
(emphasis added), not that it "means" two such acts. The implication is that while
12 two acts are necessary, they may not be sufficient. Indeed, in common parlance
two of anything do not generally form a "pattern." *Id.*

13 In *Computer Concepts, Inc. v. Brandt*, 310 Or. 706, 801 P.2d 800 (Or.1990),
14 the Oregon Supreme Court distinguished its state RICO statute from the federal
RICO statute: Oregon's definitional statute uses the phrase "pattern of
15 racketeering activity means engaging in at least two incidents of racketeering
activity," and continues with language similar to that contained in NRS 207.390.
16 14 *Brandt*, 801 P.2d at 807 (emphasis added). The *Brandt* court concluded that the
word "means" (also used in NRS 207.390) implied that the definition was self-
17 contained and there was no additional pattern/continuity requirement. *Id.* at 807-
18 08. The Oregon court concluded that a plaintiff need only allege the elements
clearly set forth in its statute. We interpret our statute in the same manner.

19 In light of the clear distinction between "means" and "requires" noted by
20 both the Supreme Court and other jurisdictions, the district court was incorrect in
its assertion that "[a]lthough Nevada's RICO statute does not use the word
21 'pattern,' the language of 18 U.S.C. § 1961(5) is functionally no different than our
22 requirement." Had the state legislature intended Nevada's RICO provisions to
mirror the federal statute in this area, it would have expressly adopted the
23 "requires" language of the federal statute. 15 See *State ex rel. Corbin v. Pickrell*,
136 Ariz. 589, 667 P.2d 1304, 1311 (Ariz.1983) (interpreting Arizona's RICO
24 statutes and noting the differences between the state and federal versions).

25 Accordingly, we hold that there is no pattern/continuity requirement as is
26 required under federal law. A state RICO complaint need allege no more than that
which is set forth in the Nevada statute. In the instant case, Joanne's complaint
27 sufficiently set forth at least two "not isolated" predicate acts "that have the same
or similar pattern, intents, results, accomplices, victims or methods of
28 commission." NRS 207.390. Therefore, the district court erred in dismissing

1 Joanne's state RICO claims for failure to sufficiently plead those causes of action.
2 17 Siragusa v. Brown, 114 Nev. 1384, 971 P.2d 801 (Nev. 1998)

3 Siragusa v. Brown, 114 Nev. 1384, 971 P.2d 801, 810-11 (1998).

4 Based on the foregoing, under Nevada law, racketeering means engaging in at least two
5 crimes related to racketeering as defined in NRS 207.390. Mineau has not denied the predicate
6 acts, nor can he at this point. The predicate acts are listed in NRS 207.360 and include: 9. Taking
7 property from another not under circumstances amounting to robbery; 27. Embezzlement of
8 money or property valued at \$650 or more; 28. Obtaining possession of money or property valued
9 at \$650 or more, or obtaining a signature by means of false pretense; 29. Perjury or subornation of
10 perjury; 30. Offering false evidence.

11 Mineau obtained a signature from Kvam and obtained money under false pretenses, and
12 subject to multiple misrepresentations, including the representation that the money would be
13 placed in a separate account. Although the construction draws were not paid directly to Mineau,
14 they were paid for the benefit of Property owned by his company, Legion Investments, LLC, and
15 Mineau later obtained possession of the proceeds of sale. The conversion is described above. The
16 false evidence and perjury are now evident. In his verified discovery responses on October 1,
17 2018, Mineau responded as follows:

18 **INTERROGATORY NO. 6:**

19 Identify all persons who contributed capital or funds for the purchase and
20 improvement of the Property. Include the names, addresses, phone numbers, dates
21 and amounts of the contributions.

22 **RESPONSE TO INTERROGATORY NO. 6:**

23 Jay Kvam
24 * * * *

25 Criterion NV LLC
26 7560 Michaela Dr.
27 Reno, NV 89511

28 Contributions: March 26, 2017 \$20,000 (Ex. "42").

29 In opposition to Kvam's Motion for Leave, Mineau submitted a declaration with the vague
30 statement as follows: "5. In 2017, Michael Spinola and I caused Criterion, NV LLC to contribute
\$20,000 to the project at 7747 May Street, Chicago, Illinois ("Property") on behalf of Legion."

(Trans. # 7067328).

Mineau later filed a Reply to his Motion for Protective Order (Trans. # 7134280) in which he provided another declaration which expanded on his prior declaration as follows:

9. In Late May, 2017, TNT's owner Derek Cole called me and requested a \$20,000 construction draw for the project at the Property. I was travelling at the time and was unable to promptly make direct payment; however, I had sufficient cash on hand in my personal safe at home to make this payment. At my request, Michael Spinola agreed to arrange to pick up the cash and have it wired to TNT.

Mineau changed his story entirely in his most recent Declaration wherein he now testifies that "25. . . However, upon further reflection and consideration in preparing this Declaration and preparing for trial, I believe my previous testimony was mistaken. I now recall that I borrowed \$20,000 from Bradley Tammen . . ." (Mineau's Ex. "1"). Mineau further testifies that he repaid \$28,000, which would be \$8,000 interest. Unfortunately for Mineau, this revelation comes after the close of discovery, he never identified Bradley Tammen as a person with knowledge on the NRCP 16.1 disclosures (Trans. # 6813392) and he has provided no evidence of such a loan. This entire line of testimony appears to be false and is part of the continuing fraud in this case.

It should also be noted that Mineau has withheld discovery in this case. To the extent this Court wants to review the RICO cause of action in light of Mineau's other projects, a ruling will have to be deferred until that information is made available.

K. ELEVENTH CAUSE OF ACTION – DERIVATIVE CLAIM

Mineau seems to misunderstand the nature of a derivative claim and has not cited any legal authorities to support his motion for summary judgment regarding Kvam's Eleventh Cause of Action. "A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership." NRS 87.4335(1). Also, "A partner may maintain an action against the partnership or another partner for legal or equitable relief . . ." This is exactly what Kvam has asserted. All of the aforementioned claims are asserted on his own behalf and on behalf of the joint venture. This is to prevent any argument from Mineau that the rights asserted belong to the joint venture, rather than Kvam. Mineau did not raise that argument in this motion for summary judgment.

1 IV. CONCLUSION.

2 Mineau's narrow view about his duties in this case can be summarized as follows: He
3 thinks he owes no duties to Kvam beyond what is expressed in the Terms of Agreement.
4 Unfortunately, the Terms of Agreement was signed after escrow closed, it primarily addresses the
5 agreement for Kvam to fund Spinola's required draw, it does not purport to integrate the entire
6 agreement between the parties, and it does not in fact contain the entire agreement between the
7 parties. Even if it did, Mineau would still owe many duties beyond the narrow confines of the
8 Terms of Agreement including the duty of good faith, which imposes an obligation to fulfill the
9 intended purpose of the agreement in a timely manner, fiduciary duty, including the duty of
10 loyalty, the exercise of due care, and the duty to render accounts. He also has the duty to disclose
11 information and not to conceal. Rather than fulfill his contractual and legal duties, he repeatedly
12 and systematically misrepresented the status of the Project to Kvam and concealed information,
13 and eventually allowed Project funds to be diverted away, despite his prior representation that the
14 funds would be placed in separate bank account.

15 When the Project eventually sold for a loss, Mineau concealed the sale and to this date has
16 not paid the Project funds to Kvam. When Kvam discovered that Mineau did not provide his
17 share of the funding, Mineau provided various, false, sworn statements: first that Criterion NV,
18 LLC provided the funding; second, that Mineau gave Criterion cash from his safe; and most
19 recently, that Mineau borrowed money from Bradley Tammen. None of these claims can be
20 substantiated, and to the extent Mineau asserts he repaid Tammen \$28,000, that is another act of
21 bad faith for Mineau to repay a later, undisclosed investor without first repaying Kvam.

22
23 ///

24
25 ///

26
27 ///

AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Respectfully submitted.

Dated this 16th day of January, 2020.

MATUSKA LAW OFFICES, LTD.

Michael L. Matuska

By:

MICHAEL L. MATUSKA, SBN 5711
Attorneys for Plaintiff, JAY KVAM,
individually and derivatively on behalf of
the unincorporated joint venture identified
as 7747 S. May Street

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 16th day of January, 2020, I served a true and correct copy of the preceding document entitled **OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** as follows:

Austin K. Sweet, Esq.
GUNDERSON LAW FIRM
3895 Warren Way
Reno, NV 89509
asweet@gundersonlaw.com

☒ **BY CM/ECF:** I electronically filed a true and correct copy of the above-identified document with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the person(s) named above.

☐ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document(s) at Carson City, Nevada, in the ordinary course of business.

☐ **BY EMAIL:** (as listed above)

☐ **BY PERSONAL SERVICE:** I personally delivered the above-identified document(s) by hand delivery to the office(s) of the person(s) named above.

☐ **BY FACSIMILE:**

☐ **BY FEDERAL EXPRESS ONE-DAY DELIVERY:**

☐ **BY MESSENGER SERVICE:** I delivered the above-identified document(s) to Reno-Carson Messenger Service for delivery.

/s/ SUZETTE TURLEY
SUZETTE TURLEY

Exhibit Index

Opposition to Defendants' Motion for Summary Judgment and Cross Motion for Partial Summary Judgment

EXHIBIT	DOCUMENT	NO. OF PAGES
1	Declaration of Jay Kvam	8
2	Text dated December 29, 2016	1
3	Project costs breakdown	2
4	Text dated March 20, 2017	1
5	January 2, 2017 email and Unsigned Triple "R" Construction Contract	4
6	Purchase Agreement dated January 3, 2017	4
7	\$44,000 Wire dated February 13, 2017	1
8	\$784.31 Wire dated February 13, 2017	1
9	Settlement Statement dated February 13, 2017	3
10	Warranty Deed dated January 30, 2017	5
11	Terms of Agreement dated February 14, 2017	1
12	Text dated February 17, 2017	1
13	Text dated March 16, 2017	1
14	Email dated March 20, 2017	1
15	DocuSign Certificate March 20, 2017	2
16	Text dated March 23, 2017	1
17	Email dated March 23, 2017	2
18	\$20,000 Wire dated March 23, 2017	2
19	Text dated April 13, 2017	1
20	\$20,000 dated April 14, 2017	2
21	\$9,000 Wire dated May 18, 2017	1
22	Email dated May 21, 2017	1
23	Email dated June 5, 2017	1
24	Email dated July 14, 2017	2
25	Email dated June 26, 2017	2
26	Email dated August 12, 2017	1
27	Email dated August 16, 2017	1
28	Email dated September 25, 2017	1
29	Email dated October 12, 2017	1

Exhibit Index

Opposition to Defendants' Motion for Summary Judgment and Cross Motion for Partial Summary Judgment

EXHIBIT	DOCUMENT	NO. OF PAGES
30	Email dated November 5, 2017	1
31	Email chain November 19, 2017 – January 23, 2018	9
32	Inspection #12270203 report of August 7, 2019	3
33	Inspection #12274840 report of August 7, 2019	6
34	Inspection #12288430 report of August 7, 2019	7
35	Settlement Statement dated November 16, 2018	3
36	Warranty Deed dated November 5, 2018	5
37	Deposition of Michelle Salazar, Excerpt	4
38	Deposition of Colleen Burke, Excerpt	3
39	Declaration of Michael L. Matuska	2
40	Declaration of Benjamin Steele	2
41	Plaintiff's Expert Witness Disclosure (report of Benjamin Steele dated September 24, 2019) w/o exhibits	8
42	Amended Report of Expert Witness Benjamin Steele Dated January 15, 2020	4
43	Brian Mineau and Legion Investments' Responses to Plaintiff Jay Kvam's First Set of Interrogatories	7
44	Michael L. Matuska's September 19, 2018 Letter to Austin Sweet	1
45	Austin Sweet letter to Michael Matuska dated March 26, 2018	1
46	Real Estate Contract – Scotch and Soda Goldmine Company, Inc. acceptance date of May 22, 2018	13
47	Real Estate Contract – Mutual Happiness LLC dated July 3, 2018	13
48	Appendix A: Legal Authority: Restatement of the Law, Second – Contracts 2d Excerpts from Volumes 1 and 2	10

FILED
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CV18-00764
2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 1

DECLARATION OF JAY KVAM

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 1

DECLARATION OF JAY KVAM

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

CODE: 1520

Michael L. Matuska, Esq. SBN 5711
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Attorneys for Plaintiff

**THE SECOND JUDICIAL DISTRICT COURT OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

JAY KVAM,

Plaintiff,

v.

BRIAN MINEAU; LEGION INVESTMENTS,
LLC; 7747 S. May Street, an Unincorporated
Joint Venture; and DOES I-X, inclusive,

Defendants.

Case No. CV18-00764

Dept. No. 6

**DECLARATION OF JAY KVAM IN SUPPORT OF OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT; AND CROSS-MOTION FOR PARTIAL
SUMMARY JUDGMENT**

I, JAY KVAM, do hereby declare as follows:

1. That I am the Plaintiff in the above encaptioned action. I have first-hand knowledge of the facts recited herein, I am competent to testify to these facts, and the same are true and correct to the best of my knowledge, information and belief.

2. In late December, 2016, Michael Spinola texted me about a rehabilitation project that his friend and business partner, Brian Mineau was starting at 7747 S. May Street, Chicago, Illinois (Ex. "2"). I consider this Project to be a "flip" and will use that term for convenience in this Declaration. For purposes of this Declaration, I will also refer to the property at 7747 S. May Street, Chicago, Illinois as the "Property" or the "Project".

3. On approximately December 30, 2016 or January 1, 2017, I met Spinola at a Starbucks that was then located on 720 S. Meadows Parkway in Reno, Nevada, where Spinola first

1 introduced me to Mineau. At that meeting, Spinola and Mineau prepared on outline of the project
2 financing. Spinola took a photo of that outline which he later sent to my email on January 7, 2017
3 (Ex. "3"). I had never engaged in a flip project before. Mineau represented to me that he had
4 experience with flip projects in Chicago that he successfully and profitably completed. I relied on
5 Mineau's experience and the information that he provided to me, including the outline of project
6 financing. We never discussed that I would have any involvement with this Project beyond as a
7 mere investor. Mineau later acknowledged my limited status as an investor in an email to his lawyer
8 who helped with the escrow: "My investor on May Street checked the recorders website last night
9 and said the deed for may street has not been posted, can you please look into what happened." (Ex.
10 "4").

11 4. In general, our discussions about the Project are encapsulated in Ex. "3" which
12 indicates that the Project would cost \$44,000 for the purchase price and \$70,000 for repairs which
13 would be repaid with interest at the rate of 7% per annum in (3) three months, which would be
14 \$1,995 in interest. Ex. "3" also includes \$13,520 in closing costs. Based on an estimated sale price
15 of \$169,000, the Project would generate a profit of \$39,485, which would be divided three (3) ways,
16 \$13,161 each.

17 5. On January 2, 2017, Mineau copied me on an email to Spinola that included an
18 unsigned bid sent from Triple "R" Construction to Mineau for \$70,000 and dated November 11,
19 2016 (Ex. "5"). That bid stated that "THIS JOB WILL TAKE 3 MONTHS FROM START TO
20 FINISH."

21 6. Based on the documents received from Mineau and Citywide Title in this litigation,
22 Mineau signed a purchase agreement for the Property on January 3, 2017 in the amount of \$44,000
23 (Ex. "6").

24 7. On February 13, 2017, I wired \$44,000 to escrow for the purchase price (Ex. "7")
25 and another \$784.31 for miscellaneous escrow fees (Ex. "8"). Escrow closed that same day (Ex.
26 "9"). Mineau acquired title to the Property in the name of his limited liability company, Legion
27 Investments, LLC (Ex. "10"), which therefore held title for the benefit of the three (3) joint
28 venturers.

1 8. The next day, on February 14, 2017, I signed a document entitled "Terms of
2 Agreement" (Ex. "11"). Mineau and Spinola previously signed the Terms of Agreement on
3 February 13, 2017. The Terms of Agreement refers to me as the Initial Funding Member and
4 specifies that "Initial Funder will be due a 7% annual return on any funds provided due from date
5 of disbursement." The Terms of Agreement also explain that I was to pay Spinola's funding draw,
6 and in exchange, I would receive ½ of his share of the profits. The Terms of Agreement does not
7 purport to encapsulate all of the discussions between the parties, and it does not in fact encapsulate
8 all of the discussions between the parties.

9 9. On February 17, 2017, I texted Mineau to ask for wiring details to forward the first
10 payment. Mineau responded "Not yet, he was getting the wiring info for a separate account so he
11 could keep May Street funds separate from other projects." (Ex. "12"). As indicated in the
12 documents Mineau recently produced to and from the real estate agent in Chicago, he began talking
13 with TNT Complete Facility Care, Inc. after March 16, 2017 (Ex. "13"). Mineau proceeded to
14 prepare and sign the construction contract with TNT on March 20, 2017 (See Ex. "14", DocuSign
15 Certificate of Completion Ex. "15" and Contractor Agreement provided as Mineau's Ex. "7").

16 10. The Contractor Agreement provides *inter alia* that the project will be "turn key"
17 complete by June 1, 2017 at a total cost of \$80,000 (See Addendum "A"). Addendum A also
18 specified the payment schedule, including:

19 \$20,000 to secure permits, architects, demo;

20 \$15,000 to begin reconstruction April 17th 2017

21 \$15,000 due April 27th 2017

22 \$13,000 due May 8th 2017

23 \$9,000 due May 18th 2017

24 Final payment of \$8,000 due upon punch list completion.

25 The Contractor Agreement also specifies that "The Owner [Legion/Mineau, ed.] will
26 approve the percentage of work at its sole discretion" (Addendum "B") and "IN ORDER TO
27 RECEIVE PAYMENT, CONTRACTOR MUST PROVIDE INVOICES . . ." (Par. 4).

28 11. Unfortunately, Mineau never obtained invoices, never verified that work was

1 progressing, and instructed me to make the payments without regard to the payment schedule or the
2 progress of construction. Mineau never gave me a copy of the Contractor Agreement, so I did not
3 know the payment schedule or amounts and relied on Mineau. I first saw the Contractor Agreement
4 when it was provided through the discovery process in this lawsuit.

5 12. On March 23, 2017, Mineau texted that "... we are ready for our first draw on May
6 street 20k. I will email the wiring instructions to you jay and if you have time to get it out some time
7 in the next day or two I would appreciate it." (Ex. "16"). Later that morning, Mineau emailed me
8 the wire instructions as an attachment. (Ex. "17"). I wired \$20,000 to TNT that same day. (Ex.
9 "18").

10 13. On April 13, 2017, Mineau texted that "I spoke with Derek last night and this
11 morning and next Tuesday or Wednesday is good for the next draw if that works for you. He said
12 Easter pushed a few inspections back but we will be done no later than the 16th of May." (Ex. "19").
13 In reliance on that text message, I sent another \$20,000 on April 14, 2017, even though the payment
14 schedule in the Contractor Agreement only called for \$15,000 (Ex. "20").

15 14. I wired another \$9,000 on May 18, 2017 (Ex. "21") and began to ask questions of
16 Mineau on about May 21, 2017: "Have you heard from Derek recently about May Street? How's it
17 progressing in these, as I've heard, last couple weeks of renovation? to which Mineau replied: "I
18 did actually he called me about an hour and a half ago and told me he is installing floors this week
19 and should be finished very soon." (Ex. "22"). On June 5, 2017 following Cole's sending photos
20 to Mineau and me, I expressed some concern to Mineau regarding the project: "...the photos that
21 Derek sent us both yesterday left me with the impression that the interior it was much less further
22 along than I had imagined it and most of the roofing and siding problems I had already seen." (Ex.
23 "23").

24 15. Although Mineau was able to procure the property for \$44,000, most of the other
25 representation he made to me have proven to be false. For instance, I first discovered on July 12,
26 2017 that Mineau's budget for construction costs had increased from \$70,000 to \$80,000 and only
27 when Bradley Tammen forwarded a copy of an email conversation that Mineau had initiated with
28 him to solicit funds. (Ex. "24").

1 16. Also, Mineau never informed me that he did not have his share of funding as required
2 by the Terms of Agreement, and I would not have proceeded with this Project had I known that he
3 needed to borrow his share of funding as he now claims in the Declaration. Mineau claims that he
4 borrowed \$20,000 from Tammen to invest in the project. (See Mineau Declaration at Par. 25).
5 Unfortunately, the Contractor Agreement did not call for an additional \$20,000 at that time, and
6 Mineau has never provided any evidence of this alleged loan or repayment. The only information I
7 have about an arrangement between Mineau and Tammen is the email that was forwarded to me
8 after the fact on July 14, 2017. (Ex. "24"). Ironically, in his email to Tammen, Mineau confirmed
9 his obligation to me. However, Mineau testified in his Declaration that he repaid Tammen in full.
10 (See Mineau Declaration at Par. 25). He has not repaid me.

11 17. During this litigation, I began researching the permit history for the Property through
12 the Cook County, Illinois public records. The summary report is provided as Mineau's Exhibit "23"
13 and confirms that there were no inspections at the time of the second draw on April 14, 2017, and
14 the floors were not ready to install at the time of the third draw on May 18, 2017. There was no
15 progress beyond demolition (which should have been covered by the first draw), and the Project
16 could not have been on track to be completed by the 16th of May. In fact, the first permit that was
17 issued on April 21, 2017 was for "Removal of Drywall Only." The permit for "Interior Alteration
18 of a Single Family Residence, Architectural, Mechanical, Plumbing and Electrical Involved" was
19 not issued until June 14, 2017.

20 18. Mineau continued to misrepresent the status of the project to me. On June 26, 2017,
21 in response to my questions: "... how is May shaping up at this point? Are we close to completion
22 and do we have an expected finish-by date?" Mineau stated: "I spoke with him this morning and
23 they are finishing the drywall then the kitchen goes in and finishing touches in the bath room and
24 we are done. He told me this morning if the city can finish their final inspection at two weeks (no
25 inspections next week cause of the holiday) then we are done!" (Ex. "25").

26 19. On August 12, 2017, I asked Mineau: "Is Todd progressing and delivering on
27 finalizing the rehab?" to which Mineau responded: "Yes sir. He has gotten everything up and
28 running again and has promised a swift completion. I have a follow up call with him Monday to go

1 over the progress.” (Ex. “26”).

2 20. On August 16, 2017, I asked Mineau: “What’s the status of the project, and are we
3 getting close to having it marketable?” to which Mineau responded: “[Todd] has assured me we will
4 be able to list the first week of September, willing no other city problems.” (Ex. “27”).

5 21. Mineau continued to misrepresent the status of inspections. On September 25, 2017,
6 Mineau stated: “Also spoke with Derek this morning and we are final about to cross the finish line,
7 need two more inspections by the city (one this week) then the other and we are done.” (Ex. “28”).
8 On October 12, 2017, Mineau states “... he said they are doing the final touches then the occupancy
9 inspection then it’s completed.” (Ex. “29”).

10 22. On November 5, 2017, Mineau told the group: “I spoke to Derek on Friday morning
11 ... and he said some of the plumbing work wasn’t to the inspectors standard / preference and that
12 he didn’t pass. He is correcting the items now and asked if I could send him \$1500 (of the 10k
13 remaining budget on Monday to help correct these items and speed it up. I told him I would. Once
14 they are completed and we have a new date I will let everyone know.” (Ex. “30”).

15 23. On November 19, 2017, Mineau told the group: “... he [Cole] said they will be done
16 in 14-17 days from tomorrow, ...” and: “... I plan on having an agent come to the property to list
17 no later than the 8th of December and he said it would be done.” (Ex. “31” KHAM0220).

18 24. On December 26, 2017, Mineau told the group: “... he said it has new windows and
19 a new room and everything is basically complete.” and he guaranteed that nobody would lose any
20 capital: “No one has lost any capital yet nor will they.” (Ex. “31” KHAM0217).

21 25. Based on the permit history (Mineau’s Ex. “23”), these various statements about the
22 status of the Project and inspections were false. There were never any inspections beyond the rough
23 plumbing and rough electrical that only partially passed with comments on July 11, 2017 and July
24 17, 2017. (See Inspection Reports 12270203 (Electrical Wiring) Ex. “32”, 12274840 (Electrical –
25 Renovation/Alteration Ex. “33” and 12288430 (Plumbing) Ex. “34”).

26 26. Mineau sold the Property to Thousand Oaks Management, LLC for a loss on
27 November 16, 2018. (See Closing Statement Ex. “35”, showing net proceeds of merely \$24,473.77).
28 I was left to find out about the sale on my own and moved for a temporary restraining order and

1 preliminary injunction on November 30, 2018 to prevent the loss of the sale proceeds. (#7000744).
2 Facing no other options, Mineau and Legion stipulated to deposit the funds with the clerk of the
3 court (#7021308).

4 27. Mineau signed all the sales agreements, escrow papers and deed, all without
5 informing me. He did not inform me of the attempts to sell nor the sale nor disclose what happened
6 to the proceeds. He did not keep a separate bank account for the project instead directing escrow to
7 disburse the funds to a Legion-held bank account and receiving them accordingly (See Deed, Check,
8 Wire Transfer Authorization, Electronic Withdraw Statement Ex. "36")

9 28. Starting at page 6, Line 1, of Mineau's Motion for Summary Judgment, he includes
10 a lengthy discussion about a meeting between me and Derek Cole regarding Atlas Investors
11 Southside and included minutes of a meeting for Atlas Southside Investors. This information is
12 irrelevant and misleading. The meeting took place on May 5, 2017, which is well after the Project
13 at issue in this case was undertaken. The meeting has nothing to do with Terms of Agreement (or
14 other agreements) at issue in this case. Rather, Atlas Investors Southside was an investment vehicle
15 that the parties formed with the expectation of undertaking subsequent projects. Any discussions
16 pertaining to the May Street Property were at the end of the meeting and are reflected by Bullets
17 10a and 10b, which were an inquiry about a 3D model of the Property that Mineau had previously
18 promised and a statement from Cole that May Street would be done in early June.

19 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
20 is true and correct.
21
22
23
24
25
26
27
28

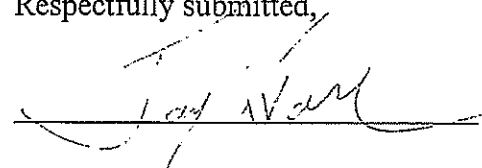
AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Executed this 16th day of January, 2020, at Carson City, Nevada.

Respectfully submitted,

By:



FILED
Electronically
CV18-00764
2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 2

TEXT DATED DECEMBER 29, 2016

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 2

TEXT DATED DECEMBER 29, 2016

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Michael Spinola
(775) 233-2241

M

1) Quickclaim it over for 44k 2) contractor gave a bid of 70k if he was going to also dormer out the bathroom upstairs. 3) A couple doors down went under contract in nine days. It's still in escrow list 169,900 .4 miles away 8038 S. Morgan sold for 175k .4 miles away 8019 S. Sangamon St. sold for 170,500 .1 mile away 7810 S. Aberdeen sold for 175k. These comps are all less than a half mile away. We will probably list at \$169,900 @

Michael Spinola (mobile) • Dec 29, 2016

FILED
Electronically
CV18-00764
2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 3

PROJECT COSTS BREAKDOWN

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 3

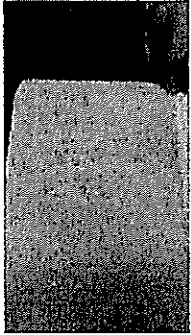
PROJECT COSTS BREAKDOWN

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

SMS from Michael Spinola [(775) 233-2241]

Michael Spinola (SMS) <17754348230.17752332241.PJN3RwSmZb@txt.voice.google.com> Sat, Jan 7, 2017 at 10:24 PM
To: kvam.jay@gmail.com

MMS Received



noname
39K

\$1154.00

20000.00

617.600

114.000

15.120

\$41,580

\$1998.00

\$24,125.13

\$13,161.00

3 = 18.50

11 = 13.161

13 = 13.161

FILED
Electronically
CV18-00764
2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 4

TEXT DATED MARCH 20, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 4

TEXT DATED MARCH 20, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

From: Brian Mineau [<mailto:Brian.t.mineau@hotmail.com>]
Sent: Monday, March 20, 2017 10:56 AM
To: Harley Rosenthal <harley@rosenthallawgroup.com>
Subject: 7747 S. May St.

Good morning Harley,

My investor on May Street checked the recorders website last night and said the deed for may street has not been posted, can you please look into what happened. Thank you.

v/r

Brian Mineau


 warranty deed - 7747 South May Street [2017-03-15].zip
960K

Exhibit 5

**JANUARY 2, 2017 EMAIL AND UNSIGNED
TRIPLE "R" CONSTRUCTION CONTRACT**
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 5

**JANUARY 2, 2017 EMAIL AND UNSIGNED
TRIPLE "R" CONSTRUCTION CONTRACT**
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)



Jay Kvam <kvam.jay@gmail.com>

Fw: 7747 S. MAY ST

Brian Mineau <Brian.t.mineau@hotmail.com>
To: Michael Spinola <mspinola@onetrusthomeloans.com>
Cc: Jay Kvam <kvam.jay@gmail.com>

Mon, Jan 2, 2017 at 8:11 AM

I caught that last night as well and asked him and he said has concerns about the delay in the permitting office there but said he can comfortably change back to 10 and if we do a large portion down (I have wired up to 22k to him before with no issues) the faster he can go.

Sent from my iPhone

On Jan 1, 2017, at 11:11 PM, Michael Spinola <mspinola@onetrusthomeloans.com> wrote:

Brian, the timeline he quoted is about 6 weeks longer that what we discussed, and what I shared with Jay, is that an error? Or an actual change?

Michael Spinola

Mortgage Loan Originator // NMLS #311884

☎ 775-335-2056 ☎ 775-233-2241 ☎ 775-201-0517

✉ mspinola@onetrusthomeloans.com

🌐 Visit My Webpage

📍 5470 Kietzke Lane Suite 110, Reno, NV 89511



[download my info](#)

[mortgage calculators](#)

[apply now!](#)

This email may contain data that is confidential, proprietary or "non-public personal information," as that term is defined in the Gramm-Leach-Bliley Act (collectively, "Confidential Information"). The Confidential Information is disclosed conditioned upon your agreement that you will treat it confidentially and in accordance with applicable law, ensure that such data isn't used or disclosed except for the limited purpose for which it's being provided and will notify and cooperate with us regarding any requested or unauthorized disclosure or use of any Confidential Information. By accepting and reviewing the Confidential Information you agree to indemnify us against any losses or expenses, including attorney's fees that we may incur as a result of any unauthorized use or disclosure of this data due to your acts or omissions. If a party other than the intended recipient receives this e-mail, you are requested to instantly notify us of the erroneous delivery and return to us all data so delivered. NMLS# 46375

From: Brian Mineau [mailto:brian.t.mineau@hotmail.com]
Sent: Sunday, January 01, 2017 5:18 PM
To: Michael Spinola <mspinola@onetrusthomeloans.com>

Subject: Fwd: 7747 S. MAY ST

Finally got it sir

Sent from my iPhone

Begin forwarded message:

From: "TripleRCon.8787 Rivera" <triplercon.8787@gmail.com>
Date: January 1, 2017 at 4:06:17 PM PST
To: Brian Mineau <brian.t.mineau@hotmail.com>
Subject: 7747 S. MAY ST

SCOPE FOR 7747 MAY STREET. CHICAGO IL. 60628

THIS IS A SCOPE OF WORK FOR THE FOLLOWING WORK TO BE DONE AT THE ABOVE ADDRESS. DEMO ENTIRE HOUSE , . ALL NEW MECHANICALS.WHICH INCLUDES HVAC, ELECTRICAL AND PLUMBING. ALL NEW DRYWALL I BASEMENT , FIRST FLOOR AND SOME OF THE ATTIC . NEW FLOORS, SINKS AND VANITY. NEW BATHROOM IN BASMENT . REMODEL BASEMENT. WITH NEW FRAME WORK , DRYWALL, INSULATION, FLOORING AND PAINT ENTIRE HOUSE

1ST . FLOOR: DEMO ENTIRE FIRST FLOOR , NEW CABINETS FOR KITCHEN , GRANITE COUNTER TOPS , NEW APPLIANCES , NEW HARDWOOD THREWOUT THE FIRST FLOOR . UPDATE BATHROOM WITH NEW VANITY AND MIRROR , TOILET BOWL AND TILE FLOOR WITH SHOWER

BASEMENT: FRAME OUT THE ENTIRE BASEMENT WITH LAUNDRY AND CLOSED FURNACE ROOM. INSULATE THE ENTIRE BASEMENT AND PAINT THE ENTIRE BASEMENT.ADD BATHROOM IN BASEMENT

ROOF. DEMO OLD ROOF AND PUT NEW SHINGLES

SECOND FLOOR, ADD NEW COSETS TO BEDROOMS , NEW DRYWALL AND INSTALLTION

FRONT DECK: PAINT FRONT DECK

ADD NEW WINDOWS WHERE NEEDED

NEW FURNACE WITH CENTRAL AIR

NEW UPDATED ELECTRICAL THREWOUT HOUSE

NEW PLUMBING THREWOUT

TOTAL JOB FOR MATERIAL AND LABOR WILL BE \$70,000

THIS CONTRACT IS TO BE SIGNED AND RETURNED . IF ACCEPTED A THIRD OF THE JOB IS DUE AND PAID IN PHASES AS THE JOB PROGRESSES. IF ANYTHING OUTSIDE OF THE CONTRACT IS ASKED TO BE DONE WILL BE AN EXTRA COST TO THE OWNERS. THIS JOB WILL TAKE 3 MONTHS FROM START TO FINISH.

BRIAN MINEAU _____ 11/11/16

TRIPLE "R" CONSTRUCTION _____ 11/11/16
VICTOR RIVERA

TRIPLE "R" CONSTRUCTION
TRIPLERCON.8787@GMAIL.COM
(312)978-2750
11021 S. GREENBAY AVE.
CHICAGO IL. 60617

Exhibit 6

PURCHASE AGREEMENT DATED JANUARY 3, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 6

PURCHASE AGREEMENT DATED JANUARY 3, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)



CHICAGO ASSOCIATION OF REALTORS®
RESIDENTIAL REAL ESTATE PURCHASE AND SALE CONTRACT
(single family home/fee simple townhome)

Rev. 01/2012



1. **Contract.** This Residential Real Estate Purchase and Sale Contract ("Contract") is made by and between SDL iVest Group, LLC
2 ("Buyer") and Learn Investments ("Seller") (collectively, "Parties"), with respect to the purchase and sale of the real estate and
3 improvements located at 7747 South May Street, Chicago, IL 60620
4 (address) (unit #) (city) (state) (zip) ("Property").
5 Property P.I.N. #: 20294170150000 Lot size: 3720 Approximate square feet of Property: 1056

6 2. **Fixtures and Personal Property.** At Closing (as defined in Paragraph 7 of this Contract), in addition to the Property, Seller shall transfer to
7 Buyer by a Bill of Sale, all heating, cooling, electrical and plumbing systems, together with the following checked and enumerated items ("Fixtures
8 and Personal Property"):

AS-IS

- | | | | | |
|---|---|--|---|--|
| <input type="checkbox"/> Refrigerator | <input type="checkbox"/> Sump Pump | <input type="checkbox"/> Central air conditioner | <input type="checkbox"/> Fireplace screen | <input type="checkbox"/> Built-in or attached |
| <input type="checkbox"/> Oven/Range | <input type="checkbox"/> Smoke and carbon monoxide | <input type="checkbox"/> Window air conditioner | <input type="checkbox"/> and equipment | <input type="checkbox"/> shelves or cabinets |
| <input type="checkbox"/> Microwave | <input type="checkbox"/> detectors | <input type="checkbox"/> Electronic air filter | <input type="checkbox"/> Fireplace gas log | <input type="checkbox"/> Ceiling fan |
| <input type="checkbox"/> Dishwasher | <input type="checkbox"/> Intercom system | <input type="checkbox"/> Central humidifier | <input type="checkbox"/> Firewood | <input type="checkbox"/> Radiator covers |
| <input type="checkbox"/> Garbage disposal | <input type="checkbox"/> Security system (rented or owned) (strike one) | <input type="checkbox"/> Lighting fixtures | <input type="checkbox"/> Attached gas grill | <input type="checkbox"/> All planted vegetation |
| <input type="checkbox"/> Trash compactor | <input type="checkbox"/> Satellite Dish | <input type="checkbox"/> Electronic garage door(s) | <input type="checkbox"/> Existing storms | <input type="checkbox"/> Outdoor play set/swings |
| <input type="checkbox"/> Washer | <input type="checkbox"/> Attached TV(s) | <input type="checkbox"/> with remote unit(s) | <input type="checkbox"/> Window treatments | <input type="checkbox"/> Outdoor shed |
| <input type="checkbox"/> Dryer | <input type="checkbox"/> TV Antenna | <input type="checkbox"/> Tacked down carpeting | <input type="checkbox"/> Home | |
| <input type="checkbox"/> Water Softener | <input type="checkbox"/> LCD/plasma/multimedia equipment | <input type="checkbox"/> Other Equipment | <input type="checkbox"/> warranty (as attached) | |
| <input type="checkbox"/> Stereo speakers/surround sound | | | | |

19 Seller also transfers the following: _____ The following items are excluded: _____

20 3. **Purchase Price.** The purchase price for the Property (including the Fixtures and Personal Property) is \$ \$44,000 buyer pays
21 ("Purchase Price"). closing cost Except Water
22 Cert & Seller's Attorney Fee

23 4. **Earnest Money.** Upon Buyer's execution of this Contract, Buyer shall deposit with _____ in the form of check or wire ("Initial Earnest
24 Money"). The Initial Earnest Money shall be returned and this Contract shall be of no force or effect if this Contract is not accepted by Seller on or
25 before Signing of Contract. The Initial Earnest Money shall be increased to (strike one) 10% of the Purchase Price OR 100 % [percent]
26 of the Purchase Price ("Final Earnest Money") within 3 business days after the expiration of the Attorney Approval Period (as established
27 in Paragraph 13 of this Contract) (the Initial and Final Earnest Money are together referred to as the "Earnest Money"). The Parties acknowledge
28 and agree that (i) the Parties shall execute all necessary documents with respect to the Earnest Money in form and content mutually agreed upon
29 between the parties and (ii) except as otherwise agreed, Buyer shall pay all expenses incurred in opening an escrow account for the Earnest Money.

30 5. **Mortgage Contingency.** This Contract is contingent upon Buyer securing by _____, 20 _____ ("First Commitment Date") a
31 firm written mortgage commitment for a fixed rate or an adjustable rate mortgage permitted to be made by a U.S. or Illinois savings and loan
32 association, bank, or other authorized financial institution, in the amount of (strike one) \$ _____ OR _____ % [percent] of the Purchase
33 Price, the interest rate (or initial interest rate if an adjustable rate mortgage) not to exceed _____ % per year, amortized over _____ years, payable
34 monthly, loan fee not to exceed _____ %, plus appraisal and credit report fee, if any ("Required Commitment"). If the mortgage secured by the
35 Required Commitment has a balloon payment, it shall be due no sooner than _____ years. Buyer shall pay for private mortgage insurance as required
36 by the lending institution. If a FHA or VA mortgage is to be obtained, Rider 7, Rider 9, or the HUD Rider shall be attached to this
37 Contract. (1) If Buyer is unable to obtain the Required Commitment by the First Commitment Date, Buyer shall so notify Seller in writing on or
38 before that Date. Thereafter, Seller may, within 30 business days after the First Commitment Date ("Second Commitment Date"), secure the
39 Required Commitment for Buyer upon the same terms, and may extend the Closing Date by 30 business days. The Required Commitment may be
40 given by Seller or a third party. Buyer shall furnish all requested credit information, sign customary documents relating to the application and
41 securing of the Required Commitment, and pay one application fee as directed by Seller. Should Seller choose not to secure the Required
42 Commitment for Buyer, this Contract shall be null and void as of the First Commitment Date, and the Earnest Money shall be returned to Buyer. (2)
43 If Buyer notifies Seller on or before the First Commitment Date that Buyer has been unable to obtain the Required Commitment, and neither Buyer
44 nor Seller secures the Required Commitment on or before the Second Commitment Date, this Contract shall be null and void and the Earnest Money
45 shall be returned to Buyer. (3) If Buyer does not provide any notice to Seller by the First Commitment Date, Buyer shall be deemed to have waived
46 this contingency and this Contract shall remain in full force and effect.

47 6. **Possession.** Seller agrees to surrender possession of the Property on or before the Closing Date (as defined in Paragraph 7 below). If
48 possession is not delivered on or prior to the Closing Date, then, Seller shall pay to Buyer at Closing \$ N/A per day ("Use/Occupancy
49 Payments") for Seller's use and occupancy of the Property for each day after the Closing Date through and including the date Seller plans to deliver
50 possession to Buyer ("Possession Date"). If Seller delivers possession of the Property to Buyer prior to the Possession Date, Buyer shall refund the
51 portion of Use/Occupancy Payments which extend beyond the date possession is actually surrendered. Additionally, Seller shall deposit with
52 Escrowee a sum equal to 2% of the Purchase Price ("Possession Escrow") to guarantee possession on or before the Possession Date, which sum shall
53 be held from the net proceeds at Closing on Escrowee's form of receipt. If Seller does not surrender the Property on the Possession Date, Seller shall
54 pay to Buyer, in addition to all Use/Occupancy Payments, the sum of 10% of the original amount of the Possession Escrow per day up to
55 including the day possession is surrendered to Buyer plus any unpaid Use/Occupancy Payments up to and including the date
56 possession is surrendered, these amounts to be paid out of the Possession Escrow and the balance, if any, to be returned to Seller. Acceptance of
57 payments by Buyer shall not limit Buyer's other legal remedies. Seller and Buyer hereby acknowledge that Escrowee shall not distribute the
58 Possession Escrow without the joint written direction of Seller and Buyer. If either Party objects to disposition of the Possession Escrow, then
59 shall be reimbursed from 60 the Possession Escrow for all costs, including reasonable attorneys' fees, related to the filing of an Interpleader. Escrowee
60 Parties shall indemnify and 61 hold Escrowee harmless from any and all claims and demands, including the payment of reasonable attorneys' fees, costs,
62 and expenses.

63 7. **Closing.** Buyer shall deliver the balance of the Purchase Price (less the amount of the Final Earnest money, plus or minus prorations and
64 escrow fees, if any) to Seller and Seller shall execute and deliver the Deed (as defined below) to Buyer at "Closing". Closing shall occur on or prior to

Buyer Initials: BTM Buyer Initials: _____

Seller Initials: [Signature] Seller Initials: _____

64 14 days after acceptance _____, 20____ at a time and location mutually agreed upon by the Parties ("Closing Date"). Seller must provide Buyer with good and
65 merchantable title prior to Closing.

66 8. Deed. At Closing, Seller shall execute and deliver to Buyer, or cause to be executed and delivered to Buyer, a recordable Quickclaim Deed
67 ("Deed") with release of homestead rights (or other appropriate deed if title is in trust or in an estate), or Articles of Agreement, if applicable, subject
68 only to the following, if any: covenants, conditions, and restrictions of record; public and utility easements; acts done by or suffered through Buyer; all
69 special governmental taxes or assessments confirmed and unconfirmed; and general real estate taxes not yet due and payable at the time of Closing.

70 9. Real Estate Taxes. Seller represents that the 20____ general real estate taxes were \$_____. General real estate taxes for the
71 Property are subject to the following exemptions (*check box if applicable*): ☐ Homeowner's. ☐ Senior Citizen's. ☐ Senior Freeze. General real
72 estate taxes shall be prorated based on (i) _____% of the most recent ascertainable full year tax bill, or (ii) mutually agreed by the Parties in
73 writing prior to the expiration of the Attorney Approval Period.

74 10. Property Subject to Homeowners Association. (*If not applicable, strike this entire Paragraph*) Seller represents that as of the
75 Acceptance Date (as set forth following Paragraph 15 of this Contract), the regular monthly assessment pertaining to this unit is \$_____. a
76 special assessment (*strike one*) has / has not been levied. The original amount of the special assessment pertaining to this unit was \$_____.
77 and the remaining amount due at Closing will be \$_____. and (*strike one*) shall / shall not be assumed by Buyer at Closing. Buyer
78 acknowledges and agrees that (i) the representations in this Paragraph are provided as of the Acceptance Date; (ii) this information may change, and
79 these fees may increase, prior to Closing; and (iii) Seller is under no obligation to notify Buyer of any changes to this information, and, should
80 changes occur, this Contract shall remain in full force and effect. Notwithstanding anything to the contrary contained in this Paragraph 10, Seller
81 shall disclose to Buyer any new assessment that is actually approved and levied prior to Closing no later than 5 days after Seller is notified of the
82 new assessment (and in no event later than the Closing Date). Seller shall furnish Buyer a statement from the proper representative certifying that
83 Seller is current in payment of assessments, and, if applicable, proof of waiver or termination of any right of first refusal or similar options contained
84 in the bylaws of the Association for the transfer of ownership. Seller shall deliver to Buyer the items stipulated by the Illinois Condominium
85 Property Act (765 ILCS 605/1 et seq.) ("ICPA Documents"), including but not limited to the declaration, bylaws, rules and regulations, and the prior
86 and current years' operating budgets within _____ business days of the Acceptance Date. In the event the ICPA Documents disclose that the
87 Property is in violation of existing rules, regulations, or other restrictions or that the terms and conditions contained within the documents would
88 unreasonably restrict Buyer's use of the Property or would increase the financial considerations which Buyer would have to extend in connection with
89 owning the Property, then Buyer may declare this Contract null and void by giving Seller written notice within 5 business days after the receipt of
90 the ICPA Documents, listing those deficiencies which are unacceptable to Buyer, and thereupon all earnest money deposited shall be returned to
91 Buyer. If written notice is not served within the time specified, Buyer shall be deemed to have waived this contingency, and this Contract shall
92 remain in full force and effect. Seller agrees to pay any applicable processing/moveout/transferring fees as required by the Association, and Buyer
93 agrees to pay the credit report and move-in fee if required by the Association. If the right of first refusal or similar option is exercised, this Contract
94 shall be null and void and the Earnest Money shall be returned to Buyer, but Seller shall pay the commission pursuant to Paragraph V of the
95 General Provisions of this Contract.

96 11. Disclosures. Buyer has received the following (*check yes or no*): (a) Illinois Residential Real Property Disclosure Report: ☐ Yes/☐ No; (b)
97 Rent Disclosure: ☐ Yes/☐ No; (c) Lead Paint Disclosure and Pamphlet: ☐ Yes/☐ No; (d) Radon Disclosure and Pamphlet: ☐ Yes/☐ No; and (e) Zoning
98 Certification ☐ Yes/☐ No.

99 12. Dual Agency. The Parties confirm that they have previously consented to _____ ("Licensee") to act as Dual Agent
100 in providing brokerage services on behalf of the Parties and specifically consent to Licensee acting as Dual Agent on the transaction covered by this
101 Contract.
102 Buyer Initials: _____ Seller Initials: _____

103 13. Attorney Modification. Within 5 business days after the Acceptance Date ("Attorney Approval Period"), the Parties' respective
104 attorneys may propose written modifications to this Contract ("Proposed Modifications") on matters other than the Purchase Price, broker's
105 compensation and dates. Any Proposed Modifications that are set forth in writing and accepted by the other party shall become terms of this Contract
106 as if originally set forth in this Contract. If, within the Attorney Approval Period, the Parties cannot reach agreement regarding the Proposed
107 Modifications, then, at any time after the Attorney Approval Period, either Party may terminate this Contract by written notice to the other Party. In
108 that event, this Contract shall be null and void and the Earnest Money shall be returned to Buyer. IN THE ABSENCE OF DELIVERY OF
109 PROPOSED MODIFICATIONS PRIOR TO THE EXPIRATION OF THE ATTORNEY APPROVAL PERIOD, THIS PROVISION SHALL BE
110 DEEMED WAIVED BY ALL PARTIES, AND THIS CONTRACT SHALL BE IN FULL FORCE AND EFFECT.

111 14. Inspection. Within 0 business days after the Acceptance Date ("Inspection Period"), Buyer may conduct, at Buyer's sole cost and expense
112 (unless otherwise provided by law) home, radon, environmental, lead-based paint and/or lead-based paint hazards (unless separately waived), wood
113 infestation, and/or mold inspections of the Property ("Inspections") by one or more properly licensed or certified inspection personnel (such, an
114 "Inspector"). The Inspections shall include only major components of the Property, including, without limitation, central heating, central cooling,
115 plumbing, well, and electric systems, roofs, walls, windows, ceilings, floors, appliances, and foundations. A major component shall be deemed to be in
116 operating condition if it performs the function for which it is intended, regardless of age, and does not constitute a health or safety threat. Buyer
117 shall indemnify Seller from and against any loss or damage to the Property or personal injury caused by the Inspections, Buyer, or Buyer's Inspector.
118 Prior to expiration of the Inspection Period, Buyer shall notify Seller or Seller's attorney in writing ("Buyer's Inspection Notice") of any defects
119 disclosed by the inspections that are unacceptable to Buyer, together with a copy of the pertinent pages of the relevant Inspections report. Buyer
120 agrees that minor repairs and maintenance costing less than \$250 shall not constitute defects covered by this Paragraph. If the Parties have not
121 reached written agreement resolving the inspection issues within the Inspection Period, then either Party may terminate this Contract by written
122 notice to the other Party. In the event of such notice, this Contract shall be null and void and the Earnest Money shall be returned to Buyer. IN THE
123 ABSENCE OF WRITTEN NOTICE PRIOR TO EXPIRATION OF THE INSPECTION PERIOD, THIS PROVISION SHALL BE DEEMED WAIVED
124 BY ALL PARTIES, AND THIS CONTRACT SHALL BE IN FULL FORCE AND EFFECT.

125 15. General Provisions, Riders and Addendums. THIS CONTRACT WILL BECOME A LEGALLY BINDING CONTRACT WHEN
126 SIGNED BY BUYER AND SELLER AND DELIVERED TO BUYER OR BUYER'S DESIGNATED AGENT. THIS CONTRACT INCLUDES
127 THE GENERAL PROVISIONS ON THE LAST PAGE OF THIS CONTRACT AND RIDERS _____ (list Rider
128 numbers here) AND ADDENDUM _____ (list Addendum numbers here) ATTACHED TO AND MADE A PART OF
129 THIS CONTRACT.

[SIGNATURE PAGE FOLLOWS]

Buyer Initials: BM Buyer Initials: _____

Seller Initials: [Signature] Seller Initials: _____

130 OFFER DATE: January 3, 2017 20

ACCEPTANCE DATE: 20 ("Acceptance Date")

131 BUYER'S INFORMATION:

132 Buyer's Signature: [Signature]

133 Buyer's Signature: _____

134 Buyer's Name(s) (print): Legion Investments

135 Address: 2171 San Ramon Dr Sports

136 City: Sports State: NV Zip: 89439

137 Office Phone: 530-257-325 Home Phone: _____

138 Fax: _____ Cell Phone: _____

139 Email Address: brian.t.mineau@chadmar.com

140 The names and addresses set forth below are for informational purposes only and subject to change.

142 BUYER'S BROKER'S INFORMATION:

143 Designated Agent (print): _____

144 Agent MLS Identification Number: _____

145 Brokerage Company Name: _____ MLS # _____

146 Office Address: _____

147 City: _____ State: _____ Zip: _____

148 Office Phone: _____ Cell Phone: _____

149 Fax: _____

150 Email: _____

151 BUYER'S ATTORNEY'S INFORMATION:

152 Attorney Name: _____

153 Firm: _____

154 Office Address: _____

155 City: _____ State: _____

156 Office Phone: _____ Cell Phone: _____

157 Fax: _____

158 Email: _____

159 BUYER'S LENDER'S INFORMATION:

160 Mortgage Broker's Name: CASH

161 Lender: _____

162 Office Address: _____

163 City: _____ State: _____ Zip: _____

164 Office Phone: _____ Cell Phone: _____

165 Fax: _____

1 Email: _____

Buyer Initials: BIM Buyer Initials: _____

SELLER'S INFORMATION:

Seller's Signature: [Signature]

Seller's Signature: [Signature]

Seller's Name(s) (print): SDLiVest Group, LLC

Address: 2029 Verdugo Blvd, Suite 140

City: Montrose, CA 91020 State: _____ Zip: _____

Office Phone: 773-998-4264 Home Phone: _____

Fax: _____ Cell Phone: 818-521-0252

Email Address: Sonja@SDLiVestGroup.com

The names and addresses set forth below are for informational purposes only and subject to change.

SELLER'S BROKER'S INFORMATION:

Designated Agent Name (print): _____

Agent MLS Identification Number: _____

Brokerage Company Name: _____ MLS # _____

Office Address: _____

City: _____ State: _____ Zip: _____

Office Phone: _____ Cell Phone: _____

Fax: _____

Email: _____

SELLER'S ATTORNEY'S INFORMATION:

Attorney Name: Harley Rosenthal

Firm: Rosenthal Law Group

Office Address: _____

City: _____ State: _____ Zip: _____

Office Phone: 847-677-5100 Cell Phone: _____

Fax: 888-451-9627

Email: harley@rosenthallawgroup.com

Seller Initials: [Signature] Seller Initials: _____

167 GENERAL PROVISIONS

- 168 A. **Prorations.** Rent, interest on existing mortgage, if any, water taxes and other items shall be prorated as of the Closing Date. Security deposits, if any, shall
169 be paid to Buyer at Closing. Notwithstanding anything to the contrary contained in Paragraph 9 of this Contract, if the Property is improved as of the Closing Date, but
170 the last available tax bill is on vacant land, Seller shall place in escrow an amount equal to 2% of the Purchase Price and the Parties shall prorate taxes within 30
171 days after the bill on the improved property becomes available.
- 172 B. **Uniform Vendor and Purchaser Risk Act.** The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this
173 Contract.
- 174 C. **Title.** At least 5 days prior to the Closing Date, Seller shall deliver to Buyer or his agent evidence of merchantable title in the intended grantor by delivering
175 a Commitment for Title Insurance of a title insurance company bearing a date on or subsequent to the Acceptance Date, in the amount of the Purchase Price, subject to
176 no other exceptions than those previously listed within this Contract and to general exceptions contained in the commitment. Delay in delivery by Seller of a
177 Commitment for Title Insurance due to delay by Buyer's mortgagee in recording mortgage and bringing down title shall not be a default of this Contract. Every
178 Commitment for Title Insurance furnished by Seller shall be conclusive evidence of title as shown. If evidence of title discloses other exceptions, Seller shall have 30
179 days after Seller's receipt of evidence of title to cure the exceptions and notify Buyer accordingly. As to those exceptions that may be removed at Closing by payment of
180 money, Seller may have those exceptions removed at Closing by using the proceeds of the sale.
- 181 D. **Notice.** All notices required by this Contract shall be in writing and shall be served upon the Parties or their attorneys at the addresses provided in this
182 Contract. The mailing of notice by registered or certified mail, return receipt requested, shall be sufficient service when the notice is mailed. Notices may also be served
183 by personal delivery or commercial delivery service, by mail-a-gram, telegram, or by the use of a facsimile machine with proof of transmission and a copy of the notice
184 with proof of transmission being sent by regular mail on the date of transmission. In addition, facsimile signatures or digital signatures shall be sufficient for purposes
185 of executing this Contract and shall be deemed originals. E-mail notices shall be deemed valid and received by the addressee when delivered by e-mail and opened by
186 the recipient, provided that a copy of the e-mail notice is also sent by regular mail to the recipient on the date of transmission.
- 187 E. **Disposition of Earnest Money.** In the event of default by Buyer, the Earnest Money, less expenses and commission of the listing broker, shall be paid to
188 Seller. If Seller defaults, the Earnest Money, at the option of Buyer, shall be refunded to Buyer, but such refunding shall not release Seller from the obligations of this
189 Contract. In the event of any default, Escrowee shall give written notice to Seller and Buyer indicating Escrowee's intended disposition of the Earnest Money and
190 request Seller's and Buyer's written consent to the Escrowee's intended disposition of the Earnest Money within 30 days after the notice. However, Seller and Buyer
191 acknowledge and agree that if Escrowee is a licensed real estate broker, Escrowee may not distribute the Earnest Money without the joint written direction of Seller and
192 Buyer or their authorized agents. If Escrowee is not a licensed real estate broker, Seller and Buyer agree that if neither Party objects, in writing, to the proposed
193 disposition of the Earnest Money within 30 days after the date of the notice, then Escrowee shall proceed to disburse the Earnest Money as previously noticed by
194 Escrowee. If either Seller or Buyer objects to the intended disposition within the 30 day period, or if Escrowee is a licensed real estate broker and does not receive the
195 joint written direction of Seller and Buyer authorizing distribution of the Earnest Money, then the Escrowee may deposit the Earnest Money with the Clerk of the
196 Circuit Court by the filing of an action in the nature of an Interpleader. Escrowee may be reimbursed from the Earnest Money for all costs, including reasonable
197 attorney's fees, related to the filing of the Interpleader and the Parties indemnify and hold Escrowee harmless from any and all claims and demands, including the
198 payment of reasonable attorneys' fees, costs, and expenses arising out of those claims and demands.
- 199 F. **Operational Systems.** Seller represents that the heating, plumbing, electrical, central cooling, ventilating systems, appliances, and fixtures on the
200 Property are in working order and will be so at the time of Closing and that the roof is free of leaks and will be so at the time of Closing. Buyer shall have the right to
201 enter the Property during the 48-hour period immediately prior to Closing solely for the purpose of verifying that the operational systems and appliances serving the
202 Property are in working order and that the Property is in substantially the same condition, normal wear and tear excepted, as of the Acceptance Date.
- 203 G. **Insulation Disclosure Requirements.** If the Property is new construction, Buyer and Seller shall comply with all insulation disclosure requirements as
204 provided by the Federal Trade Commission, and Rider 13 is attached.
- 205 H. **Code Violations.** Seller warrants that no notice from any city, village, or other governmental authority of a dwelling code violation that currently exists on
206 the Property has been issued and received by Seller or Seller's agent ("Code Violation Notice"). If a Code Violation Notice is received after the Acceptance Date and
207 before Closing, Seller shall promptly notify Buyer of the Notice.
- 208 I. **Escrow Closing.** At the written request of Seller or Buyer received prior to the delivery of the deed under this Contract, this sale shall be closed through an
209 escrow with a title insurance company, in accordance with the general provisions of the usual form of deed and money escrow agreement then furnished and in use by
210 the title insurance company, with such special provisions inserted in the escrow agreement as may be required to conform with this Contract. Upon the creation of an
211 escrow, payment of Purchase Price and delivery of deed shall be made through the escrow, this Contract and the Earnest Money shall be deposited in the escrow, and
212 the Broker shall be made a party to the escrow with regard to commission due. The cost of the escrow shall be divided equally between Buyer and Seller.
- 213 J. **Survey.** At least 5 days prior to Closing, Seller shall provide Buyer with a survey by a licensed land surveyor dated not more than six months prior to the
214 date of Closing, showing the present location of all improvements. If Buyer or Buyer's mortgagee desires a more recent or extensive survey, the survey shall be obtained
215 at Buyer's expense.
- 216 K. **Affidavit of Title; ALTA.** Seller agrees to furnish to Buyer an affidavit of title subject only to those items set forth in this Contract, and an ALTA form if
217 required by Buyer's mortgagee, or the title insurance company, for extended coverage.
- 218 L. **Legal Description.** The Parties may amend this Contract to attach a complete and correct legal description of the Property.
- 219 M. **RESPA.** Buyer and Seller shall make all disclosures and do all things necessary to comply with the applicable provisions of the Real Estate Settlement
220 Procedures Act of 1974, as amended.
- 221 N. **Transfer Taxes.** Seller shall pay the amount of any stamp tax imposed by the state and county on the transfer of title, and shall furnish a completed
222 declaration signed by Seller or Seller's agent in the form required by the state and county, and shall furnish any declaration signed by Seller or Seller's agent or agent
223 other requirements as established by any local ordinance with regard to a transfer or transaction tax. Any real estate transfer tax required by local ordinance shall be
224 paid by the person designated in that ordinance.
- 225 O. **Removal of Personal Property.** Seller shall remove from the Property by the Possession Date all debris and Seller's personal property not conveyed by
226 Bill of Sale to Buyer.
- 227 P. **Surrender.** Seller agrees to surrender possession of the Property in the same condition as it is on the Acceptance Date, ordinary wear and tear excepted,
228 subject to Paragraph B of the General Provisions of this Contract. To the extent that Seller fails to comply with this Provision, Seller shall not be responsible for that
229 portion of the total cost related to this violation that is below \$250.00.
- 230 Q. **Time.** Time is of the essence for purposes of this Contract.
- 231 R. **Number.** Wherever appropriate within this Contract, the singular includes the plural.
- 232 S. **Flood Plain Insurance.** In the event the Property is in a flood plain and flood insurance is required by Buyer's lender, Buyer shall pay for that insurance.
- 233 T. **Business Days and Time.** Any reference in this Contract to "day" or "days" shall mean business days, not calendar days, including Monday, Tuesday,
234 Wednesday, Thursday, and Friday, and excluding all official federal and state holidays.
- 235 U. **Patriot Act.** Seller and Buyer represent and warrant that they are not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation
236 named by Executive Order or the United States Treasury Department as a Specially Designated National and Blocked Person, or other banned or blocked person, entity,
237 nation or transaction pursuant to any law, order, rule or regulation which is enforced or administered by the Office of Foreign Assets Control ("OFAC"), and that they
238 are not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity, or
239 nation. Each Party shall defend, indemnify, and hold harmless the other Party from and against any and all claims, damages, losses, risks, liabilities, and expenses
240 (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing representation and warranty.
- 241 V. **Brokers.** The real estate brokers named in this Contract shall be compensated in accordance with their agreements with their clients and/or any offer of
242 compensation made by the listing broker in a multiple listing service in which the listing and cooperating broker both participate.
- 243 W. **Original Executed Contract.** The listing broker shall hold the original fully executed copy of this Contract. #10828406 y1
Buyer Initials: Buyer Initials: Seller Initials: Seller Initials:

FILED
Electronically
CV18-00764
2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 7

\$44,000 WIRE DATED FEBRUARY 13, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 7

\$44,000 WIRE DATED FEBRUARY 13, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Print OK Cancel

2017/02/13 11:54

Debit Acct Number: 000153753377719

Amount (USD): 44,000.00

Send Date: 02/13/2017

Receiver: 021000021

JPMCHASE NYC

NEW YORK, NY

Beneficiary: CITYWIDE TITLE CORP

850 WEST JACKSON BLVD. STE. 120

CHICAGO, IL 60607

456460794

Originator to Beneficiary Info: ESCRWO NO. 719630

Originator: JAY KVAM

153753377719

Customer Authorization Customer acknowledges that U.S. Bank and any other bank involved in a wire transfer may rely on the account number, bank number, or other information you provide. U.S. Bank has no duty to detect any mistake in the information you provide and shall not be liable for any resulting transfer errors or loss of funds, in accordance with applicable law. Additional fees may be deducted from the transfer amount by other financial institutions involved in the payment process. Customer acknowledges the applicable funds transfer is subject to the rules set forth in the Bank's *Your Deposit Account Agreement*. All transactions are subject to possible limitations under federal law and regulation, including possible restrictions under the rules issued by the U.S. Treasury's Office of Foreign Assets Control. For International wire transfers, the transfer may be made in the applicable foreign currency. In such cases, U.S. Bank or its designee may convert the amount to be transferred from U.S. dollars to the specified currency at U.S. Bank's, or its designee's, applicable rate in effect when the transaction is processed. U. S. Bank provides this rate to the customer upon request. If customer chooses not to convert to local currency at this time, it still may be converted at some point in the processing chain. We may route payment at our own discretion for each outgoing wire transfer. A wire transfer is irrevocable once payment has been transmitted to the beneficiary's bank, in accordance with applicable law. At your request, we may request the beneficiary's bank return funds previously transferred. However, you acknowledge that the beneficiary's bank is under no obligation to comply with this request. By signing below, customer agrees to the terms of the authorization, and represents that customer is authorized to initiate this wire transfer.

Customer Signature: Jay Kvam

Date: 2017-02-13

Customer Name(Print): Jay Kvam

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2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 8

\$784.31 WIRE DATED FEBRUARY 13, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 8

\$784.31 WIRE DATED FEBRUARY 13, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Print OK Cancel

2017/02/13 12:12

Debit Account Name: JAY J KVAM
Debit Acct Number: 000153753377719
Amount (USD): 784.31
Send Date: 02/13/2017
Receiver: 021000021

Beneficiary: JPMCHASE NYC
NEW YORK, NY
CITYWIDE TITLE CORP
850 WEST JACKSON BLVD. STE 120
CHICAGO, IL 60607
456460794

Originator to Beneficiary Info: ESCROW NO. 719630

Customer Authorization: Customer acknowledges that U.S. Bank and any other bank involved in a wire transfer may rely on the account number, bank number, or other information you provide. U.S. Bank has no duty to detect any mistake in the information you provide and shall not be liable for any resulting transfer errors or loss of funds, in accordance with applicable law. Additional fees may be deducted from the transfer amount by other financial institutions involved in the payment process. Customer acknowledges the applicable funds transfer is subject to the rules set forth in the Bank's *Your Deposit Account Agreement*. All transactions are subject to possible limitations under federal law and regulation, including possible restrictions under the rules issued by the U.S. Treasury's Office of Foreign Assets Control. For International wire transfers, the transfer may be made in the applicable foreign currency. In such cases, U.S. Bank or its designee may convert the amount to be transferred from U.S. dollars to the specified currency at U.S. Bank's, or its designee's, applicable rate in effect when the transaction is processed. U. S. Bank provides this rate to the customer upon request. If customer chooses not to convert to local currency at this time, it still may be converted at some point in the processing chain. We may route payment at our own discretion for each outgoing wire transfer. A wire transfer is irrevocable once payment has been transmitted to the beneficiary's bank, in accordance with applicable law. At your request, we may request the beneficiary's bank return funds previously transferred. However, you acknowledge that the beneficiary's bank is under no obligation to comply with this request. By signing below, customer agrees to the terms of the authorization, and represents that customer is authorized to initiate this wire transfer.

Customer Signature: _____

Date: 2017-02-13

Customer Name(Print): _____

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CV18-00764
2020-01-16 04:00:42 PM
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Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 9

SETTLEMENT STATEMENT DATED FEBRUARY 13, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 9

SETTLEMENT STATEMENT DATED FEBRUARY 13, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

File No./Escrow No.: 719630 Citywide Title Corporation
 Print Date & Time: 02/14/17 11:59 AM ALTA Universal ID:
 Officer/Escrow Officer: 850 W. Jackson
 Settlement Location: Citywide Title Suite 320
 Chicago, IL 60607

Property Address: 7747 South May Street
 Chicago, IL 60620

Buyer: Legion Investments

Seller: SDL iVest Group, LLC

Settlement Date: 02/13/2017

Disbursement Date: 02/13/2017

Additional dates per state requirements:

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
		Financial		
	\$44,000.00	Sale Price of Property	\$44,000.00	
		Prorations/Adjustments		
\$935.17		County Property Taxes from 07/01/2016 thru 12/31/2016		\$935.17
\$250.52		County Property Taxes from 01/01/2017 thru 02/13/2017		\$250.52
		Title Charges & Escrow / Settlement Charges		
\$50.00		Title - CPL Fee to First American	\$25.00	
\$3.00		Title - DFI Policy Fee to Citywide Title		
\$800.00		Title - Owner's Policy to Rosenthal Law Group, LLC	\$800.00	
\$250.00		Title - Search Fee to Citywide Title		
\$600.00		Title - Settlement Fee to Citywide Title	\$600.00	
\$125.00		Title - Update Fee to Citywide Title	\$125.00	
\$40.00		Title - Wire Fee to Citywide Title	\$40.00	
		Government Recording and Transfer Charges		
		Recording Fee (Deed) to Cook County Recorder	\$50.00	
\$44.00		Transfer Tax to State of Illinois		
\$132.00		City Transfer Tax to City of Chicago	\$330.00	
\$22.00		County Transfer Tax to Cook County		
		Miscellaneous		
\$1,148.99		2016 1st Cook tax to Cook County Treasurer		
\$557.55		Final water to City of Chicago		
\$750.00		Seller Attorney fee to Rosenthal Law Group, LLC		
\$320.00		Water/zoning to River North Clerking		
Seller			Borrower/Buyer	

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
Debit	Credit		Debit	Credit
\$6,028.23	\$44,000.00	Subtotals	\$45,970.00	\$1,185.69
		Due From Borrower		\$44,784.31
\$37,971.77		Due To Seller		
\$44,000.00	\$44,000.00	Totals	\$45,970.00	\$45,970.00

Acknowledgement

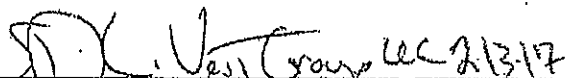
We/I have carefully reviewed the ALTA Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction and further certify that I have received a copy of the ALTA Settlement Statement. We/I authorize Citywide Title Corporation to cause the funds to be disbursed in accordance with this statement.

Buyer/Borrower:

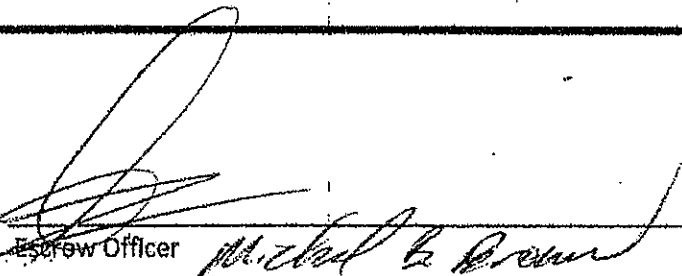
Seller:


LEGION INVESTMENTS, LLC

Feb 6th 2017
Date


SDI VEST GROUP, LLC

2/13/17
Date


Escrow Officer

2/14/17
Date

Receipts and Disbursements Ledger

Printed at 12:41 PM, Feb 14, 2017

Buyer/Borrower: Legion Investments
 Seller: SDL iVest Group, LLC
 Lender: Cash Transaction
 Closing Date: 2/13/2017
 File Number: 719630
 Property Address: 7747 South May Street, Chicago IL 60620
 Closer:
 Primary Bank: JP Morgan Chase Bank, N.A.

Open Date: 01/19/2017

JP Morgan Chase Bank, N.A.

Receipts					
Trans ID:	Payor	Description:	Type of Funds	Deposit Date	Amount
719630-1	Legion Investments	Funds from Buyer	Wire	02/14/2017	44,000.00
		Total			44,000.00
719630-2		funds from borrower	Wire	02/14/2017	784.31
		Total			784.31
		Total Receipts			44,784.31

Disbursements					
Check #:	Payee	Description:	Type of Funds	Check Date	Amount
	EZDEC				
	E04	County Transfer Tax	Check	Not Issued	22.00
	E02	Transfer Tax	Check	Not Issued	44.00
	E03	City Transfer Tax	Check	Not Issued	462.00
		Total			528.00

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CV18-00764
2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 10

WARRANTY DEED DATED JANUARY 30, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 10

WARRANTY DEED DATED JANUARY 30, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

719630 10.1
WARRANTY DEED (Illinois)

THIS DEED is made as of the 30 day of
January, 2017, by and between



Doc# 1707413028 Fee \$46.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 03/15/2017 11:30 AM PG: 1 OF 5

SDL IVEST GROUP, LLC

A Nevada Limited Liability Company
("Grantor," whether one or more),

and

LEGION INVESTMENTS, LLC

A Nevada Limited Liability Company
("Grantee," whether one or more).

(Citywide Title Corporation
850 W. Jackson Blvd., Ste. 320
Chicago, IL 60607)

WITNESSETH, that the Grantor, for and in consideration of the sum of Ten Dollars and 00/100 (\$10.00), in hand paid by the Grantee, the receipt whereof is hereby acknowledged, does WARRANT, COVENANT, AND CONVEY unto the Grantee, and to their heirs and assigns, FOREVER, all the following described real estate, situated in the County of Cook and State of Illinois known and described as follows, to wit:

LOT 25 IN FISHER AND MILLER'S SECOND ADDITION TO WEST AUBURN SUBDIVISION OF BLOCK 23 OF SUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 38 NORTH, RANGE, 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 20-29-417-015-0000 (VOL: 436)

COMMONLY KNOWN AS: 7747 S MAY ST., CHICAGO, IL 60620

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainder, rents issues and profits hereof, and all the estate, right, title, interest, claim or demand whatsoever, of the Grantor, either in law or equity, of, in and to the above described premises, with the hereditaments and appurtenances: TO HAVE AND TO HOLD the said premises as above described, with the appurtenances, unto the Grantee, his heirs and assigns forever.

And the Grantor, for itself, and its successors, does covenant, promise and agree, to and with the Grantee, his heirs and assigns, that it has not done or suffered to be done, anything whereby the said premises hereby granted are, or may be, in any manner encumbered or charged, except as herein recited; and that the said premises, against all persons lawfully claiming, or to claim the same, by, through or under it, it WILL WARRANT AND DEFEND, subject to: Covenants, conditions, restrictions of record, public and utility easements, provided that such exceptions do not impair Purchaser's intended use of the Unit of residential purposes, and general real estate taxes for the year 2017 and subsequent years.

IN WITNESS WHEREOF, said Grantor has caused its signature to be hereto affixed, and has caused its name to be signed to these presents, this 30 day of January, 2017.

SDL IVEST GROUP, LLC


SONJA D LAWRENCE, Its Manager

*See Attached
Acknowledgment or Power*

Instrument prepared by: Rosenthal Law Group, LLC, 3700 W Devon, Ste E, Lincolnwood, IL 60712

MAIL TO:

SEND SUBSEQUENT TAX BILLS TO:
LEGION INVESTMENTS, LLC

OR

RECORDER'S OFFICE BOX NO. _____

STATE OF _____ }
COUNTY OF _____ } SS

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that SONJA D LAWRENCE, manager of SDL IVEST GROUP, LLC is/are personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, 2017.

Notary Public _____

My Commission Expires: _____

*See Attached
Acknowledgment or Power*

**CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGMENT**
(CALIFORNIA CIVIL CODE § 1189)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF Los Angeles)

On Jan. 30, 2017 before me, Gia Michael Dang, Notary Public
(Date) (Here Insert Name and Title of the Officer)

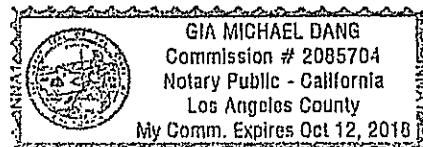
personally appeared Sonia Diane Lawrence,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Gia M. Dang
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

Description of Attached Document

Title or Type of Document: Warranty Deed (Illinois) Document Date: 01/30/2017

Number of Pages: 2 Signer(s) Other Than Named Above: None

Additional Information: _____

REAL ESTATE TRANSFER TAX

21-Feb-2017



CHICAGO:	330.00
CTA:	132.00
TOTAL:	462.00 *

20-29-417-015-0000 | 20170201614562 | 1-953-747-648

* Total does not include any applicable penalty or interest due.

REAL ESTATE TRANSFER TAX

21-Feb-2017



COUNTY:	22.00
ILLINOIS:	44.00
TOTAL:	66.00

20-29-417-015-0000

| 20170201614562 | 0-030-356-160

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Electronically
CV18-00764
2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 11

TERMS OF AGREEMENT DATED FEBRUARY 14, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 11

TERMS OF AGREEMENT DATED FEBRUARY 14, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Terms of Agreement between Legion Investments LLC (its Members)

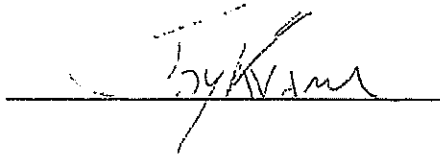
And Jay Kvam (Initial Funding Member of Same)

RE:

7747 S. May Street, Chicago Illinois.

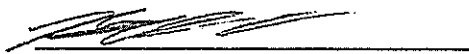
With Regards to acquisition of the aforementioned property, it is understood that the membership of Legion Investments LLC for this acquisition is Brian Mineau, Jay Kvam, and Michael J. Spinola. All parties are entitled to 33.33% of net profit, after all expenses are accounted for, to include interest due on funds dispersed. Initial purchase is being funded by Jay Kvam, who is there by assigned any remedies due should the transaction fail in anyway. Initial funder will be due a 7% annual return on any funds provided due from date of disbursement. There is expected to be 3 renovation draws necessary on this project. First draw to be funded by Mr. Kvam, Due to present and ongoing business dealings between Jay and Michael, Michael has agreed to allot %50 of his 1/3 profit to Mr. Kvam for both initial funding's.

Jay Kvam



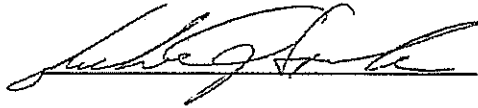
Date 2017-02-14

Brian Mineau

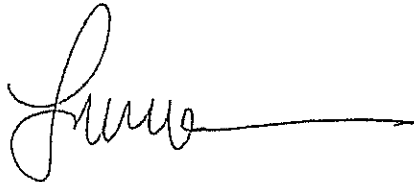
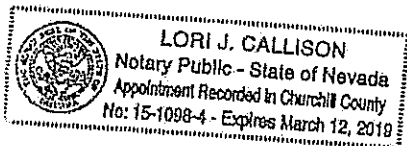


Date 2/13/2017

Michael J. Spinola



Date 2/13/17



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2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 12

TEXT DATED FEBRUARY 17, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 12

TEXT DATED FEBRUARY 17, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Brian Mineau
(530) 251-3205



Evenin', Brian!

Did those wire details comes through? I could do it tomorrow during limited banking hours, if they came through.



Feb 17, 2017

Not yet, he was getting the wiring info for a separate account so he could keep May street funds separate from other other projects

B

I will push to get them by the end of the weekend, sorry for the hold up he was sick most of the week but said he is feeling better now

Brian Mineau (other) • Feb 17, 2017



Okay, no problem, I'll just hold tight.

Feb 17, 2017

B

I appreciate it, sorry for the delays

Brian Mineau (other) • Feb 17, 2017

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Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 13

TEXT DATED MARCH 16, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 13

TEXT DATED MARCH 16, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Verizon LTE

1:07 PM

79%



Colleen >

Mar 16, 2017, 10:32 AM

Oh good that's great.

I left you a long message. I need to get some money to James he's Rollin on Michigan. The weather is getting a little better to be able to pour the concrete on Michigan and the flat on Forest as well. He has ordered materials for forest. And he feels that they can move very quickly there once we get to the hump of this plumbing issue at Michigan.

I have the other contractor I told you about going to May Street. I'm really liking this guy. He seems very fair and hard worker.

I would like to set up a conference call with him this weekend.



Text Message



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Exhibit 14

EMAIL DATED MARCH 20, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 14

EMAIL DATED MARCH 20, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

RE: Scope of Work for May St

Colleen Burke

Mon 3/20/2017 10:48 AM

To: Brian Mineau <Brian.t.mineau@hotmail.com>

Okay he agreed to the 80K.

Colleen Burke

@properties

1586. N. Clybourn

Chicago, IL 60640

773.552.7900

Cburke@atproperties.com

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: Brian Mineau <Brian.t.mineau@hotmail.com>

Date: 3/20/17 12:22 PM (GMT-06:00)

To: Colleen Burke <cburke@atproperties.com>

Subject: Re: Scope of Work for May St

Looks good, I will put together a contracting agreement today. Can you ask him if we can do it for 80k?

Sent from my iPhone

On Mar 20, 2017, at 9:48 AM, Colleen Burke <cburke@atproperties.com> wrote:

Brian please see attached. Let me know if you want to add or make any changes.

Colleen Burke

@properties

1586. N. Clybourn

Chicago, IL 60640

773.552.7900

Cburke@atproperties.com

Sent from my Verizon Wireless 4G LTE smartphone

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Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 15

DOCUSIGN CERTIFICATE MARCH 20, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 15

DOCUSIGN CERTIFICATE MARCH 20, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Certificate Of Completion

Envelope Id: 3EE2D8D9AFCA4C1EAD21FC63EF2DB977

Status: Completed

Subject: Please DocuSign: 7747 S May St - Contractor Agreement TNT Complete Facility Care Inc 3.20.17.doc

Source Envelope:

Document Pages: 14

Signatures: 3

Envelope Originator:

Supplemental Document Pages: 0

Initials: 0

Colleen Burke

Certificate Pages: 5

AutoNav: Enabled

Payments: 0

2634 Woodmere DR.

Envelopeld Stamping: Enabled

Darien, IL 60561

Time Zone: (UTC-06:00) Central Time (US &

cburke@atproperties.com

Canada)

IP Address: 24.13.29.97

Record Tracking

Status: Original

Holder: Colleen Burke

Location: DocuSign

3/20/2017 8:53:40 PM

cburke@atproperties.com

Signer Events

Brian Mineau

brian.t.mineau@hotmail.com

Manager

Legion Investments

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

Accepted: 11/24/2015 9:37:29 PM

ID: 91dfe56a-57de-40f1-bac1-9962220fd749

Signature

DocuSigned by:
Brian Mineau
5C79E24372E245D...

Using IP Address: 108.194.160.93

Signed using mobile

Timestamp

Sent: 3/20/2017 9:02:30 PM

Viewed: 3/20/2017 10:50:58 PM

Signed: 3/20/2017 10:51:07 PM

Derek Cole

derek@tnt24-7.com

Security Level: Email, Account Authentication
(None)

DocuSigned by:
Derek Cole
88AF64D498884A7...

Using IP Address: 71.194.63.160

Sent: 3/20/2017 9:02:30 PM

Viewed: 3/20/2017 10:43:31 PM

Signed: 3/20/2017 10:43:41 PM

Electronic Record and Signature Disclosure:

Accepted: 3/20/2017 10:43:31 PM

ID: 2f4f3c27-04c9-47b5-9d70-c5a3e24dc710

Todd Hartwell

todd@tnt24-7.com

CEO

Security Level: Email, Account Authentication
(None)

DocuSigned by:
Todd Hartwell
A8B9FDC8F9A84EB...

Using IP Address: 73.75.66.42

Sent: 3/20/2017 9:02:30 PM

Resent: 3/21/2017 12:03:47 PM

Resent: 3/21/2017 12:04:17 PM

Viewed: 3/21/2017 2:07:17 PM

Signed: 3/21/2017 2:07:34 PM

Electronic Record and Signature Disclosure:

Accepted: 3/21/2017 2:07:17 PM

ID: ac6fef65-d2ea-4a54-b2d2-7f4581e7ec10

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Notary Events**Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

Hashed/Encrypted

3/21/2017 12:04:17 PM

Certified Delivered

Security Checked

3/21/2017 2:07:17 PM

Signing Complete

Security Checked

3/21/2017 2:07:34 PM

Completed

Security Checked

3/21/2017 2:07:34 PM

Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**

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Transaction # 7691235 : csulezic

Exhibit 16
TEXT DATED MARCH 23, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 16
TEXT DATED MARCH 23, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Brian Mineau, Michael Spinola

Group message



Good morning guys, we are ready for our first draw on May street 20k. I will email the wiring instructions to you jay and if you have time to get it out some time in the next day or two I would appreciate it.

Brian Mineau (other) • Mar 23, 2017

Good morning to you too!
Glad to hear it. I'm going to leave for Elmo shortly, so I will send the funds before that shortly after I receive the instructions.

Elkol haha

Mar 23, 2017



I was wondering where Elmo was lol.

Brian Mineau (other) • Mar 23, 2017

If Sesame Street were anywhere, I'd imagine that it would be in the same neighborhood as May Street.

Mar 23, 2017

KVAM0051

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2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 17
EMAIL DATED MARCH 23, 2017
(Opposition to Defendants' Motion for Summary Judgment
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Exhibit 17
EMAIL DATED MARCH 23, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)



Jay Kvam <kvam.jay@gmail.com>

1st Draw on 7747 May st

Brian Mineau <Brian.t.mineau@hotmail.com>
To: Jay <kvam.jay@gmail.com>
Cc: Michael Spinola <mspinola@onetrusthomeloans.com>

Thu, Mar 23, 2017 at 10:19 AM

Good morning team,

Please see attached, thank you J. My apology for the delays gentleman but we are back on track now!

v/r

Brian Mineau



TNT COMPLETE FACILITY CARE INC Wire info.docx
13K

TNT COMPLETE FACILITY CARE INC

Chase Bank

Routing number 071000013

Account number 603831855

Derek Cole

Todd Hartwell

CEO

919 North LaFox. South Elgin IL, 60177

PO Box 6017 Elgin IL, 60121

Office: 224-535-8616 | Fax: 224-535-9716

todd@tnt24-7.com | www.tnt24-7.com

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Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 18

\$20,000 WIRE DATED MARCH 23, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 18

\$20,000 WIRE DATED MARCH 23, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)



Bank Account Transfers

Bank Accounts : 1-877-247-2559 [Close](#)

What's Next?

If we need to contact you for additional verification, we'll call the number in your profile

To cancel this wire transfer request, call us immediately at 1-877-247-2559

You submitted a wire transfer request

saving *****1512

Available Balance: \$33,359.35

From:

To:

Other Account

Wire Amount:

\$20,000.00

Wire Fee:

\$20.00

Total:

\$20,020.00

Request Date:

Mar 23, 2017

Recipient:

TNT Complete Facility Care Inc

Bank Name:

JPMORGAN CHASE BANK, NA

Recipient
Account Number:

603831855

Recipient
Routing Number:

071000013

For Further Credit To / Additional Instructions

7747 South May Street - Legion Investments - Jay Kvam

Authorization and Agreement

A wire transfer request is known as a "payment order" under Article 4A of the Uniform Commercial Code.

1. As a security procedure, we may verify that you authorized this payment order by telephoning you to confirm that you initiated the request. **We will generally call you based on the dollar amount of this payment order or if we need to further verify your request.** You agree that this "callback" security procedure is commercially reasonable and meets your security requirements. We will not be liable for our refusal to honor any payment order if we are unable to satisfy ourselves that you requested the payment order.


2. You must ensure that the account number of the beneficiary and the bank routing number of the beneficiary's bank are **ABSOLUTELY ACCURATE**. All banks process and post payment orders by the account number of the beneficiary and by the bank's routing number and not by the name of the beneficiary or by the name of the beneficiary's bank. **We will not verify the accuracy of any account number or routing number provided by you.**

3. We reserve the right to delay or not to process payment orders (a) to beneficiaries listed on the Specially Designated National lists from the U.S. Department of Treasury, or (b) for any reason related to an Executive Order of the President, Foreign Governmental Embargoes/ Sanctions, or directive of the U.S. Department of Treasury.

4. We cannot revoke or cancel a payment order once it has been sent and we will not be liable to you if we cannot recover any funds already transferred.

5. We will not be liable for the insolvency, neglect, misconduct, mistake, default or delay of any other bank, entity or person whether or not that other bank, entity or person is our agent.
6. Our liability for failure to follow your instructions will be limited to the amount of any payment order lost plus incidental expenses and interest. In no event will we be liable for any present or future indirect or consequential damages, punitive damages or special damages, whether or not we were first advised of the possibility of such damages. We reserve the right to reject any payment order for any reason, including, but not limited to, the lack of sufficient available funds in the account to be charged.
7. You must notify us in writing of any error, mistake or irregularity within 60 calendar days after the payment order was requested. Thereafter, we will have no liability to you.
8. We do not send outgoing international wire transfers to beneficiaries located in other countries.

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Ally Financial, Inc.

Equal Housing Lender  NMLS: 181005
Ally Bank
Member FDIC

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Transaction # 7691235 : csulezic

Exhibit 19
TEXT DATED APRIL 13, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 19
TEXT DATED APRIL 13, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Brian Mineau
(530) 251-3205

B

Good morning Jay, I spoke with Derek last night and this morning and next Tuesday or Wednesday is good for the next draw if that works for you. He said Easter pushed a few inspections back but we will be done no later than the 16th of May

Brian Mineau (other) • Apr 13, 2017

That does. We can talk details at our meeting today, and then I'll queue it up.

Apr 13, 2017

B

Cool

Brian Mineau (other) • Apr 13, 2017

Great meeting this afternoon! Looking forward to next steps. Until then, I have a question and a follow-up request of you:

1) Does our contracting with Derek mean that he would part ways with Todd Hartwell and TrT-2477?

2) Would you ask Derek whether his bank account is a business account? That has implications for my/our ability to move monies to him at lesser cost. Also, would the account for the second draw be that same as for the first?

KVAM0053

Apr 13, 2017

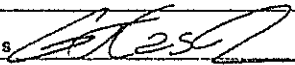
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Electronically
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2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 20
\$20,000 WIRE DATED APRIL 14, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 20
\$20,000 WIRE DATED APRIL 14, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)



General Wire Transfer Request

Section 1 – Branch Information			
Branch #: 3762	Branch Name: MEADOWOOD	Branch Phone Number: 775 693 2050	
Date Received: 04/14/2017	Time Received: 5:08 PM		
Name & Title of Person Accepting Instructions	GREG CASTLE, PERSONAL BANKER	Signature of Person Accepting Instructions	
Section 2 – Method Wire Received			
Wire Requested: In-Person (Section 3 Required)			
Section 3 – Identification for In-Person Wires			
ID Issue State: NV	Type of ID: State Driver's License	ID Number: 0800211404	ID Issue Date: 01/18/2017
Expiration Date: *06/01/2022	Additional Information:		
Section 4 – Telephone, Fax, and Email Requests Only			
Wire transfer requests via telephone, fax, or email may only be accepted from known and existing customers. The employee accepting the request must document how the customer's identity was verified (i.e., the customer was able to verify account transaction history, etc.). Refer to Instructions for Completing K5-A General Wire Transfer Request for detailed identification and documentation requirements. Following privacy , the callback must be performed by someone other than the employee accepting the wire instructions and must be approved by branch management prior to wire initiation. Complete Section 11 to document the callback.			
Customer's/Requestor's Full Name:			
Documentation for how the Customer was verified			
Option 1: Select three different options and document details used to identify the customer. Ownership/Title/Signer(s) option must only be selected once.			
Option 2: Customer identified through conversation details – Used to identify "known existing customers":			
Section 5 – Wire Information			
Customer and Account Information			
Debiting Account Number: 153753377719		Account Title (as shown on the system):	JAY J KVAM
Person Requesting Wire (Name) JAY J KVAM		Relationship to Beneficiary:	INVESTOR
Purpose of Wire: ON-GOING CONSTRUCTION WORK			
Customer Address (city, state, zip): 7565 MICHAELA DR, RENO, NV 89511			
Type and Amount of Wire			
Type of Wire: Domestic	Amount of Wire: 20000.00	Is the amount in USD? Yes	
INPOC Wire Information			
Reason/Purpose for using INPOC GL:			
Customer CD/Loan Account #:		INPOC Cost Center & Account:	/1851230
Receiving Bank and Beneficiary Information			
ABA/Swift (first bank):		Bank Name (first bank):	
Address:		City, State, and/or Country:	
ABA/Swift (final bank): 0710000313		Bank Name (final bank):	CHASE
Address:		City, State, and/or Country:	
Beneficiary Name:	TNT COMPLETE FACILITY CARE INC	Beneficiary Account Number	603531855
Beneficiary Address:	919 NORTH LAFOX, SOUTH ELGIN, IL 60177		
Further Credit To/Reference Info:	SECOND DRAW LEGION INVESTMENTS JAY KVAM		
Section 6 – International Wire Transfers			
All consumer international wires require a Prepayment Disclosure and Receipt Disclosure. Refer to International Wire Transfer Processing for instructions.			
In what currency are the funds to be received? (If unknown to sender, select USD).		Type of Currency:	Bank ID Number:
Section 7 – Verification of Funds			
The account has been reviewed for the following:	<input checked="" type="checkbox"/> Restraints	<input checked="" type="checkbox"/> Collected Balance	
	<input checked="" type="checkbox"/> Accessible Balance (Balance details or DE00 screen print attached)		
Section 8 – Branch Management Authorization (if applicable)			
Required for any of the following scenarios:			
<ul style="list-style-type: none">Known/existing customer is documented.When using the INPOC account for the wire transfer requested.Future dated wires.		<ul style="list-style-type: none">For all wires requested via telephone, fax or email.When waiving the callback requirement for telephone, fax or email requests \$5,000 or less.	
Signature of Management Approval:		Printed name:	

04/2017
K5-A.1

Customer Confidential

Retention: 5 Years

KVAM0005

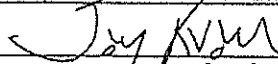
1353



General Wire Transfer Request

Section 9 – Customer Authorization

Customer Authorization: Customer acknowledges that U.S. Bank and any other bank involved in a wire transfer may rely on the account number, bank number, or other information you provide. U.S. Bank has no duty to detect any mistake in the information you provide and shall not be liable for any resulting transfer errors or loss of funds in accordance with applicable law. Additional fees may be deducted from the transfer amount by other financial institutions involved in the payment process. Customer acknowledges the applicable funds transfer is subject to the rules set forth in the Bank's *Your Deposit Account Agreement*. All transactions are subject to possible limitations under federal law and regulation, including possible restrictions under the rules issued by the U.S. Treasury's Office of Foreign Assets Control. For international wire transfers, the transfer may be made in the applicable foreign currency. In such cases, U.S. Bank or its designee may convert the amount to be transferred from U.S. dollars to the specified currency at U.S. Bank's, or its designee's, applicable rate in effect when the transaction is processed. U.S. Bank provides this rate to the customer upon request. If customer chooses not to convert to local currency at this time, it still may be converted at some point in the processing chain. We may route payment at our own discretion for each outgoing wire transfer. A wire transfer is irrevocable once payment has been transmitted to the beneficiary's bank, in accordance with applicable law. At your request, we may request the beneficiary's bank return funds previously transferred. However, you acknowledge the beneficiary's bank is under no obligation to comply with this request. By signing below, customer agrees to the terms of the Authorization, and represents that customer is authorized to initiate this wire transfer.

Customer
Signature: 

Date: 2017-04-14

Future Dated Wire (initials req'd):
Date to be Sent:

Section 10 – Secondary Branch Management Review / Approval

Section 10.a – Wire Transfer ≥ \$50,000 – Secondary Review must be performed by a member of branch management.

Review, and initial or
checkmark each of the
following:

____ Inspection of the wire details to ensure
completion of all required forms and fields.

____ Proof that funds have
been verified.

____ Identification has been verified
and documented.

Section 10.b – Wire Transfer ≥ \$350,000 – Secondary Review must be performed by a member of branch management. Completion of Exhibit K5-E is required to document the Secondary Review/Approval. This section must only be used if K5-E is inaccessible due to system unavailability.

Review, and initial
or checkmark
each of the
following:

____ Inspection of the wire details to ensure completion of all
required forms and fields.

____ Proof that funds have
been verified.

____ Identification has been verified
and documented.

One of the following tasks is required (by the secondary reviewer)

☐ Customer ID verified in
person (complete only if the
customer is physically present
to the secondary reviewer)

ID Issue State
ID Type
ID Number
Expiration Date
ID Issue Date

☐ Callback by the secondary reviewer
(required if the customer is not physically
present to the secondary reviewer.
Complete Section 11 below.)

Section 10.c – (The Reviewer's Signature field below is required for all wires reviewed ≥ \$50,000 in Section 10.a or 10.b)

Reviewer's Signature:

Date:

Name:

Job Title:

Time:

* OPERATOR-ASSISTED WIRES \$50,000 - \$349,999.99: Immediately after initiating the wire transfer, scan and email to E-Fraud Wire Shared/MN/USB.
* OPERATOR-ASSISTED WIRES ≥ \$350,000: Completion of Exhibit K5-E is required with attached documentation of the operator-assisted wire details.
Failure to do so may result in the delay or cancellation of the wire transfer.

Section 11 – Callback Verification

Signature of Callback Employee:

Printed Name:

Date:

Callback Confirmed With:

Time:

Complete one of the following identifying options following privacy.

Option 1: Document three different ways the customer was
verified. Verification options include:

- Branch location where the account was opened
- Date & dollar amount of a recent deposit/credit
- Date the account was opened
- Dollar amount & merchant of recent debit
- Dollar amount or payee of a specific check number
- Frequency and sender of a recent direct deposit
- Mother's maiden name
- Online Banking user ID or account nickname
- Opening amount or current balance of an existing CD
- Ownership/Title/Signers of an account
 - Consumer accounts – Document the ownership/title
 - Business accounts – Document the signer(s) of an account

Option 2: Customer Identified Through Conversation Details
– Used to identify "known existing customers".

Section 12 – Operator-Assisted Wires

U.S. Bank Wire Transfer Operator 888-799-4737

Note: The following fields must be completed for operator-assisted wires.

The account has been
reviewed for the following:

☐ Restraints

☐ Collected Balance

☐ Accessible Balance (Balance details or DE00 screen print attached)

Initiator Calling in Wire (signature):

Name:

Title:

Date:

Wire Transfer Operator Name:

Time:

Section 13 – Reference Numbers

PAR/Wire Reference Number:

IDWires Disclosure Number:

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Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 21
\$9,000 WIRE DATED MAY 18, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 21
\$9,000 WIRE DATED MAY 18, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

2017/05/18 13:22

Print OK Cancel

Debit Account Name: JAY J KHAM
Debit Acct Number: 000153753377719
Amount (USD): 9,000.00
Send Date: 05/18/2017
Receiver: 071000013
JPMORGAN CHASE BK CHICAGO
CHICAGO, IL
Beneficiary: TNT COMPLETE FACILITY INC
603831855
Originator to Beneficiary Info: HALF OF THIRD INSTALLMENT

Customer Authorization

Customer Authorization: Customer acknowledges that U.S. Bank and any other bank involved in a wire transfer may rely on the account number, bank number, or other information you provide. U.S. Bank has no duty to detect any mistake in the information you provide and shall not be liable for any resulting transfer errors or loss of funds, in accordance with applicable law. Additional fees may be deducted from the transfer amount by other financial institutions involved in the payment process. Customer acknowledges the applicable funds transfer is subject to the rules set forth in the Bank's *Your Deposit Account Agreement*. All transactions are subject to possible limitations under federal law and regulation, including possible restrictions under the rules issued by the U.S. Treasury's Office of Foreign Assets Control. For international wire transfers, the transfer may be made in the applicable foreign currency. In such cases, U.S. Bank or its designee may convert the amount to be transferred from U.S. dollars to the specified currency at U.S. Bank's, or its designee's, applicable rate in effect when the transaction is processed. U. S. Bank provides this rate to the customer upon request. If customer chooses not to convert to local currency at this time, it still may be converted at some point in the processing chain. We may route payment at our own discretion for each outgoing wire transfer. A wire transfer is irrevocable once payment has been transmitted to the beneficiary's bank, in accordance with applicable law. At your request, we may request the beneficiary's bank return funds previously transferred. However, you acknowledge that the beneficiary's bank is under no obligation to comply with this request. By signing below, customer agrees to the terms of the authorization, and represents that customer is authorized to initiate this wire transfer.

Customer Signature: _____

Date: _____

SFE WIRE FORM

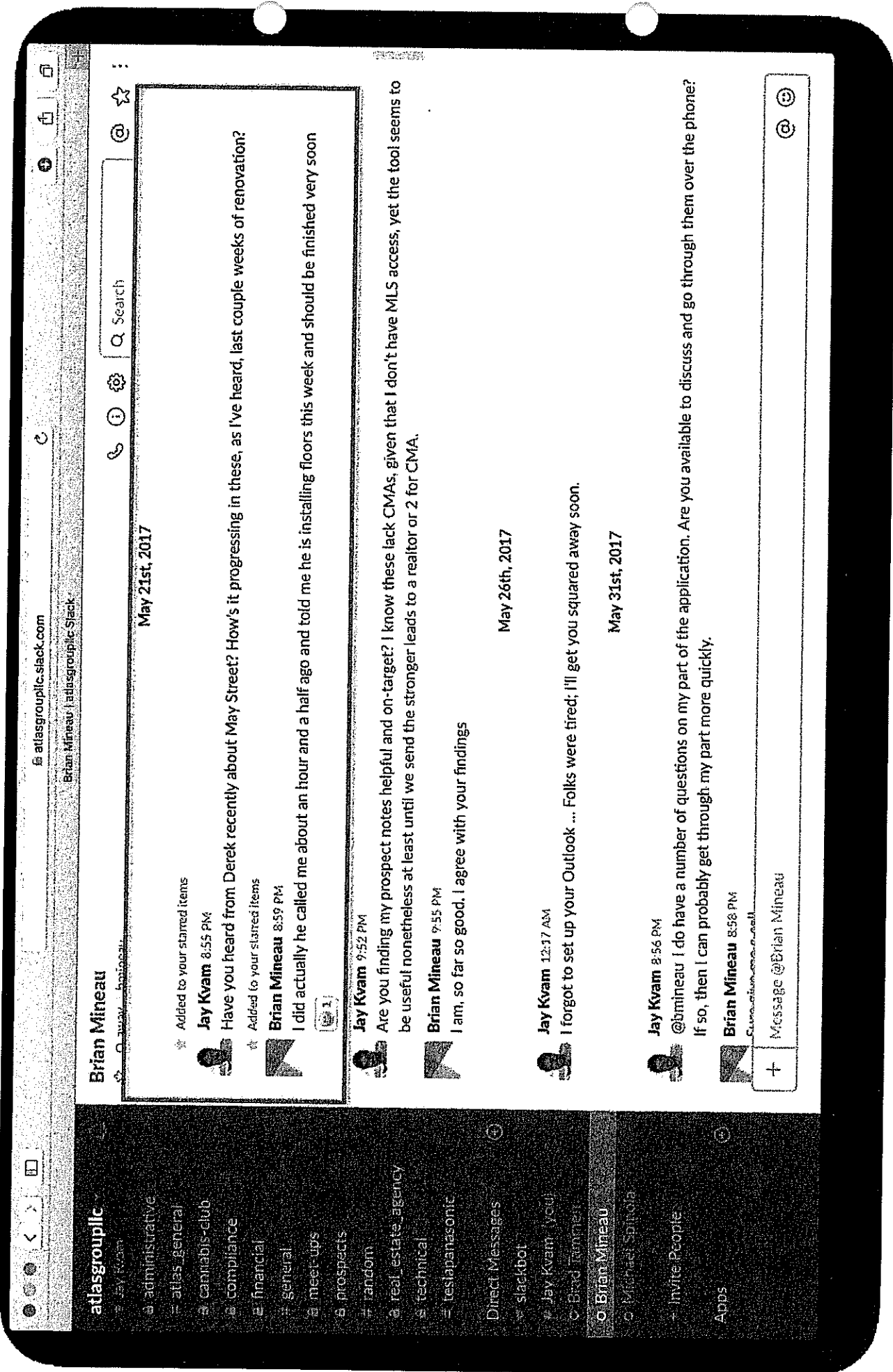
Customer Name(Print): _____

REF # 170518026592

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CV18-00764
2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 22
EMAIL DATED MAY 21, 2017
(Opposition to Defendants' Motion for Summary Judgment
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Exhibit 22
EMAIL DATED MAY 21, 2017
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KVAM0223

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2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 23
EMAIL DATED JUNE 5, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 23
EMAIL DATED JUNE 5, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

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2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 24
EMAIL DATED JULY 14, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 24
EMAIL DATED JULY 14, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)



Jay Kvam <kvam.jay@gmail.com>

Fwd: Re: 7747 May Street

Jay Kvam <jay@atlas-investors-southside-llc.com>
To: Jay Kvam <kvam.jay@gmail.com>

Fri, Jul 14, 2017 at 9:15 PM

----- Forwarded message -----

From: **Bradley T.** <wisted@gmail.com>
Date: Wed, Jul 12, 2017 at 6:48 PM
Subject: Fwd: Re: 7747 May Street
To: Jay Kvam <jay@atlas-investors-southside-llc.com>

For your records. :)

----- Forwarded message -----

From: "Bradley T." <wisted@gmail.com>
Date: May 26, 2017 2:12 PM
Subject: Re: 7747 May Street
To: "Brian Mineau" <Brian.t.mineau@hotmail.com>
Cc:

Just for convenience and to use this email as a record, just wanted to confirm you received the \$20k today which will translate to \$28k back in July.

Thanks,
Brad

On May 26, 2017 11:16 AM, "Brian Mineau" <Brian.t.mineau@hotmail.com> wrote:

Good morning sir,

Here are the numbers for 7747 May Street in Chicago. Jay, Michael and I start negotiations back in February and finally closed it late March.

Purchase Price 44k

Repairs 80k

ARV 169k

Closing costs 13k

All in 138k

Gross Profit 31k

Jay put up the purchase capital and is getting 7% on that and then we are going to split the profit after all expenses are paid back. Michael is splitting his profit with Jay because of a capital crunch and I figured you and I can do the same if you can put up 20k/25k (which ever is easier for you) and then I will put up the remaining construction and listing costs.

Sorry for the delay on this email, I know we have all been running crazy hours. I am hoping to get a wire to Derek today to keep them flying on these properties.

Please let me know if you have any questions.

v/r

Brian Mineau

FILED
Electronically
CV18-00764
2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 25
EMAIL DATED JUNE 26, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 25
EMAIL DATED JUNE 26, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Brian Mineau

From: Jay Kvam <kvam.jay@gmail.com>
Sent: Monday, June 26, 2017 7:42 PM
To: Brian Mineau
Subject: Re: electricity bill - 7747 South May Street

Wow! Thanks great news. Looking forward to checking this off my bucket list and then on to the next.

As for the bill, yeah, I figure that you've been carrying all the operating expenses, so, for ease and consistency sake, probably good to just stick with that.

Also, it's a standing offer, if you need any help wrapping up the bookkeeping and financial calculations at project's conclusion. It may, however, just be easier if you do it, but I'd be glad to contribute however I can, if it would help you out.

On Mon, Jun 26, 2017 at 7:39 PM, Brian Mineau <Brian.t.mineau@hotmail.com> wrote:

Good evening sir,

Thank you for sending this over. Just so I don't drop the ball do I need to pay this bad boy? I spoke with him this morning and they are finishing the drywall then the kitchen goes in and finishing touches in the bath room and we are done. He told me this morning if the city can finish their final inspection at two weeks (no inspections next week cause of the holiday) then we are done!

v/r

Brian Mineau

From: Jay Kvam <kvam.jay@gmail.com>
Sent: Monday, June 26, 2017 7:30 PM
To: Brian Mineau
Subject: electricity bill - 7747 South May Street

Hi, Brian,

Please see attached for the electricity bill for 7747 South May Street. It was


sent to me since I activated the account at Derek's request weeks ago. I know that you're taking care of these things though.

By the way, how is May shaping up at this point? Are we close to completion and do we have an expected finish-by date?

kindly,

Jay Kvam

 : kvam.jay@gmail.com

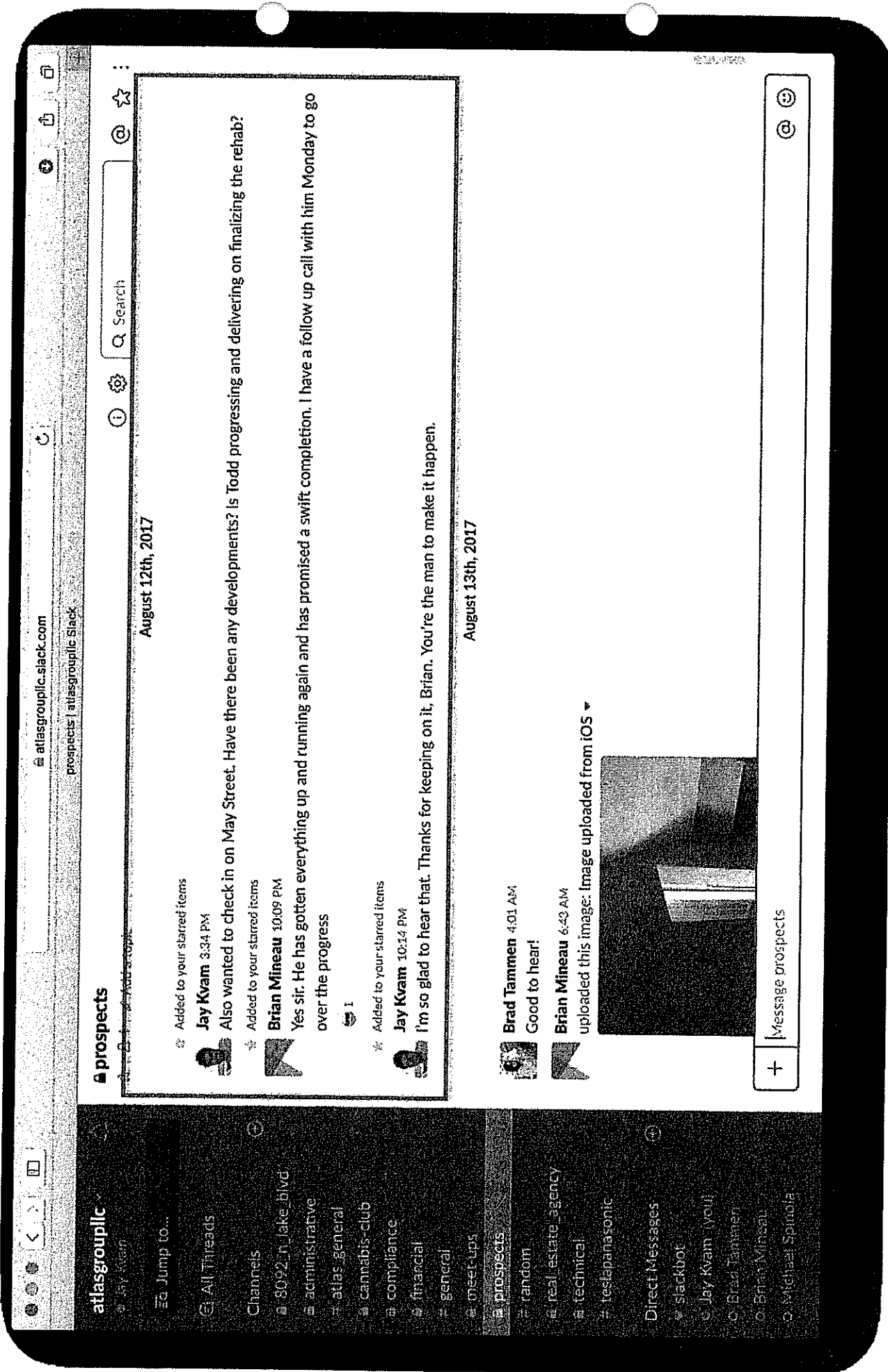
 : +1 (775) 434-8230

 **bill - energy (7747 South May Street) [2018-02-16].pdf**
649K

FILED
Electronically
CV18-00764
2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 26
EMAIL DATED AUGUST 12, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 26
EMAIL DATED AUGUST 12, 2017
(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)



KVAM0238

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Electronically
CV18-00764
2020-01-16 04:00:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7691235 : csulezic

Exhibit 27

EMAIL DATED AUGUST 16, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Exhibit 27

EMAIL DATED AUGUST 16, 2017

(Opposition to Defendants' Motion for Summary Judgment
and Cross Motion for Partial Summary Judgment)

Brian Mineau | Atlasgroup LLC Slack

32. 0 away : homing

Added to your starred items

Jay Kvam 6:53 PM

Good afternoon, Brian,

I know that our attention is, rightly so, on closing on North Lake, but I'm just being honest that May Street is often on my mind and, frankly, it's been a disappointing if not frustrating experience. How did your call with Todd go on Monday? Can we truly depend on him? I know that you have your doubts about his business acumen. Is he actually going to deliver? What's the status of the project, and are we getting close to having it marketable?

Added to your started items.

Brian Mineau 9:00 PM

Good afternoon Jay! I promise you I agree May street is on my mind at least 2/3 times a day I have had 3 separate calls over the last 6 days for May street Todd is back up and running and has promised a swift completion. Derrick not only left us hanging on May but he left me hanging on two other projects as well. I sent 15k in good faith to get Todd moving on those projects and he said he is going to have the crews finishing May at the same time now that he has officially assumed the lead contractor role. He has assured me we will be able to list the first week of September, willing no other city problems. I will keep you apprised of any and all changes

Added to your starred items

Wesley K. Vam 9-12 PM

Thanks, Brian. I'm sorry to pester you so. I just wish that I could help somehow but feel powerless to do so. (edited)

Added to your stored items

Brian Mineau 9:13 PM

No pester at all! good sir! I totally understand and have felt the same way the last few weeks but I think we are over the hump now

August 25th, 2017

Day Kvam 5:34 PM

⁶ Hershiser Capital a sure deal to lend or is its lending dependent upon either the site visit or lender's inspection (Those may be one and the

Message @ Brian Minerva